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APPEAL PETITION NO. P/173/2015
(Present: V.V. Sathyarajan)
Dated: 31st March 2016

Appellant : Sri Vimal Paul,
Managing Partner,
M/s. L & P Rubber Industries,
Rubber Park,
Valayanchirangara
Perumbavoor

Respondent :
1. M/s. Rubber Park India Ltd,
2A-Kautileeyam,
Valayanchirangara P.O.
Perumbavoor

2. The Managing Director,
M/s. Rubber Park India Ltd,
Valayanchirangara P.O.
Perumbavoor

3. The Resident Engineer,
M/s. Rubber Park India Ltd,
Valayanchirangara P.O.
Perumbavoor

ORDER

Background of the case:

The appellant Sri Vimal Paul is the Managing Partner of M/s. L & P Rubber Industries, Rubber Park, Valayanchirangara P.O, Perumbavoor, engaged in the business of manufacturing tread rubber and allied products. The connection was given to the industrial unit by the Rubber Park India Ltd. the Licensee, bearing consumer No: 125, under HT I tariff with a Contract Demand of 200 kVA. The respondent has issued a demand notice for back assessment amounting to Rs. 10,57,254.00 towards the energy charges of unrecorded consumption of 243852 units during the period from 01-01-2013 to 01-10-2013 alleging that current in one of the phases was missing in the metering circuit of the appellant. Aggrieved by the decision of the respondent the appellant approached CGRF of the licensee and preferred an appeal petition.

Further, the appellant also filed a Writ Petition No. WP (C) 17117/2014 (L) before the Hon'ble High Court of Kerala which was disposed of on 16-07-2014 with a

direction to consider the objections of the appellant by the CGRF of Rubber Park India (P) Ltd. Accordingly, CGRF has ordered to revise the disputed bill by taking the actual consumption of the appellant as two times of the recorded consumption during the disputed period instead of average consumption based on the succeeding 6 months consumption after the rectification of defects vide order in CGRF 01/2015 dated 27-10-2015. Not satisfied with the above order, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant stated as follows:

1. On 03-12-2013, the licensee made a communication to the appellant alleging that current in one of the phases was missing in the metering circuit and is liable to pay for the unrecorded portion of consumption. Immediately the appellant approached the Resident Engineer of the licensee and after protracted discussions, it was informed to ignore the communication already issued.

2. After a lapse of nearly 6 months, the respondents issued communication no RP/E/28/9859 dated 26-05-2014, whereby a demand was issued for Rs. 10,57,254.00 towards unrecorded 243852 units of energy alleged to have been consumed by him. It was claimed therein that the respondents had conducted an inspection in the premises of the appellant on 10-10-2013, an error in the metering circuit was detected, which resulted in short fall of recording in the energy meter. For the purpose of computation and billing of the alleged short fall, average consumption for consecutive 6 months after the so called inspection was relied upon.

3. The appellant wishes to bring to the kind notice of the Hon'ble Ombudsman that the metering equipments are installed on the roadside, outside the premises of the appellant, under seal and cover of the licensee and the appellant have no access to it. No inspection of any kind was conducted in the premises of the appellant. If at all an inspection was conducted in the metering equipments of the appellant, no information was given and no representative of the appellant was present. No independent witnesses were present, no site mahazar was prepared and no copy of the same was handed over to the appellant at site. The appellant was not informed of any such inspection or any anomaly detected in the metering circuit till date of communication on 03-12-2013 i.e. nearly 2 months after the so called inspection.

4. Aggrieved by the demand of the licensee for such a huge amount, an objection was filed by the appellant on 26-06-2014 with prayer to set aside the impugned demand dated 26-05-2014 and seeking downloaded data from the metering equipment. Also a personal hearing in the matter was requested for, but no tangible results were coming up. Finally the appellant filed a Writ Petition before the Hon'ble High Court of Kerala and the Hon'ble Court was pleased to direct the respondents to furnish documents sought for by the appellant, and give an opportunity of personal hearing.

5. Based on the directions of the Hon'ble High Court the respondents were pleased to hear the appellant on 19-12-2014. Before the aforesaid hearing, appellant had filed two more objections. In the objections raised by the appellant, along with other reasons, the appellant had once again requested for downloaded data from the energy meter, copy of meter reading register, and to test the energy meter at the Electrical Inspectorate and also expressed willingness to bear any cost for the same. But the respondent could not produce the downloaded data from the energy meter

and never bothered to make the energy meter tested by an appropriate authority. After hearing a final order was passed by the respondent vide order no: Nil dated 17-02-2015 in which no relief except correction of a small calculation mistake was allowed.

