

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/066/2017  
(Present: A.S. Dasappan)  
Dated: 21<sup>st</sup> August 2017

Appellant : Sri. Prabhu K.N.,  
Raghunilayam, Amakulam,  
Vadakkancherry P.O.,  
Alathur,  
Palakkad.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd,  
Vadakkancherry,  
Palakkad

### **ORDER**

#### **Background of the case:**

The appellant is a consumer under Electrical Section, Vadakkancherry having the Electricity connection bearing Consumer No. 1165158007685. The connection is registered in the name of appellant's father late K.T. Narayanan under tariff I A domestic with a registered connected load 100W. The energy meter of the consumer became faulty during 5/2014 and on intimating the respondent replaced the defective meter only during 3/2015. The appellant was served with energy bills on the basis of average consumption during 5/2014 to 3/2015 and the above bills were duly paid by the consumer. The respondent as per the invoice dated 01-05-2016 directed the appellant to remit an amount of Rs. 6,464/- being the short assessment based on the audit report of RAO, KSEBL for the period from 09/2014 to 03/2015.

Being aggrieved by this short assessment, the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 146/2016-17. The Forum quashed the short assessment bill for Rs. 6,464/- and disposed of the petition accordingly vide order dated 11-05-2017. Still not satisfied, the appellant has submitted this appeal petition before this Authority.

**Arguments of the appellant:**

(1) The energy meter of the consumer turned faulty during 5/2014 to 3/2015 that was intimated to the licensee. 1<sup>st</sup> respondent replaced the defective meter only during 3/2015. The licensee issued the energy bills on the basis of average consumption and the above bills were duly paid by the consumer.

(2) After replacing the defective meter, the petitioner installed two Air Conditioners of 0.75 Ton capacity each on 26-03-2015. After that the licensee issued a short assessment bill for Rs. 6,464/- on 04-05-2016 stating that the actual consumption recorded by the new meter, after replacement of faulty meter was higher than the average consumption computed during the meter faulty period.

(3) The aggrieved appellant submitted a written objection against the short assessment bill dated 04-05-2016, explained the reason for the difference in average consumption before and after the replacement of the defective meter, with the original purchase bill dated 26-03-2015 of the two Air Conditioners. The licensee assured that the appellant would be duly informed about the final decision in the above raised objection. Thereafter the appellant continued to remit his regular energy bills.

(4) After a long period the licensee issued Additional Cash Deposit bill for Rs. 2,148/- on 01-07-2016 on the basis of increase in energy charges after the installation of 2 Air Conditioners. The appellant approached the respondents on 20-07-2016. At that time Superintendent of billing section (Respondent No. 3) informed the appellant that the said cash deposit bill amount of Rs. 2,148/- will be received only after reaching in a final decision in the above mentioned objection filed by the appellant. On 26-09-2016 the appellant again approached the respondents and enquired about the final decision in the above matter, then the Superintendent (i.e. Respondent No. 3) demanded Rs. 2,000/- as bribe for settling the matter, but the appellant refused for the same, then he threatened the appellant with dire consequences.

(5) On 01.10.2016 the licensee without any proper notice disconnected the appellant's Electric connection. The appellant contacted the respondents 3, 4 through telephone, they informed appellant that the connection will be

reconnected only after remitting dues of Rs. 15134/-. At that time, appellant was ready to pay the amount through online under protest. The said offer was refused by the respondents and insisted that they would collect the dues only by cash. appellant approached the CGRF through telephone but they simply avoided the appellant by saying some flimsy reasons. The connection was replaced only after the intervention from the office of the Electricity Minister.

(6) The Hon'ble Forum ought to have found that the issuance of provisional assessment bill for more than two times within a financial year is illegal and against the Regulation 124 (2) of Electricity Supply Code, 2014. The Hon'ble Forum ought to have annulled the two provisional bills, out of the 4 provisional bills issued.

(7) The Hon'ble Forum ought to have found that the delay in replacing the defective meter was against the Regulation 118 code and it is punishable under Section 142 of the 'Act'.

(8) The Hon'ble Forum ought to have found that the issuance of short assessment bill and insisting for payment, even after filing objection with valid grounds and supporting evidence, without deciding the objection is illegal. The Hon'ble Forum ought to have found that the non-furnishing of the receipt as well as reference number for the objection filed by the appellant was against the short assessment bill, as provided under Section. 130(2) of Kerala State Electricity Supply Code, 2014 and non communication under Section 130(7) of the code are against the provisions of 'Regulation' and 'Act' and is punishable under Section 142 of the Act.

