

**OFFICE OF
THE ELECTRICITY OMBUDSMAN
ASSAM ELECTRICITY REGULATORY COMMISSION**

FILE NO. EOM. 12/2010

Petition No. 3/2010

Name of Petitioner: The Manager,
Amalgamated Plantations Private Limited
Majuli Tea Estate, P.O.- Hatigarh
Dist.- Udalguri (BTAD)
Assam - 784524

ORDER SHEET

02.02.2011

Appeal Petition dated 09.10.2010 filed by the Manager, Amalgamated Plantations Limited, Majuli Tea Estate, P.O.- Hatigarh, Dist. - Udalguri (BTAD), Assam hereinafter called "the Petitioner" was received on 2.11.2010.

The Petitioner stated in the Appeal Petition that they received a notice no.DGM/MEC/TECH-17(IRCA)/07/702 dated 21.09.2010 from the Area Manager, IRCA, Mangaldai, APDCL, ASEB, Mangaldai, whereby it was notified that non payment of an outstanding dues amounting to Rs. 1,21,315/- (Rupees One Lakh Twenty One Thousand Three Hundred Fifteen) as accrued on 01.02.2010 would lead to dismantling of service materials from their premises and also for initiating legal action against them for the recovery of the stated amount.

The Petitioner also submitted that the management would not be in a position to make the payment as recovering such a huge sum from the workers would not be possible as the liability against the workers stand completely changed within a period of six and half years within which time there has been migration of workers, retirements, deaths and dismissals and any attempt will trigger a law and order situation in the present scenario where there is much impetus being given in regards to labour quarter electrification.

Therefore, the Petitioner made an appeal before the General Manager (Commercial-Revenue) vide letter No. 'nil' dated 27.06.2008 and 22.12.2009 with copies to the DGM Mangaldai, Electrical Circle, LAEDCL, Mangaldai and Area Manager, IRCA, ASEB, Mangaldai. Main contention of the Petitioner was that he was served a supplementary bill on 25.04.2008 amounting to Rs. 119558/- (Rupees One Lakh Nineteen Thousand Five Hundred Fifty Eight) for the meter stopped period w.e.f. 08.05.2004 to 20.08.2004. The Petitioner made a complaint before the authority stating that the bill is time barred under section 56(2) of the Electricity Act, 2003. The General Manager had advised the DGM, LAEDCL, Mangaldai vide his Memo No. 402 dated 15th of February, 2010 to look into the matter and dispose of the matter as per the rule from his end with a compliance report. Meantime labour line was disconnected on 18.02.2010 on the ground of non-payment of the supplementary bill.

The Petitioner referred the matter before the Consumer Grievance Redressal Forum (CGRF), LAEDCL, Mangaldai Electrical Circle vide letter dated 30th March, 2010. The CGRF in its meeting held on 06.10.2010 discussed the matter under Agenda No. 1. Objection raised by M/s. Amalgamated Plantations Pvt. Ltd., Majuli T.E. against their labour quarter energy bill (Supplementary), consumer under Mangaldai Electrical Circle.

Extract of Action and Resolution taken by the CGRF, APDCL (LAZ) is reproduced below:

"Action and Resolution. M/S Amalgamated Plantation (P) Ltd. Majuli T.-E. P.O. Hatigarh Dist.Udalguri- 784524 vide their letter dtd. 19/07/2010 intimated that they have received a supplementary energy bill (Bill period from 08/05/04 to 20/08/04) for Rs.1,19,558,00 for labour quarters connected on 25/04/08 after laps of three years seven months from the AM, IRCA under Mangaldai Electrical Circle, APDCL.

The Management (Tea Estate) has pointed out that the provision under section 56(2) of the IE Act, 2003 that bill is time barred. As such bill in question is not recoverable. It is also intimated that the amount is such high that it is not possible for them to recover from his workers.

In this connection some documents such as copy of supplementary bill and reason for the said bill was sought verbally from the garden Authority and accordingly they have furnished the same on 11/08/2010.

A report in the matter was sought from the AM, IRCA, Mangaldoi. The DGM, Mangaldoi Elect. Circle, vide his letter dated 10/08/10 has intimated that the bill was raised as per provision of rule since during the particular period (08/05/04-20/08/04) meter was found stopped (defective) and it was pointed by the Audit to recover from the consumer.