6. The CGRF of the Licensee conducted a hearing on 8th July 2015 and passed order No. RP/CGRF/C/01/15/10954 dated 28-10-2015, in which only an error in computation of the short assessment was corrected.

7. Prayers before the CGRF that the appellant should have been made convinced about any anomaly in the metering equipment during an inspection and licensee should have established their claim before making any assessment was never considered. The contention of the CGRF that there is no need of a site mahazar before making an assessment on the appellant based on an anomaly in the metering circuit is totally against the spirit and essence of Electricity Act, 2003. The Electricity Act, 2003 has given certain rights to the consumer including answers to why, how, what etc in cases of any penalisation or assessment on the consumer. The licensee cannot arbitrarily or on surmise, charge the consumer on whatever grounds. Whenever a demand is made on an anomaly, if at all, they have to establish it. In this case no such effort has been made by the licensee and hence the assessment is bad at law, illegal and against the principles of natural justice.

8. The appellant respectfully submits that the entire proceedings right from the so called inspection by the respondents on 10-10-2013 to the issuance of orders, by the CGRF are quite arbitrary, illegal based on surmises, without adhering to codes and procedures and violation of principles of natural justice.

In addition to the above, the appellant has argued that the short assessment bill issued cannot be admitted due to the following grounds as detailed below.

1. The computation and quantification arrived at for calculating assessment for the alleged unrecorded consumption is totally erroneous, misconceived, imaginary and against facts in evidence. No inspection of any kind was conducted in the premises of the appellant during the month of October 2013. If at all any inspection was conducted and an anomaly was noticed in the recording of the energy meter installed in the metering equipments, a site mahazar should have been prepared in the presence of appellant's representative or independent witnesses and a copy of the same handed over to the appellant then and there. Neither, the appellant was informed of any anomaly in the meter till communication dated 03-12-2013 of the licensee, in which it was alleged that current in one of the phases was missing in the energy meter.

2. The aforesaid finding of the licensee is not based on real facts and records and the assessment is totally based on assumptions, misconceived, illegal, not sustainable and bad at law. Regulation 19(1) of Supply Code, 2005 and Regulation 109 (14) of Supply Code, 2014 makes it mandatory that "Details of any fault in the meter, repairs, replacement etc shall be entered in the meter particulars sheet/card given to the consumer at the time of installing the meter" by the licensee. In this case no such entry is seen anywhere and hence the presumption that current in one phase was missing was detected in an inspection is totally misleading and against facts in evidence.

3. According to Regulation 27(2)of Supply Code 2005, Section 42(l) of Terms and Conditions of supply 2005 and also Regulation 109 (20) of Supply Code, 2014 "it shall be the duty of the licensee to maintain the meter and keep it in good working condition at all times". It may be noted that meter readings were taken regularly on the first day of every month by the authorised representative of the licensee. If any discrepancy was noted in the supply parameters, the LED display will clearly show an anomaly in the meter and the licensee ought to have informed the same immediately to the appellant. Here no such anomaly is reported or informed to the appellant till communication dated 03-12-2013.

Moreover, if such an anomaly was noticed, data from the meter should have been downloaded by the licensee and made available to the consumer for convincing about it. Despite the appellants repeated requests, through objections filed to download the data, this was done only after a lapse of one year after the so called inspection and the consumer was informed that no data pertaining to the period of assessment is available in the meter, as the storage of data in the meter is limited to 12 months. It is not the fault of appellant that the licensee never bothered to download the data in support of their allegation that current in one phase was missing for such a long period from January to September 2013.

Moreover the licensee had knowledge about the storage capacity of the meter and was aware of the fact that only 12 months data can be retrieved. It is quite ambiguous that why exactly after 12 months of the disputed date of inspection in premises of the appellant, downloading of the data was carried out and there is ample reason to believe that the licensee never wanted to divulge the said data stored in the meter to the appellant. Hence the assessment is based only on assumptions, surmises, not sustainable and the appellant is not liable to pay the same.

4. Before making any short assessment the licensee had to give sufficient data to prove the genuineness and authenticity of their claim. Regulation 37(5) of Supply Code, 2005 clearly states that before making such an assessment the licensee have to clearly "establish" that they have under charged a consumer. This has not been followed in the instant case. Hence no short assessment at all can be made. The assessment now made, based on average consumption for 6 months after the inspection, is totally erroneous, without adhering to codes and procedures, bad at law and hence is not sustainable.