(9) The Hon'ble Forum went wrong in observing that the meter was faulty from 7/14 to 09-03-15. Actually it was faulty from 5/14 to 3/15 as evident from Ext. B4.

(10) The Hon'ble Forum went wrong in observing that the Regulation 118 of the Kerala Electricity Supply Code is not acceptable in this case.

(11) The Hon'ble Forum ought to have found that the disconnection was without proper notice, is illegal, and against the 'Act'. The provisions clearly says about the terms regarding notices related to the disconnection proceedings. As per Electricity Supply Code, 2014 demand notice and disconnection notice are different. The provisions in code are for the benefit of consumers. As per provisions 139(1), a disconnection notice is a must before the disconnection proceedings. So the respondents violated all the provisions in the code. The Hon'ble Forum failed to appreciate point No. 10 in argument note dated 04-03-2017 filed by the appellant.

(12) The Hon'ble Forum ought to have found that the act of respondents is illegal and punishable under 142 of Electricity Act, 2003, as violation of the Act and Rules are established.

(13) Even though the Hon'ble CGRF was pleased to quash the short assessment bill dated 01-05-2016 to a tune of Rs. 6,464/-, failed to issue a direction to the respondents to reimburse the same to the appellant with interest.

On the above mentioned grounds and that are urged at the time of hearing this Hon'ble Forum may be pleased to allow this appeal by providing the following remedies against the respondents.

- A. To 'reimburse' Rs. 6,464/- with 12% annual interest to the appellant, (which was paid by the appellant under the short assessment bill dated 01-05-2016 and quashed by the Hon'ble CGRF vide above mentioned order dated 11-05-2016 in OP 146/2016-17)
- B. Impose punishment and penalty provided under Section. 142 of the 'Act' with a direction to pay the penalty amount to the appellant.
- C. 'Annul' Two Provisional Bills issued, among the 4 Provisional Bills issued in Consumer No. 1165158007685.
- D. To pay the cost of the litigation to the appellant.

**Arguments of the respondent:**

1. Consumer No. 7685 in the name of K.T. Narayanan is a Single Phase LT consumer under Electrical Section, Vadakkencherry under billing tariff I A with a registered connected load 100W. In the Petition before the Honourable Forum, it was stated that the consumer has passed away on 17.9.2013. The connection has not been transferred or the ownership not changed so far in the records of the licensee. Hence the application filed by a stranger who has no agreement with the Kerala State Electricity Board Limited is not maintainable before the Hon'ble Ombudsman.

2. It is stated in the petition that the consumer K.T. Narayanan died on 17-09-2013. But in response to the notice dated 1.5.2016 of the Assistant Engineer, Electrical Section, Vadakkencherry, "K.T. Narayanan" in his hand replied to the Assistant Engineer. The reply is seen signed by 'K.T. Narayanan'. If the statement in the Petition that 'K.T. Narayanan died on 17-09-2013' is correct, the signature in the reply is a forged one which is a criminal offense.

For this reason also the Appeal may be dismissed in toto. A copy of the reply letter is produced herewith (Exhibit B1).

3. The meter of the Petitioner consumer became faulty during 9/2014 and was replaced with a new meter on 09-03-2015. The Regional Audit Officer (RAO), KSEBL, Palakkad upon inspection, instructed these Respondents to re-assess the consumer on the basis of Regulation 125 of Kerala Electricity Supply Code, 2014. Hence a short assessment bill was issued on 01-05-2016 for an amount of Rs. 6,464/- by the Assistant Engineer, Electrical Section, Vadakkencherry. A copy of the bill dated 01-05-2016 is produced herewith (Exhibit B2).

4. As per Regulation 125 of the Kerala State Electricity Supply Code, 2014, if the meter is found defective or damaged, the consumer shall be billed based on the average consumption for a period of past three billing cycles preceding the date of meter being found defective. If the required details pertaining to previous billing cycles are not available, the average shall be computed from the three billing cycles after the meter is replaced. Regulation 125 of the code is reproduced below:

125. Procedure for billing in the case of defective or damaged meter: - (1) In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles, immediately preceding the date of the meter being found or reported defective:

Provided that, the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available:

Provided further that any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average.

(2) Charges based on the average consumption as computed above shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter.

(3) In case, the maximum demand indicator (MDI) of the meter at the installation of the consumer is found to be faulty or not recording at all, the demand charges shall be calculated based on maximum demand during corresponding months or billing cycle of the previous year, when the meter was functional and recording correctly.