The Forum perused the matter and the points raised by the consumer have been assessed. It is noted that the consumer has objected against the bill raised after 43 months and claimed for withdrawal of the bill citing provision of section 56 of IE Act'2003. On going through the said provision it is noted that this provision is applicable in case of old arrear dues only. In the instant matter the amount became due only on 22/04/08, when the amount has been qualified and claimed by the licensee by a bill. So the said provision is not applicable in this case.

However, the Garden Authority may request before the licensee to grant some suitable installment without any surcharge."

Being aggrieved with the decision of the CGRF, the Appellant Petitioner submitted this appeal before the Electricity Ombudsman praying to waive the said bill as the bill was time barred under section 56(2) of the Electricity Act, 2003.

The Appeal is admitted under clause 5(1) and 6(4) of the Assam Electricity Regulatory Commission (AERC) "Guidelines for Redressal of Consumer Grievances".

It is to be decided

- A) whether the action of the Respondents namely (1) the Deputy General Manager, Mangaldoi Electrical Circle, ASEB, Mangaldai and (2) the Area Manager, IRCA, Mangaldai, APDCL, ASEB Mangaldai in serving the supplementary bill No. 3507 dated 22.04.2008 on the Petitioner on 25.04.2008 for the meter stopped period 08.05.2004 to 20.08.2004 amounting to Rupees 1,19,558/- is in accordance with the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007 and
- B) whether the supplementary bill no. 3507 dated 22.04.2008 is time barred under section 56(2) of the Electricity Act, 2003.

Altogether 4 (four) sittings were held on the date 26.11.2010, 15.12.2010, 10.01.2011 and 19.01.2011.

On the first date of hearing, Sri Indu Raj Malhotra appeared on behalf of the Appellant Petitioner the Manager, Amalgamated Plantations Private Limited, Majuli Tea Estate, P.O.- Hatigarh, Dist. - Udalguri (BTAD), Assam.

The authorized representatives namely Sri Jiten Sarma, Member Convener, CGRF, O/o the Deputy General Manager, APDCL, LAZ, Mangaldai and Sri Rupjyoti Borah, Area Manager, IRCA, Mangaldai, APDCL, LAZ appeared on behalf of the Respondent Deputy General Manager, Mangaldai Electrical Circle, APDCL, LAZ, Mangaldai.

On the second date of hearing, Shakeel Rafique, the Manager, Majuli Tea Estate, Amalgamated Plantations Private Limited, P.O.- Hatigarh, Dist. - Udalguri (BTAD), Assam appeared.

The authorized representatives namely Sri Jiten Sarma, Member Convener, CGRF, O/o the Deputy General Manager, APDCL, LAZ, Mangaldai and Sri Rupjyoti Borah, Area Manager, IRCA, Mangaldai, APDCL, LAZ appeared on behalf of the Respondent Deputy General Manager, Mangaldai Electrical Circle, APDCL, LAZ, Mangaldai. Sri Alope Chakravorty, Senior Manager(F&A), GZ, APDCL, Narengi, Guwahati -26 also appeared.

On the third date of hearing, the Respondents namely Sri Rupjyoti Borah, Area Manager, IRCA, Mangaldai, APDCL, LAZ appeared and Sri Alope Chakravorty, Senior Manager (F&A), GZ, APDCL, Narengi, Guwahati - 26 also appeared.

On the fourth date of Shakeel Rafique, the Manager, Majuli Tea Estate, Amalgamated Plantations Private Limited, P.O.- Hatigarh, Dist. - Udalguri (BTAD), Assam and Hasibur Rahman, Advocate, Gauhati High Court, Guwahati appeared.

The Respondents namely Sri Rupjyoti Borah, Area Manager, IRCA, Mangaldai, APDCL, LAZ appeared and Sri Alope Chakravorty, Senior Manager (F&A), GZ, APDCL, Narengi, Guwahati - 26 also appeared.

In the course of the hearing, the Petitioner also stated in his appeal petition before the Electricity Ombudsman that in the recent months bill Rs. 1,44,345/- has been charged as arrear (Principal and Surcharge) in the Bill no. 20/957 dated 12.06.2010 as against the original bill amounting to Rupees 1,19,558/- .