5. It may be noted that the so called inspection was conducted on 10-10-2013, no site mahazar was prepared. No independent witnesses or representative of the appellant were present at the time of inspection. No intimation regarding any anomaly in the energy meter was intimated to the appellant. Then, on a fine morning, after 2 months of the said inspection the licensee gives a letter alleging missing of current in one phase in the energy meter for such a long period of 9 months. On every first day of the month an authorised representative of the licensee was taking regular meter readings but did not report any abnormality in the meter or anomaly in the supply parameters.

Again, after 7 months of the so called inspection, assessment for a huge amount is inflicted to the appellant on the plea that losses of the licensee were very high during the period and it was because of a defect in their energy meter circuit. No evidence or data to substantiate the claim was furnished and the small scale industrial unit is being pressurised to remit the amount. The licensee never bothered to establish their claim as laid down in Supply Code and Conditions of Supply. Even

request for the downloaded data from the meter was complied with only 14 months after the so called inspection. That too without any details pertaining to the period to which assessment is made. All these do not fit in to the Codes and Procedures to be followed by the licensee as is laid down in the Electricity Act, 2013 and Supply Codes, 2005 and 2014, which is denial of principles of natural justice. Hence the assessment is illegal, arbitrary and not sustainable.

6. Section 173 (1) of Supply Code, 2014 makes it mandatory that every inspection conducted by a licensee shall be transparent, fair and free of prejudice and Section 173 (5) makes it mandatory that the Inspecting Officer shall inspect thoroughly, all relevant aspect of the installation including condition of the metering installation without limiting the scope of inspection to one or two aspects. Here the inspection if any conducted by the licensee was not transparent or fair. No intimation was given to the appellant regarding any anomaly in the metering circuit at the time of inspection. No witnesses were present and not even a mahazar was prepared at site. Hence the assessment in itself is prejudicial, arbitrary and does not stand the test of law.

7. It may kindly be noted that the first ever communication was made by the licensee regarding the so called inspection only on 03-12-2013 i.e. after nearly 2 months from the said date of inspection. Immediately on receipt of said letter the appellant had contacted the concerned officer of the licensee in person and the appellant was asked to "ignore it".

8. In reply to Para 4 of the appellant's petition before the CGRF, the licensee claimed that there was unrecorded consumption due to the faulty operation of the metering equipments. In fact the very same meter, which is functioning properly, is still installed for measuring energy consumed by the appellant. No material evidence to substantiate that there was a mal operation or any kind of interference of the appellant with the metering equipments. The claim of the licensee that there was unrecorded consumption is unfounded and bogus. The assessment made is based on false notions and assumptions are not sustainable and the appellant is not bound to pay the same.

9. Hence it is humbly submitted that whatever works carried out and checking of connections made in the metering cubicle on 10-10-2013 and 11-10-2013 was only part of a break down rectification work. The chronology of the incident narrated by the operator is given below.

a. 08-10-2013 L & P RMU flashed with heavy sound. New bay 11 kV feeder and incomer 2 tripped due to over current
b. 09-10-2013 meggered cable of L & P. Found that the cable is faulty (Low insulation resistance)
c. Cable termination work was done and again meggered cable. The reading of phase to phase showed "infinity" and charged cable (at 13:45 on 10-10-2013.) stood OK.
d. 10-10-2013/13:45 "But one phase shows no load in the meter". Cable connection checked. Found OK.
e. 11-10-2013 checked CT connection in TTB, on the screw of R phase terminal in TTB carbon particles was found. Cleaned and connected. Again charged feeder." Checked meter readings and all the phases found equal."

From the above it is quite evident that from 09-10-2013 to 11-10-2013 the licensee was carrying out rectification works due to a heavy fault in the 11 kV L & P

cable. The cable end joint was damaged; all fuses in the RMU were blown off and rectification works such as redoing end joints, renewal of fuses in the RMU etc were carried out by the licensee. After the breakdown maintenance / rectification works the feeder was charged and the feeder stood OK, but no load was showing in one phase of the energy meter. Again all connections were checked and found that the 11 kV connections are OK. Then there was every reason to check the metering cubicle.