(4) In case, the recorded maximum demand (MD) of corresponding month or billing cycle of past year is also not available, the average maximum demand as available for lesser period shall be considered:

Provided that the above sub regulations shall not be applicable in the case of a tampered meter for which appropriate action under the provisions of the Act shall be initiated by the licensee.

5. During the RAO Inspection at Electrical Section, Vadakkencherry, it was found that there was revenue loss to Kerala State Electricity Board Limited on account of the less average taken for billing during the period 09/2014 to 03/2015. Regional Audit Officer instructed to revise the bills based on the consumption after changing the meter, i.e., after 09-03-2015. The calculation of the bill amount was arrived at by the Audit Officer and a copy of this calculation sheet is enclosed (Exhibit B3). On going through the calculation sheet it can be easily understood that, Regional Audit Officer followed the consumption as per the invoice for the months 7/2015, 9/2015 and 11/2015 (during the healthy period after the installation of new meter) as per the Proviso to Regulation 125 of Supply Code, 2014. Hence' an average consumption of 760 Units was arrived for short assessment for the period 09/2014 to 03/2015. But the short assessment was done only for two billing cycles as per Regulation 125. Hence the short assessment is in order.

6. Procedure for billing in the case of defective or damaged meter is clearly mentioned in the Kerala Electricity Supply Code, 2014 Regulation 125 (1), which states that In the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective. Provided that the average shall be computed from the three billing cycles after the meter is replace if required details pertaining to previous billing cycles are not available. In the case on hand, for calculating the average, the last three billing cycles immediately preceding the date of the meter being found defective, i.e. 01-09-2014, could not be relied upon since the meter was started to record lesser energy from the previous months. This could be clearly seen in the details of energy consumption attached herewith, that is during 07/2014 and 05/2015 the recorded energy consumption was in the range of 433 and 437 units respectively. The details of energy consumption from 01-11-2013 to 01-11-2015 is produced herewith (Exhibit B4). Hence the reading for the period immediately preceding the date of the meter became faulty could not be relied upon for short assessment. Hence as per the Proviso to Regulation 125, which permits to bill on the basis of average consumption computed from the three billing cycles after the meter is replaced, short assessment was made. Therefore the petitioner is very much liable to pay the amount.

7. Kerala Electricity Supply Code, 2014 Reg. 134 (1) stipulates that if the licensee establishes either by review or otherwise, that it has undercharged the

consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill. In the case on hand, the short assessment bill is the bill raised upon the review conducted by RAO. Since it is an under charged bill as per the above regulation of Kerala Electricity Supply Code, 2014, the consumer is bound to pay the bill. The short assessment bill issued to the petitioner is purely based upon the prevailing rules in KSEBL and clearly more than thirty days time period had been given to the consumer for paying the bill as per the provision in Supply Code, 2014.

8. The charge liable by the consumer as per this short assessment is the energy charges for the actual energy used by the petitioner during the period 09/2014 to 03/2015. Since the meter was not recording the actual energy used by the petitioner at the time of measurement as per the provisions in the Supply Code, 2014 the energy actually consumed by the petitioner is recalculated and the bill was served to him. Even though the meter was faulty for six months and Regulation 134 of Supply Code, 2014 permits KSEBL to recover the under charged bills for the entire period, in the matter on hand the short assessment was made only for two billing cycles immediately preceding the installation of new meter. So the petitioner is very much benefited in other way.

9. The statement of the Petitioner that he produced original cash bills for the purchase of 2 Nos. of 0.75 Tonne A/c after the installation of new meter is false, frivolous and fabricated. The consumer or any of his representative has never filed any objection except the letter in the name of the deceased consumer which was signed by the "deceased consumer" in which it was requested to recall the demand and to revise it based on the average consumption for the preceding months before 26-03-2015 i.e. claimed date of purchase of the two A/Cs. There is no provision in any of the laws/rules to reassess the short assessment bill based on average calculated from a date pointed out by the consumer. But from the consumption pattern of the consumer, it can be very well understood that the meter was faulty during the prior months before 26-03-2015 and the average taken for billing was 'system average'. This has already been billed and deducted from the short assessment bill as detailed below.

Rs. 10,200 for 760 units (average) (2 months)  
 Less Rs. 3,736/- for 414 units (average already billed) (2 months)  
 Balance Rs. 6,464/- short assessment bill issued

10. The allegation against the 3rd and 4th Respondents in the Para 4 of the Petition is false and fabricated one that arose out of the frustration on receipt of the short assessment bill and far from truth. The Petitioner has never turned up in the office pointing any anomaly in the short assessment. Moreover he has not produced a copy of the bill for the purchase of A/c in support of his claim.