A. As per para wise comment submitted by the Respondent Deputy General Manager, Mangaldai Electrical Circle, APDCL, LAZ

1. Meter No. 7151237, MF-80 connected to Manager Majuli T.E. A/c. Labour Quarter was not working from 8.5.2004 to 20.8.2004(104 days).

2. Meter was replaced with a new tested and good meter on 20.8.2004.

3. No revise bill was prepared after rectification/ replacement of defective meter. During 09-07-2007 to 19-07-2007, an internal audit party under the guidance of Senior Manager cum Nodal Officer (Audit) LAEDCL test checked the audit report on the revenue account of Area Manager, IRCA, Mangaldai w.e.f. January, 2003 to December 2004 and iter-alia observed that revised bill in the name of Manager, Majuli T.E., P.O.- Hatigarh, Dist. - Udalguri (BTAD) 83 KW, date of inspection 20.8.2004 for an amount of Rupees 2,40,847/- was not raised as suggested by the MTI in its inspection report in 2004 and advised to realize the amount immediately for the meter defective period i.e. 8.5.2004 to 20.8.2004 vide their audit report communicated vide No. LAEDCL/CGM/ADT/REV/MD/2007/1 dated 15.10.2007.

4. As per advice of audit and existing terms & condition, the revised bill was prepared considering the consumption of succeeding 82 days of the replaced new meter amounting to Rs. 1,19,558/- (Rupees One Lakh Nineteen Thousand Five Hundred Fifty Eight). Details of the bill as submitted vide Annexure-II is reproduced below:

Provisionally already units billed during the period 8.5.04 to 20.8.04 i.e. 104 days (During meter stop/defect period)

Period	Unit billed
8.5.04 to 9.6.04	= 7663 Units
9.6.04 to 9.7.04	= 7663 do
9.7.04 to 4.8.04	= 5027 do
4.8.04 to 20.8.04 (dt. of rect.)	= 10038 do
<hr/> Total	<hr/> 30391 units

After rectification of meter on 20.8.04 consumption for 82 days (i.e. up to 10.11.04)

Meter reading on 20.08.04 = 4553

Meter reading on 10.11.04 = 5402
Diff. Of reading 849

Unit consumed = $849 \times 80(\text{MF}) + 3\% \text{ L.T. metering}$

= $67920 + 2038$

= 69958 KWH

Per day consumption = $69958/82 = 853$ units

A) Assessed unit to be billed for the period 8.5.04 to 20.8.04

= 853×104 days

= 88712 KWH

B) Unit already billed = 30391 KWH

Unit to be billed = (A-B) = $88712 - 30391$
= 58321 units

Billing Calculation:-

Energy Ch.	= 58321×2	=	Rs. 116642.00
<u>E.D.</u>	= 58321×0.05	=	Rs. 2916.00
Total	=	=	Rs. 119558.00

5. The revised bill No. 3507 dated 22.4.2008 was served on the consumer vide letter no. DGM/IRCA/Audit/2008/336 dated 25.4.2008 allowing 30 days due date for payment i.e. 25.5.2008.

6. On receipt of the revised bill the Petitioner raised objection to the Area manager, IRCA vide letter No. 'nil' dated 30.4.2008 that the bill is time barred under section 56(2) of the Electricity Act, 2003.

7. On receipt of the complaint, the Area Manager, IRCA LAEDCL ASEB, Mangaldai vide letter No. DGM/MEC(IRCA)/Audit/2008/348-350 dated 20.5.2008 informed the Petitioner that as guided by Cl.15(e)(v) of Terms and Conditions of Supply'89 of the Board, the supplementary bill was served on the Petitioner vide bill No. 3507 dated 22.04.2008 amounting to Rupees 1,19,558. It was also mentioned in this letter that the energy meter connected to the labour Qtr. was found stopped from 08.05.2004 which was rectified by MTI personal on 20.8.04 and that there is no scope of waive of bill amount from his end and that the Petitioner may have option for seeking installment to liquidate the amount before the Deputy General Manager, Mangaldai Electrical Circle, LAEDCL, ASEB.