It may be noted that the fault was too heavy and even incomer No. 2 in the substation was tripped with over current indication. Due to this abnormal and heavy fault current, a more than abnormal current was flown through the CT terminals, connected in the TTB. A flash was occurred in one of the TTB terminals and carbon particles coated in the connecting screw. This resulted in missing of one phase to the meter. This is quite a natural phenomenon when a heavy fault occurs in the 11 kV line of HT consumers, especially when the fault is so near to the metering equipments. It is prayed before the Hon'ble Ombudsman to examine the operator's diary from 01-01-2013 till date. It can be seen that prior to or after the heavy cable fault, there is no entry in the operator's diary regarding missing of current in any phase in the metering circuit.

10. Whatever activities made by the licensee in connection with the cable fault was part of a breakdown maintenance and cannot be construed as an inspection. The appellant was charged with the material and labour cost incurred by the licensee and demand made by them was duly remitted by the appellant. As per guidelines laid down by the Regulatory Commission an inspection in the premises of a consumer shall be complete in every respect and shall not confine to one or two aspects. Here the only activity made by the licensee in the metering cubicle was cleaning a terminal in the TTB and connecting a CT terminal in to it, which was consequent to a heavy fault in the 11 kV circuit. Hence the claim of the licensee that they have made an inspection in the premises of the consumer and found that one phase was not recording for a long period is totally baseless and against facts in evidence. The assessment is totally against Act and Rules in force, hence is bad at law and not sustainable

11. The contention of the licensee that the evidences produced before the CGRF regarding repairs to their mixing machine do not support the claim is not correct. The mixing unit was sent for repairs in the month of 2/2013 without rotor. After repairs the company, M/s Kelachandra Ltd asked to send the rotor assembly, which is the integral part of the mixing unit for testing and calibrating the efficiency of the repaired machine, and the rotor was despatched on 07-06-2013 to the company. After repairs and testing the entire unit was returned to them on 15-06-2013. In support of the claim the copies of the despatch notes were submitted before the CGRF.

12. In reply to Para 10 of complaint to the CGRF the licensee has quoted Section 42 (3) of Terms and Conditions of Supply, 2005, which is totally irrelevant in this case. Section 42 (3) applies for cases where the meter was faulty. Here the meter was not faulty and is still working properly. Only non recording due to failure of a phase is alleged. In such cases there are laid down rules to quantify the consumption unrecorded if any. It is quite ambiguous why Section 42(3) of Condition of Supply, 1990 is brought in to this case. The appellant wishes to humbly point out that Section 42(3) of the (Non-existent) Conditions of Supply, 1990 of KSEB has nothing to do with the instant case and the assessment made on the said clause of conditions of supply is arbitrary illegal and does not stand the test of law.

13. For reasons stated in the original complaint filed by the appellant grounds and reasons put forth in the hearing, documents submitted and reasons furnished in the foregoing paragraphs, it is humbly prayed that the Hon'ble Ombudsman may be pleased to order to set aside the impugned assessment dated 26-05-2014, order dated 17-02-2015 issued by the respondents and order dated 28-10-2015 of the CGRF and declare that the appellant is not liable to pay charges for the imaginary unrecorded energy, alleged to have been consumed by the appellant. Also it is humbly prayed that interim direction may kindly be given to the respondents not to disconnect power supply to their premises till a final decision in the matter is made by the Hon'ble Ombudsman.

Arguments of the respondent:

The respondent submitted the following arguments.

The computation and quantification in the assessment are correct and the averments to the contra are wrong. The appellant argued that no inspection was conducted in their premises on 10-10-2013. The said argument of the appellant was baseless and incorrect. Respondents had inspected and carried out fault rectification works on the metering cubicle in the premises of the appellant on 09-10-2013, 10-10-2013 and 11-10-2013 and the sequence of events are fully recorded in the permit book and operators diary kept within the Sub Station. Moreover the appellant had issued with a letter vide RP/E/29/9297 dated 10-10-2013 regarding the amount to be remitted in connection with the expenses incurred by Rubber Park for the rectification works conducted on RMU, Metering Cubicle and outgoing cable installed in the premises of the appellant.

In the subject line itself of the said letter it is clearly mentioned that "Fault rectification work at RMU, Metering Cubicle and outgoing cable to appellant's factory on 09-10-2013 and 10-10-2013. The appellant had remitted Rs. 23,264.00 on 30-10-2013. Hence it is clear from this data that fault rectification works on the metering cubicle of the appellant was conducted on 10-10-2013 and the argument of the appellant that no such inspection was conducted in their premises on 10-10-2013 was baseless, incorrect and not sustainable. Moreover the appellant was issued with a letter on 03-12-2013 in which it was clearly mentioned that the respondent had observed a metering error in the metering cubicle installed for the appellant.