Besides, as per the Electricity Act, 2003 and Electricity Supply code 2014, the consumers are equipped with Alternate Dispute mechanism in the form of CGRF and Ombudsman and there is no need for the consumer to wait for a solution from the same authority who issued the bill. Moreover, from the forged signature of the Petitioner as pointed out earlier, the mindset of the Petitioner can be well understood. Besides this, the Honourable Forum in the hearings requested the Counsel who appeared for the Petitioner to make the Petitioner appear directly in person for giving evidence for the allegation which he never cared. From this act alone, it can be understood that the allegation is fabricated.

11. It is also submitted that the disconnection was effected on default of the regular monthly current charge besides the inspection bill. Hence there is no justification on the part of the Petitioner to keep away from remitting regular current charge citing a dispute in an inspection bill. The non-remittance of the regular monthly bill is purposeful to keep away from it on the ground of a dispute and to create a litigation.

Aggrieved by the short assessment bill, this appellant filed a petition before the Honourable CGRF, Northern Region, Kozhikode vide OP No. 146/2016-17. The Honourable Forum in its order dated 11.5.2017 allowed the Petition and quashed the bill leaving the option to the Petitioner to approach the licensee for the redressal of other grievances. The Honourable CGRF did not invoke any action against the employees of this licensee since there was no deposition to prove it under evidence. Since the appellant failed to adduce evidence, the matter was decided on merits.

12. The appellant has prayed to annul the two out of the four provisional bills quoting Regulation 124(2) of the Kerala Electricity Supply Code, 2014 which is reproduced below:

*124(2): The licensee shall ensure that such provisional billing does not extend to more than two billing cycles at a stretch, and there are not more than two provisional bills generated for a consumer during one financial year.*

13. It is evident that a short assessment bill for Rs. 6.464/- was issued on 4.5.2016. Besides this bill, it is submitted that no other short assessment bills were issued to the consumer during this financial year. The consumer is aiming at a bill for Rs. 2.148/- which is issued as Additional Cash Deposit as per Regulation 73 of the Supply Code, 2014. The consumer might have misunderstood the same as a short assessment bill. Hence the statement of the consumer that this licensee had issued four short-assessment bill is a misstatement.

14. The statement of the appellant that he had furnished an objection, itself is false and misleading. The appellant had declined the fact that the petition



was signed by him and alleged as not his petition during the hearing before the Honourable Forum. The appellant could not even produce a copy -of the objection said to be filed before the Honourable Forum.

15. The contention of the appellant that the disconnection was made without a proper notice is incorrect and denied. The disconnection was made in a regular monthly bill due and the bill itself serves as a Demand and Disconnection Notice as per Section 56 of Electricity Act, 2003. In the bill issued under Section 56, it was specifically mentioned that the supply will be disconnected if the regular monthly amount is not remitted within the "pay by disconnection" date.

16. From the above it can be clearly understood that the demand raised on 01-05-2016 by Electrical Section, Vadakkancherry is as per the rules and regulations prevailing in KSEBL and therefore the petitioner is legally liable to pay the amount within the stipulated time mentioned in the bill served upon him. There were no violation of any statutes and rules attracting Section 142. Therefore it is humbly prayed that this Honourable Authority may be pleased to accept the contentions and statements of these respondents and the appeal may be dismissed with cost to these respondents.

### **Analysis and findings:**

Hearing of the case was conducted on 08/08/2017 in the Court Hall of CGRF, Kottarakkara. Sri P.S. Sreejith, advocate, represented the appellant and Sri Premraj C.V., Assistant Executive Engineer, Electrical Sub Division, Vadakkancherry and Sri Vipin N., Nodal Officer (Litigation) appeared for the respondent. In view of the arguments made by both parties, it appears that the foremost question to be decided in the matter is whether the appeal petition is maintainable or not. It is needless to enter into the merits of the case, if this Authority has no jurisdiction to entertain the same.