8. The Petitioner made an appeal before the General Manager (Co-Rev.) vide letter no. 'nil' dated 27.6.2008 and 22.12.2009 with copies to the DGM, Magaldai Electrical Circle, LAEDCL, Mangaldai and Area Manager, IRCA, ASEB Mangaldai.

9. The General Manager advised the DGM, LAEDCL Mangaldai vide memo no. 402 dated 15.02.2010 to look into the matter and dispose off the matter as per the rule.

10. On 10.12.2009, TDC notice was served on the Petitioner due to non-payment of the bill and the same was received.

11. On 18.02.2010, the labour line was disconnected on the ground of non-payment of the aforesaid bill.

It is clear from the above chronological developments that the meter was found stopped on 8.5.2004 and a correct meter was installed on 20.8.2004.

Now procedure of preparing revise bill after installing new meter is given in clause 4.2.1.4 of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007. As per clause 4.2.1.4 of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007 says that "..... after repairing of the defective meter or after installation of a new meter the licensee shall revise the bills as per the procedure given in clause 4.2.2 (Billing)."

Let us see what clause 4.2.2 (billing) of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007 says:

4.2.2.1 Billing Frequency and Serving of Bills

"Bill frequency for all categories of consumers should preferably be one month. Bills shall be served to the consumers every month giving them time of 15 days from date of presentation for payment. Any deviation from this should be recorded in the bill indicating reason thereof.

The Distribution Licensee shall intimate the consumer of the due date on which he will receive his energy bill and also the due date for payment of his bills. This will normally be the due date for all billing cycles for that consumer. In case the due date falls on a holiday in any month, the next working day shall be the due date for that month....."

Procedure for assessment of consumption in case of incorrect or stopped meter is given in clause 4.2.2.4 of the Regulations.

Let us see what clause 4.2.2.4 says:

"In the event of any meter being found prima-facie incorrect (which includes a stopped, slow, or fast meter) and where actual errors of reading cannot be ascertained, the assessed quantity of energy consumed shall be determined by taking the average consumption for the previous 3 months, preceding the date on which the defect was detected or the next three months after correction whichever is higher and bill be prepared and presented accordingly....."

Clause 4.3.3 of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007 relates to recovery of old dues.

Let us see what clause 4.3.3 of the Regulations says : "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 a 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. "

Therefore, the bill for the period 08.05.2004 to 20.08.2004 should have been prepared as per clause 4.2.2.4 of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007 and should have been presented in December, 2004 i.e. the first due date of the bill as per clause 4.2.2.1 of the Regulation in December 2004. But it is seen that the Area Manager, IRCA LAEDCL ASEB, Mangaldai vide letter No. DGM/MEC(IRCA)/Audit/2008/348-350 dated 20.5.2008 informed the Manager Majuli T.E. (A/c. Labour Qtr.) (herein the Petitioner) that as guided by Clause 15(e)(v) of Terms and Conditions of Supply'89 of the Board, the supplementary bill was served (to the Petitioner) vide bill No. 3507 dated 22.04.2008 amounting to Rupees 1,19,558/-. But Clause 15(e)(v) of Terms and Conditions of Supply'89 of the Board has no validity as on 20.5.2008 because the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007 was notified in the Assam Gazette Extraordinary on June 13, 2007. These Regulations shall apply to all distribution licensee and electricity consumer in the state of Assam. Therefore, serving of the bill under clause 15(e)(v) of Terms and Conditions of Supply'89 of the Board is not tenable under the law. Also the Distribution Licensee did not record any reason in the bill for delay in serving the bill after 3 years 4 months.

The correct meter was installed on 20.8.2004 and as per clause 4.2.2.4 of the said Regulations, the assessed quantity of energy consumed should have been determined by taking the average consumption for the previous 3 months, preceding the date on which the defect was detected or the next three months after correction whichever is higher and bill should have been prepared and produced accordingly. Here the licensee prepared the bill for the meter stopped period i.e. 8.5.2004 to 20.8.2004 on the basis of average monthly consumption of the previous 3 months of the date of detection of defect. But the licensee did not assess the quantity consumed during the next three months for the period 20.8.2004 to 20.11.2004 after correction and correct bill was not prepared and served on the consumer as required under clause 4.2.2.4. It is observed that correct bill should have been prepared taking into account of the energy consumption during the period 20.8.2004 to 20.11.2004 and the correct bill should have been served on the consumer i.e. the Petitioner latest by December 2004 as per clause 4.2.2.1 of the said Regulation.