The respondent had also informed the appellant in the same letter that they are liable to pay the energy charges for the unrecorded consumption during the faulty period. But the appellant has not made any objection on the claim and they had never ever objected the findings up to the demand notice dated 26-05-2014 for Rs. 10,57,284.00 (Rupees Ten Lakhs Fifty Seven Thousand Two Hundred and Eighty Four only) towards the energy charges for the unrecorded consumption. Hence it is obvious that the appellant was aware of the meter rectification works carried out at his premises and he was not questioned the same until he was issued with a bill. If the appellant did not know about the meter rectification works carried out on the metering cubicle, he would have objected to the same at the time of receiving the notice.

It is not mandatory as per the Supply Code, 2005 to prepare and deliver the site mahazar during all inspections. The Regulation 50(1) of the KSEB Terms and Conditions of Supply, 2005 states that if on an inspection of any place or premises or

after inspection of the equipment, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the Board's officer not below the rank of Assistant Engineer (Assessing Officer) comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally access to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use as per Section 126 of Electricity Act.

Similarly, the Regulation 4(4(i)) of the Kerala State Electricity Supply Code, 2005 states that “In case of prejudicial use of power supply, the licensee should draw mahazar at the time of inspection when such prejudicial use is detected. The mahazar shall be drawn in the presence of the consumer or his representative along with two other witnesses who shall sign the mahazar report. One copy of such report shall be handed over under acknowledgment of the consumer or his representative. As per the above Regulation the issue of provisional bill and preparation of mahazar is only mandatory for power theft and unauthorized extension or use of electricity. Hence as per the above Regulation, it is very clear that the licensee was not accountable to provide the provisional bill and mahazar in this case.

The Regulation 19(1) of the Supply Code, 2005 states that "the meter reading shall be taken by the employee or the persons authorised by licensee and record the same on the meter card provided for such purposes by the licensee near such meter" The licensee had kept an independent meter reading register which is accessible for the appellant at any time. There is no clause in the said Regulation that "Details of any fault in the meter, repairs, replacement etc shall be entered in the meter". The Hon’ble Commission had implemented the Kerala State Electricity Supply Code, 2014 with effect from 01-04-2014. Hence the Regulations mentioned in the Supply Code, 2014 are not applicable in this case. The R phase current reading recorded as zero in the register from December 2012. The copy of the meter reading register was issued to the appellant before the hearing conducted by the Managing Director, Rubber Park. Hence the finding of the licensee that the said fault was persisted in the metering of the appellant from December 2012 was totally factual according to the facts and evidences.

The argument of the appellant that the licensee had knowledge about the storage capacity of the meter and was aware that only 12 months data can be retrieved is baseless, incorrect and hence denied. The said anomaly events will be recorded in the meter for every power failure, load unbalance etc. The anomalies are recorded in a meter as sequential storage. The said meter had a capacity to store maximum of latest 188 Nos. of sequential storage for events. The events are recording in the meter as first come first out manner. The said anomaly events will be recorded in the meter for every power failure, load unbalance etc. The latest 188 datas within the meter were downloaded on 27-10-2014. The meter had recorded 188 events within 25-10-2014 to 26-10-2014. Neither the consumer nor the licensee can ascertain the date up to which the data's available in the meter without downloading the same.

The No. of events determines how many days’ datas are stored in the meter. The respondent had enquired the meter testing lab of Electrical Inspectorate to download the datas, but they had informed that they only carry out the accuracy testing and calibration of the meters. Since the respondent have not objected the accuracy of the energy meters installed in the premises of the appellant, it is not relevant to carry out the accuracy testing and calibration of the meters in this case. However the respondent had downloaded the available datas based on the additional

objection filed by the consumer with the help of the Service Engineer of the manufacturer of the meter M/s. L & T Limited within the presence of the representative of the appellant and served a copy of the same.

The ToD meter has the capability to record maximum previous 12 reset counts billing report and a maximum of latest 188 Nos. of sequential storage for events off. Respondent had got only the billing report from 11/2013 to 10/2014 and sequential storage for events from 26-10-2014 to 27-10-2014 while downloading and no previous datas were available in the meter. The meter has designed to store the datas on the first come last out manner and hence only the datas within the memory capacity of the meters are available with the meter for downloading. The anomaly will be displayed in a meter when the load is not equally segregated on every phases or putting the load on single phase or due to low power factor of the system. Since the anomaly displayed in the meter may be due to the load pattern of the consumer, it is not pragmatic to inform the consumer whenever an anomaly string displayed in the meter.