The respondent has challenged the maintainability of the petition stating that the complainant has no manner of rights to file above complaint before the Ombudsman, as the appellant is not a consumer of electricity. One of the main arguments of the respondent is that the appellant is not the registered consumer and stranger to the respondent. It is pertinent to note that the short assessment bill was served to the appellant who is the present occupier of the building. As per Regulation 2.1 (e) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a complainant is defined as

- (i) any consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;
- (iii) the Central Government or State Government - who or which makes the complaint
- (iv) in case of death of a consumer, his legal heirs or representatives

In the Act a consumer is defined as “any person who is supplied with electricity for his own use by a licensee or the government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of the licensee, the government or such other person, as the case may be”. Considering the above definition it is clear that petitioner is a consumer. In this case, the appellant is occupying the building is a fact. These points establish that the appellant’s claim as a consumer of electricity. Hence, the argument of the respondent that the appellant is not a ‘consumer’ is found as not sustainable.

The reliefs sought for by the appellant by filing petition before the CGRF were a) to quash the short assessment bill dated 04-05-2016 for Rs. 6,464/- and to refund the amount remitted by him b) to annul the bills issued on average and to reimburse the sum and c) to initiate disciplinary action against the senior superintendent and lineman. On going through the reliefs claimed in plaint the first one was allowed by the CGRF. Now the prayers in the appeal petition are to reimburse Rs.6464 with 12% interest, annul two provisional bills issued out of the 4 bills and to impose punishment and penalty provided under Section 142 of the Electricity Act and to pay the penalty amount to the appellant. This Authority is not examining the merit of case since CGRF ordered in favour of the appellant regarding the first point of the prayer. Then the only question to be answered is whether the appellant is eligible for interest for the overcharged amount. Regulation 134 (3) of Supply Code, 2014 says: “(3) The licensee may refund such overcharged amount along with interest at bank rate as on the date of remittance of such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque”. Hence the appellant is eligible for bank rate for the amount of Rs. 6,464/- from the date of remittance.

The appellant himself had admitted that the meter was faulty from 5/2014 onwards and he informed this to the respondent for replacing the faulty meter. Regarding his request for cancelling two numbers of the provisional bills out of the 4 bills, he relies the provision of Regulation 124 (2)

of Supply Code, 2014 which reads as “the licensee shall ensure that such provisional billing does not extend to more than two billing cycles at a stretch, and there are not more than two provisional bills generated for a consumer during one financial year”. The appellant has not a claim that he had not consumed power during the meter faulty period. Regulation 124 of Supply Code 2014 deals with ‘procedure for billing when meter not accessible’ and this provision is not applicable in the appellant’s case. Further it is found that the average bills issued were not provisional bills. The delay to replace the faulty meter may be due to the non-availability of the meter. The appellant is bound to pay the electricity charges for his actual consumption. Hence the request of the appellant to annul two ‘provisional bills’ is not sustainable.

Regarding the issue of disconnection due to nonpayment energy charges, it is essential to look into the provisions contained in Regulation 139 of Supply Code, 2014 which is extracted below.

*139 – Procedure for disconnection – The licensee shall in case of disconnection proposed on the grounds mentioned in Clauses (a) & (b) of sub regulation (1) of Regulation 138 above, issued a disconnection notice in writing as per Section 56 of the Act, with a notice period of not less than 15 clear days, intimating the consumer about the grounds for disconnection and directing him to pay the dues with penal charges within the notice period.*

*(2) If the consumer fails to remit the dues within such notice period, the licensee may disconnect the service of the consumer on the expiry of said notice period, by cutting off the supply in the manner as the licensee may deem fit.*

*(6) The licensee shall, after disconnection on the grounds mentioned in sub regulation (1) of Regulation 138 give intimation to the consumer as per format given in Annexure 18 to the Supply Code, 2014, to remove the cause of disconnection within 45 days, failing which the supply may be dismantled.*

The evidence shows that there is deficiency on the side of respondent in complying with the statutory provisions before disconnecting a service.

The prayer of the appellant is to take disciplinary action against the officers of the licensee could not be entertained as this Authority has not vested with any such powers. Hence the only remedy available for the appellant is to approach the authorities of KSEB Limited, if so advised.

## **Decision**

From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

1. The amount of Rs. 6,464/- collected from the appellant shall be refunded with interest at bank rate or adjust in the future bills, with the interest calculated from the date of remittance.
2. The other reliefs requested by the appellant are rejected.

Having concluded and decided as above, it is ordered accordingly. The order of CGRF in OP No. 146/2016-17 dated 11-05-2017 is modified to this extent. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/066/2017/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Prabhu K.N., Raghunilayam, Amakulam, Vadakkancherry P.O., Alathur, Palakkad.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Vadakkancherry, Palakkad.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Gandhi Road, Kozhikode.