Therefore the Distribution Licensee was at fault for not serving the bill in time to the consumer herein the Petitioner.

B. On the question on whether the bill was time barred under section 56(2) of the Electricity Act, 2003, the Respondent namely Member Convener, CGRF, Bijulee Bhawan submitted in their para wise comment vide No. CGRF/General-1/2010/41 dated 08.12.2010 that in the instant case the amount became first due only on 22.05.2008 and line was disconnected by the licensee for non-payment of the dues on 18.02.2010 and it is well within the time stipulated by the related section of the said Act as submitted by the Respondent. The Respondent further submitted that the question of reflecting continuously as arrear raised by the consumer (herein the Petitioner) would have started on or after 22.04.2010.

The Respondents namely the Area Manager, IRCA, Mangaldai Electrical Circle, Mangaldai and the Deputy General Manager, MEC, APDCL, LAZ, Mangaldai and the Member Convenor, CGRF, Bijulee Bhawan, Paltan Bazar submitted that in this instant case the amount became first due on 22.05.2008. So, the provision of section 56(2) will not attract in this case.

The Respondent namely the Deputy General Manager, Mangaldai Electrical Circle APDCL, Mangaldai further clarified vide letter no. DGM/MEC/G-52/2010/1127 dated 11.12.2010 that "section 56 of the Electricity Act, 2003 is applicable in case of old arrear only. So, the said provision is not applicable in this case."

The CGRF in its meeting on 06.10.2010 noted that "the consumer (i.e. the Petitioner in this case) objected against the bill raised after 43 months and claimed for withdrawal of the bill citing provision of section 56 of IE Act, 2003. On going through the said provision it is noted that this provision is applicable in case of old arrear dues only. In the instant matter, the amount became due only on 22.04.2008 when the amount has been qualified and claimed by the licensee by a bill. So, the said provision is not applicable in this case.

The Respondent namely Rupjyoti Borah, Area Manager, IRCA, Mangaldai, O/o Deputy General Manager, Mangaldai in his written statement before the Electricity Ombudsman on 15.12.2010 stated that outstanding bill amounting to Rs. 1,63,927 (Rupees One Lakh Sixty Three Thousand Nine Hundred Twenty Seven) dated 12.8.2010 (being arrear Rs.1,56,640 + fixed charge Rs.4770 + Meter rent Rs.315 + current surcharge Rs.2202 = Rs. 1,63,927) billing period 01.07.2010 to 01.08.2010 was served on the consumer (herein the Petitioner). As stated by the Respondent, the bill prepared on 22.4.2008 amounting to Rs.1,19,558/- was for the period 08.05.2004 to 20.08.2004 and served on the consumer (herein the Petitioner) on 25.04.2008 but this bill should have been served after three months from the date of replacement of defective meter by a new MTI tested meter which was installed on 20.8.2004 i.e. this bill should have been served on December, 2004. Later on vide No. DGM/MEC/Con-Cor(IRCA)2010/741 dated 20.12.2010, the Respondent Area Manager made additional submission in support of their defence stating that ---

1. Limitations starts only when a bill is raised giving a due date to a consumer and not earlier. This is an established law as held by Hon'ble Delhi High Court in the case of H.D. Shourie Vs Municipal Corporation of Delhi and another reported in AIR 1987 Delhi 219 as well as the Division Bench judgment of Bombay High Court in M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. Municipal Corporation of greater Bombay, reported in AIR 1978 Bombay 369.

2. In the instant case the amount became first due on 22.05.2008 only. So the provision of section 56(2) will not attract in this case.

He also attached a judgment of Jharkhand High Court between M/s. Tata Steel Limited Vs Jharkhand Electricity Board & Ors LPA No. 329 of 2007 in support of their claim that the bill was first due on 22.05.2008 citing para 9 of the Judgment which is reproduced below:

"9. The period of two years as mentioned in Section 56(2) of the Electricity Act, 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of electrical energy."