The respondent stated that in the present case, the fault in the meter connection has not developed in a single day. The carbon particles were deposited in the terminal box of the meter gradually over a period of time and the consumption recorded in the meter prior to the complete outage of one phase of the CT also may be considerably reduced. However the respondent had billed only for the period for which one phase of the CT was recorded as zero in the metering register. The respondent had issued a copy of meter reading register for the period from 01-01-2013 to 01-10-2013 to the appellant to establish the said claim. The Appellant is using 3 phase 3 wire system of energy measurement for the appellant; unavailability of one of the phases current will result in more than 50% reduction in the recorded energy consumption. Hence Licensee had calculated the average consumption of the appellant based on the provision in Section 42(3) of the KSEB Terms and Conditions of Supply, 1990 which was adopted by the Licensee also.

The Section 42(3) of the KSEB Terms and Conditions of Supply, 1990 clearly specifies that "If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding six months after replacement of meter and excess claimed if any, shall be adjusted in the future current charge bills". So the argument of the appellant that the short assessment based on the average consumption for 6 months after the inspection was without adhering to the Codes and Procedures is baseless and incorrect. Whenever a fault was rectified, the same metering equipments can be used for further metering. The respondent have never objected the accuracy of the meters and not claiming that there is any mal operation or any kind of interference of the appellant with metering equipment.

The appellant's argument for carbon particle deposited on the TTB terminal due to the flash over occur in the TTB terminals was technically not correct. This much of carbon particle will never deposit on the TTB due to the single flash over occur on RMU. These carbon particles deposited through day by day from the date of commissioning of the appellant. The flash over was occurred on the RMU on 08-10-2013. The fault rectification work was completed on 10-10-2013. The licensee noticed during the energisation of the consumer on 10-10-2013 that one phase current was not reading in the meter.

Hence the respondent had conducted detailed inspection and during detailed investigation the respondent had found out that CT connection from R phase is filled with carbon particles in test terminal block. On verification of the metering register the respondent had noticed that the one of the phases of the meter was not recording any consumption from 01-01-2013. From the detailed analysis of the meter reading register before and after the fault rectification work, it was easily understood that one of the phases was missing from 01-01-13. The consumption of the appellant before the rectification of the metering fault was as follows.

Sl. No.	Month	Total Consumption in kWH
1	Apr-13	5,772.00
2	May-13	13,796.00
3	Jun-13	17,188.00
4	Jul-13	18,520.00
5	Aug-13	20,584.00
6	Sep-13	24,344.00

The consumption of the appellant after the rectification of the meter fault was as follows.

Sl. No.	Month	Total Consumption in kWH
1	Oct-13	38,148.00
2	Nov-13	37,688.00
3	Dec-13	41,264.00
4	Jan-14	38,952.00
5	Feb-14	54,324.00
6	Mar-14	40,920.00

This shows that the metering of the appellant was not working properly during the above period. The appellant stated that mixing unit was sent to M/s Kelachandra Ltd for repair on 02/2013 without rotor. After repairs, M/s Kelachandra Ltd asked to send the rotor. Rotor was also dispatched on 07-06-2013 to M/s Kelachandra Ltd. After repairs and testing the entire machine unit was returned by M/s Kelachandra Ltd on 15-06-2013. The appellant also stated that by over sight the dispatch note send by the appellant on 15-06-2013 happened to be a copy of the dispatch note dated 07-06-2013, due to this the dispatch note on 15-06-2013 only mentioned about the dispatching of Rotor of Banbury Motor instead of dispatching of the entire unit. So the contention of the licensee that the evidence produced before this Forum regarding repair of the mixing machine did not support the claim was not correct.

The Hon'ble CGRF had calculated the unrecorded consumption not as per the section 42(3) of the KSEB Terms and Conditions of Supply, 2005. However the Hon'ble CGRF had given some relaxation to the appellant. The Hon'ble CGRF in the order stated that "When one among the two of the current transformer of the 3 phase 3 wire metering system is not recording, then the consumption recorded will be only 50% of the actual consumption. Therefore, this Forum is fixing the actual consumption of the appellant as two times of the recorded consumption during the

disputed period". The order of the Hon'ble CGRF which may also be read as a part of this objection.

However the section 42(3) of the KSEB Terms and Conditions of Supply, 2005 clearly specifies that "If the existing meter after having found faulty is replaced with a new one, the consumption recorded during the period in which the meter was faulty shall be reassessed based on the average consumption for the previous six months prior to replacement of meter. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding six months after replacement of meter and excess claimed if any, shall be adjusted in the future current charge bills. The said Regulation is applicable to assess the unrecorded consumption for all the cases where the meter fails to record the actual consumption. The failure of a phase will also leads to the non recording of the actual consumption.

The Meter means a device suitable for measuring, indicating, and recording consumption of electricity or any other quantity related with electrical system: and shall include wherever applicable, other equipment such as current transformer (CT), Voltage transformer (VT), or Capacitive Voltage transformer (CVT), necessary for such purpose. Hence argument of the appellants that the assessment made on the said clause of condition is wrong" is not true and baseless. The respondents had issued revised demand notice in compliance with the order of Hon'ble CGRF for an amount of Rs. Rs. 5,76,116.00 (Rupees Five Lakhs Seventy Six Thousand One Hundred and Sixteen Only). The short remittance on the account of unrecorded consumption to be remitted by the appellant was almost reduced by half from Rs. 10,57,284.00 to Rs. Rs. 5,76,116. The revised demand notice issued by the respondent which may also be read as a part of this objection.

In view of the above submissions and also the contentions which will be urged at the time of hearing it is most humbly prayed that the Hon'ble Ombudsman may be pleased to dismiss the appeal.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 11-02-2016. Sri S. Babukutty and Sri A. A. Muraleedharan were present for the appellant's side and Sri Akhil Raj, Assistant Resident Engineer, Rubber Park India (P) Ltd. represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The appellant has alleged that no inspection was conducted in their premises and no site mahazar prepared and issued to the appellant. Further no notice was issued pursuant to the alleged inspection on 10-10-2013 but raised a demand which is of final in nature. Moreover, he has not given an opportunity to raise his objections against the demand made therein by issuing a provisional bill. According to the appellant it is mandatory that "Details of any fault in the meter, repairs, replacement etc shall be entered in the meter particulars sheet/card given to the consumer at the

time of installing the meter" by the licensee as per **Regulation 19(1) of Supply Code, 2005 and Regulation 109 (14) of Supply Code, 2014.** In this case no such entry is seen recorded anywhere and hence it is only a presumption that current in one phase was missing was detected in the alleged inspection, is totally misleading and against facts in evidence.

As per Regulation 27(2) of Supply Code 2005, Section 42(l) of Terms and Conditions of Supply, 2005 and also Regulation 109 (20) of Supply Code, 2014, "it shall be the duty of the licensee to maintain the meter and keep it in good working condition at all times". According to the appellant, meter readings were taken regularly on the first day of every month by the authorised representative of the licensee. If any discrepancy was noted in the supply parameters, the LED display will clearly show an anomaly in the meter and the licensee ought to have informed the same immediately to the appellant. Here no such anomaly is reported or informed to the appellant till the issue of letter dated 03-12-2013.

Another argument of the appellant is that there is no fault in the meter or in the CT and PT units and the energy consumed was being properly recorded without fail. No rectification works as alleged was ever carried out in the premises during the aforesaid period. One of the important dispute is that prior to issuance of the impugned demand, the ToD meter installed in the premises was not subjected to any inspection or examination. Again the appellant contented that the Banbury Rotor, which is an integral part of mixing plant, was sent for repair on 2/2013 and the same was installed in the plant during 8/2013, after repair which is the reason for lower consumption during the said period.

On the other hand, the respondent's contention is that they have inspected and carried out fault rectification works on the metering cubicle in the premises of the appellant on 09-10-2013, 10-10-2013 and 11-10-2013 and the sequences of events are fully recorded in the permit book and operator's diary kept in the Sub-station. According to the respondent, the appellant had remitted Rs. 23,264.00 on 30-10-2013 in connection with the expenses incurred by respondent for the rectification works conducted on RMU, metering cubicle and outgoing cable installed in the premises of the appellant which shows that the appellant was aware of the metering cubicle rectification works carried out in the premises on 10-10-2013. Another contention raised by the respondent is that it is not mandatory as per Supply Code, 2005 to prepare and deliver site mahazar during all inspections except in the cases of power theft and unauthorized use.

The point to be decided in this case is as to whether the issuance of back assessment bill dated 26-05-2014 for an amount of Rs. 10,57,284.00 towards the charges for the unrecorded portion of energy alleged to have been consumed by the appellant during the period from 01-01-2013 to 01-10-2013 due to missing of current in one of the phases in the metering circuit of the appellant is in order or not.