Now coming to the instant case it is seen that the Assam Electricity Regulatory Commission have already notified the AERC (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007 which was in existence when the said bill was served on the Petitioner. To quote as per clause 4.2.2 "bill frequency for all categories of consumers should probably be one month. Bills shall be served to the consumers every month giving them time of 15 days from the date of presentation for payment....."

The Respondent namely Deputy General Manager MEC APDCL LAZ Mangaldai vide No. DGM/MEC/Con-Cor/10/660 dated 18.6.2010 addressed to the General Manager (Com-Rev.), APDCL, Bijulee Bhawan, clearly mentioned "that during the meter stopped period i.e. period 8.05.2004 to 20.08.2004 average bills was served to the consumer on the basis of average monthly consumption of the previous 3 months of the date which defect was detected. But the revised bill on the basis of next 3 months after correction of meter was not served to the consumer at that time. The fault was detected at the time of scrutiny by the team of Sr. Manager (F&A) cum Nodal Officer (Audit). So, a supplement bill no. 3507 dated 22.04.2008 amounting to Rs. 119558.00 was served to the Manager, Majuli T.E., A/c. Lab. Qtr. during the meter stopped period w.e.f. 20.05.2004 to 20.08.2004 as per audit report of Sr. Manager (F&A) Nodal Officer (Audit dated 15.10.2007).

When there is in existence a Regulation notified by the AERC containing matters connected with the supply of electricity to a person and other related matters namely the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007, the licensee should have followed the said terms of the Regulations in respect of presenting the bill to the consumers i.e. the Petitioner here as this is the normal procedure of presenting a bill for the meter stopped period.

The grievance of the Petitioner is very clear that the supplementary bill for the meter stopped period 20.05.2004 to 20.08.2004 was served on them on 25.04.2008 for the billing period 20.05.2004 to 20.08.2004, therefore the bill is time barred under section 56(2) of the Electricity Act, 2003.

In the preface of the Electricity Act, 2003 (36 of 2003) [26th May, 2003], it is clearly mentioned that this is "an Act to consolidate the laws relating to generation,....., protecting interest of consumers....."

The very provision contained in section 56(2) of the Electricity Act, 2003 is in the interest of protecting the interest of the consumers. To quote section 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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

As per clause 4.2.2.1 and 4.2.2.4 of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007, the revised bill

on the basis of next 3 months after installation of correct meter on 20.08.2004 should have been served on the Petitioner in December, 2004 i.e. first due date of the bill should have been in December, 2004. But the licensee on their own submission have stated that the revised bill was not served on the consumer (i.e. the Petitioner here) at that time and that the fault was detected at the time of scrutiny by a team leader of Sr. Manager (F&A) cum Nodal officer (Audit). So, a supplement bill No. 3507 dated 22.04.2008 amounting to Rs. 119558.00 (Rupees One Lakh Nineteen Thousand Five Hundred Fifty Eight only) for the meter stopped period 20.05.2004 to 28.08.2004 was served on the Manager, Majuli T.E., Udalguri as per audit report of Sr. manager (F&A) and Nodal officer(Audit) dated 15.10.2007. Thus, it is clear that the bill should have been served in December, 2004 but due to the fault of the licensee it was not served in December, 2004. And when the fault was detected during audit inspection, supplement bill was prepared and served on the Petitioner on 25.04.2008. The CGRF have submitted that the Award given by the Forum be considered as their para wise comment on the Appeal Petition.

Under clause 5(2) of the AERC "Guidelines for Redressal of Consumer Grievances", Complainant and Distribution licensee and the CGRF were given opportunity of being heard. Since the complaint could not be settled through conciliation, the Respondent was given ample opportunity to justify their action to which the Respondent in their additional submission stated that limitation starts only when a bill is raised giving a due date to a consumer and not earlier and in this instant case, the Respondent submitted that the amount became first due on 22.05.2008 i.e. the due date given in the bill No. 3507 dated 22.04.2008.