On a detailed analysis of the pleadings and the documents produced by both sides it can be held that, admittedly there is no inspection conducted in the appellant's premises and no mahazar is seen prepared detailing the irregularities if any detected in the metering circuit of the appellant. Apart from the allegation that the respondent had conducted inspection and fault rectification work on 09-10-2013, 10-10-2013 and 11-10-2013, the licensee failed to produce any documents to prove

their arguments that the non working of one of the phases in the metering circuit. **Regulation 27(6) of the Supply Code, 2005, reads, " if it appears to the Licensee that the metering equipment provided for supplying electricity to the consumer is defective, the Licensee must test the metering equipment and repair and replace the metering equipment, as the case may be".** In this case, the licensee himself unilaterally decides that the meter is not recording energy consumption correctly and without conducting testing of the meter in an approved testing lab decides himself that the appellant should remit the short assessment bill as estimated by him.

It is to be noted that before making any short assessment the licensee had to provide sufficient details to prove the genuineness and authenticity of their claim. **Regulation 24(5) of Supply Code, 2005 clearly states that before making such an assessment the licensee have to clearly "establish" that they have under charged a consumer.** This has not been followed in the instant case. It is a fact that the appellant had remitted an amount of Rs. 23,264.00 towards the cost of replacing 3 Nos. of RMU fuse and oil changing and refilling works which were carried out outside the premises of the appellant. Hence the argument of the respondent that the appellant was aware of the metering cubicle rectification works in the appellant's premises on 10-10-2013 is found baseless and cannot be admitted.

There is no justifiable reason for not intimating the appellant about the defect if any found in the metering equipment and for issuing a revised bill in accordance with the actual consumption. Instead, the appellant is mulcted with a heavy demand for an amount of Rs. 10,57,284.00 which is arbitrary and unreasonable. It is also pertinent to note that there is no allegation that the appellant has tampered the meter or any wilful misuse. There is no mechanism for the appellant to know whether the metering system is working or properly functioning. It is the duty of the respondent to rectify the defects if any found in the meter or CTs and to ensure that the electrical installations are working properly. **According to Clause 18 (2) of Central Electricity Authority Regulations, 2006 (Installation and Operation of Meters), the testing of consumer meters shall be done at site at least once in 5 years.**

As per Regulation 24(2) of Supply Code, 2005, "if a consumer raised a complaint regarding the correctness of a bill then the licensee shall immediately carry out a review". **Regulation 24(4)** states that "while communicating a decision on the review of the bill the licensee shall advise the consumer in writing his right to prefer an application against the decision of the licensee to Consumer Grievance Redressal Forum and further appeal to the Ombudsman". Further, the Assessing Officer has to afford a reasonable opportunity of being heard and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment. Here in this case, this was not done by the licensee but issued a demand for Rs. 10,57,284.00 vide communication No. RP/E/2819859 dated 26-05-2014 after a lapse of nearly 6 months after the alleged date of inspection i.e. on 10-10-2013. In view of the settled legal position, issuing a short assessment without observing the mandatory provisions of the Act and Regulations amounts to arbitrariness and denial of natural justice hence cannot be justified.

Decision

Here in this case, it is evident that the licensee has not conducted any inspection in the premises of the consumer or not prepared any mahazar or conducted a testing of the disputed faulty meter in an approved lab or Electrical Inspectorate. Further, even before affording an opportunity to file objections and even before conducting any personal hearing, the licensee issued demand for Rs. 10,57,284.00 vide communication No. RP/E/2819859 dated 26-05-2014 after a lapse of nearly 6 months after the alleged rectification works conducted on 10-10-2013. Hence such a demand cannot be sustained under law and is liable to be quashed.

In view of the above findings the short assessment bill issued for Rs. 10,57,284.00 is hereby quashed. The appeal petition is found having some merits and is admitted. The order of CGRF Rubber Park India (P) Ltd No CGRF, 01/2015 dated 27-10-2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/173/2015/ Dated:

Delivered to:

1. Sri Vimal Paul, Managing Partner, M/s. L & P Rubber Industries, Rubber Park, Valayanchirangara, Perumbavoor
2. The Managing Director, M/s. Rubber Park India Ltd, Valayanchirangara P.O. Perumbavoor
3. The Resident Engineer, M/s. Rubber Park India Ltd, Valayanchirangara P.O. Perumbavoor

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Chairperson, CGRF of Rubber Park, Valayanchirangara P.O., Ernakulam