The Petitioner vide their submission on 19.01.2011 submitted copy of order of Hon'ble Supreme Court of India in (2008) 13 Supreme Court Cases 213

a. Kusumam Hotels Private Limited..... Appellant Vs. Kerala State Electricity Board and Others..... Respondent in Civil Appeals No. 101 of 2007 with Nos. 102-06 and 3309 of 2007 decided on May 16, 2008 citing interpretation in paragraph 43, 44 which are reproduced below:

"43: Whereas the bills are issued only in respect of the dues arising in terms of the law as was applicable prior to the coming into force of the 2003 Act, sub-section (2) of Section 56 shall apply after the said Act came into force. The Board could have even framed a tariff in terms of the Provisions appended to Section 61 of the Act. The appellants incurred liability to pay the bill. The liability to pay electricity charges is a statutory liability. The Act provides for its consequences. Unless therefore, the 2003 Act specifically introduced the bar of limitation as regards the liability of the consumer incurred prior to coming into force of the said Act; in our opinion, having regard to Section 6 of the General Clauses Act, the liability continues.

44: We, therefore, are of the opinion that the High Court was not correct in its view to the aforementioned extent. The judgment of the High Court is, thus, set aside to the aforementioned extent. The appeals are allowed with costs. Counsel's fee assessed at Rs. 25,000.00 (Rupees twenty five thousand only) in each appeal."

After hearing both the Petitioner and Respondent and after perusing all the documents submitted before the Electricity Ombudsman and after taking into consideration of all aspects as discussed in details above, I have come to the conclusion that the bill prepared for the meter stopped period w.e.f. 20.05.2004 to 20.08.2004 should have been served in December, 2004 which should be the first due date of the bill. The Respondents namely (1) the Deputy General Manager, Mangaldoi Electrical Circle, ASEB, Mangaldai and (2) the Area Manager, IRCA, Mangaldai, APDCL, ASEB Mangaldai on their own submission have faulted in serving the bill in time as per clause 4.2.2.1 of the Assam Electricity Regulatory Commission (Electricity

Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007. After detection of the fault bill No. 3507 dated 22.04.2008 was served on the Petitioner 25.04.2008 i.e. after about 3 years 4 months.

The bill amount was not shown continuously as recoverable as arrears of charges for electricity supplied w.e.f the first due date i.e. December, 2004 as per clause 4.3.3 of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007. Neither the licensee have recorded in the bill indicating reason for delay in presenting the bill after more then 3 years 4 months from the date of installation of the correct meter. Therefore, presentation of the bill is not in conformity as per clause 4.2.2.1 and 4.3.3 of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007.

I, therefore, conclude that the bill no. 3507 dated 22.04.2008 amounting to Rs. 1,19,558/- for the meter stopped period 8.5.04 to 20.8.04 is time barred under section 56(2) of the Electricity Act, 2003.

For the end of justice, the Respondents namely (1) the Deputy General Manager, Mangaldoi Electrical Circle, ASEB, Mangaldai and (2) the Area Manager, IRCA, Mangaldai, APDCL, ASEB Mangaldai are directed to restore the electricity connection to the labour quarter consumer No. IR-TE(LQ)33(TGL).

Let copy of this order be served on the Petitioner to take follow up action under clause 8(4) of the AERC (Guidelines for Redressal of Consumer Grievance) under intimation to the Electricity Ombudsman.

Let copy of this order be served to all the Respondents/Distribution Licensee to comply with the order within 15(fifteen) days from the date of receipt of the acceptance letter from the Petitioner under clause 8(5) of the AERC "Guidelines for Redressal of Consumer Grievance" and report compliance to the Electricity Ombudsman within seven days from the date of compliance.

Let copy of this order be sent to the Chairman, ASEB, for favour of information and necessary action.

Let copy of this order be sent to the Secretary, Assam Electricity Regulatory Commission, for placing before the Commission.

Let copy of this order be sent to the Secretary, Central Electricity Regulatory Commission / Forum of Regulators (FOR), 3rd & 4th Floor, Chanderlok building, 36, Janpath, New Delhi - 110 001, for favour of information.

Let copy of this order be sent to the Member Convener, CGRF, Bijulee Bhawan, Paltan Bazar, Guwahati - 781001, for favour of information and necessary action.

Sd/-
(Neelima Dewri Dutta)
Electricity Ombudsman