

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/42/2017
(Present: A.S. Dasappan)
Dated: 24th August 2017

Appellant : Sri. Joy S.,
Povottu Industries,
Ambalakara P.O.
Valakom,
Kottarakkara

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Ayoor,
Kollam.

ORDER

Background of the case:

The appellant is an industrial consumer under LT IV A tariff in Electrical Section, Valakom vide Cons No. 8864, with a contract demand of 98 kW. The appellant is running a granite crushing unit in the name and style "Povottu Granites". The APTS Unit of Kollam conducted an inspection in the premises on 23-07-2016 along with Sub Engineer of Electrical Section, Valakom and found that the energy used in one phase (out of 3 phases) was not recording in the meter. Accordingly, the party was served with a provisional short assessment bill, assessing for the period from 08/2014 to 07/2016, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 5,93,588/-. The consumer lodged complaint before the Assessing officer, the Asst. Engineer, against the said assessment on 02-08-2016 and it was finalized the provisional amount assessed, on 22-09-2016, after conducting a hearing by the Assistant Engineer on 23-08-2016. Being not satisfied with the decision of the Assistant Engineer, the consumer approached the CGRF, Kottarakkara, with Petition No. OP 259/2016 and the Forum upheld the final bill issued and directed to remit the amount without interest in 10 instalments vide its order dated 14-03-2017. Aggrieved by the decision, the appellant has submitted the appeal petition before this Forum.

Arguments of the appellant:

1. A Sub Engineer of Electrical Section, Valakom who is the authorized officer of the licensee regularly inspected, checked the meter and took meter reading on this connection and bills were issued accordingly. Electricity charges thus demanded were remitted and

no arrear is outstanding towards electricity charges. There was no report for the preceding period of two years to 23-07-2016 after checking the meter every month by a Sub Engineer that, the meter is not recording full electricity consumed or meter defective. Whereas all along the period the meter was reported working and good in the bills issued. This unit works only as per the demand of the product and thereby there may not be uniform consumption for all times.

2. While so, on 23-07-2016 Mr. R. Vijayan Achari, Sub Engineer, Electrical Section, Valakom inspected the premises and checked the meter in the presence of APTS Unit of KSEBL, Kollam and prepared a mahazar under his name and signature. Contrary to the admitted facts under the mahazar, Consumer Grievance Redressal Forum stated in the order disposing the complaint that APTS unit has inspected, which is wrong. In this mahazar, it was stated that, the meter at the premises is a CT operated one and it is defective at the time of inspection as detailed in short here under. The meter displayed R-phase voltage 237 V, Y-Phase 5.7 V and B Phase 235 V. When it was tested using a tong tester the voltage was 273V, 236V and 235 V respectively. Then it was arrived at a conclusion that, the voltage in Y Phase is not reaching the meter properly since electricity is not flowing properly through the Aluminium tapping wire connecting meter terminal and Y Phase cable and inferred that 236 V of that phase is not reaching the meter. Thereby, it was also inferred that the electricity used through Y Phase is not recorded in the meter. From this report it is very clear that the meter was found defective on 23-07-2016. Then, this terminal wire was removed and connected with 1.5m insulated copper wire. Then the meter read, R-phase voltage 241 V, Y-Phase 236 V and B Phase 235 V and the current was 0.5589, 0.629, 0.665 respectively, which means the defect found out was rectified on the same day.

3. Basing this mahazar, the Assistant Engineer Electrical Section, Valakom issued an order stating that during the inspection at the premises in the leadership of the Assistant Engineer, APTS, (while in the mahazar it is specifically stated that the inspection was conducted by Mr. R. Vjayan Achari, Sub Engineer in the presence APTS unit), it was detected that energy in one phase is not recorded in this three phase meter. On that basis, a provisional bill is being issued for Rs. 5,93,588.00 and if there is any objection it shall be submitted within seven days. This was accompanied with a bill for Rs. 5,93,588.00 and calculation statement by which the bill amount was arrived at.

4. This appellant submitted his objection. Thereafter, the Assistant Engineer issued a proceedings stated to be under "Section 134(1) of Electricity Supply Act, 2014" dated 22-09-2016. Stating among other things it was stated that, a bill is prepared for 2 years from 08-2014 to 07-2016 for additional 50% of the consumption of energy and for maximum demand recorded for the period amounting to Rs. 5,93,588.00. He brushed aside all the averments in the objection filed by this appellant. In this order it is stated that, this order issued under "Section 134(1) of Electricity Supply Act, 2014". This reveals that this Assistant Engineer has little knowledge about statutes under Electricity Act, 2003 since there is no such Supply Act, 2014, and this proceeding is issued not under good faith and knowledge. This order is factually and legally wrong. Along with this order, the Assistant Engineer issued a bill and calculation statement to that.

5. The Assistant Engineer never disclosed under Exhibit P6 order, on what basis he has arrived at the conclusion that 50% of the energy is not recorded in the meter for the

preceding two years of inspection dated 23-07-2016, while no such allegation was there despite having checking of meter every month. No scientific data is produced or said relied to do so. There by, it is only his presumption that 50% of energy consumed is not recorded in the meter. Also it was never ascertained and revealed through a proper test as required under Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 or as required under Supply Code, 2014, whether this meter is a type of meter which records 50% less consumption than the actual or how much consumption will be recorded due to missing of one phase voltage. It is also not ascertained, whether this is a meter which records the whole consumption even if one phase voltage is missing and two phase voltage and the three phase currents are available. Types of meters are available such that, even if one phase voltage is missing or one phase current is missing, the full energy consumed is recorded. In theory of meters, functioning of such meters is detailed. Thereby, no proven scientific data is available before this Assistant Engineer to charge this appellant for another 50% of the recorded consumption for both energy and maximum demand. Thereby, the proceedings, bill and calculation statement are arbitrary and illegal and hence the amount of Rs. 5,93,588.00 demanded is not an "amount due" and hence not payable by this appellant.

6. The licensee in the version filed before the Hon'ble CGRF had a plea that the order and final bill were issued under Clause 134(1), 152 (2) and(3) of Supply Code, 2014 and pleaded that, these regulations enables the licensee to issue order and bill and these regulations are applicable in this case. Moreover, there is a plea that, the meter at the premises is not defective, hence Clause 125 of Supply Code, 2014 is not applicable in this case. In this statement of facts, it was also stated that, from the down loaded reading data of the meter for the prior period establishes voltage missing. However, this document was never communicated to this appellant and the statement of facts was only given after concluding the hearing. Frantic request of this appellant to the CGRF to issue copy of the statement of facts and defence documents, it was never heard. The reply of the Forum was that, you may argue the case with your documents and the licensee may argue the case with their documents. Despite this, appellant requested to record the objection and make it part of the order was also rejected. However the fact and legal position under statutes is different from the averments of the opposite party as detailed here under.

7. The status of the meter reported in the mahazar is nothing but defective. Clause 134 (1) of Supply Code 2014 is not at all applicable in this case of meter defective case. This Clause 134 (1) of Supply Code, 2014 is almost a verbatim reproduction of Clause 24 (5) of Supply Code, 2005. Clause 24 (5) of Supply Code, 2005 and Clause 134 (1) of Supply Code, 2014 is extracted here under for ready reference.

Clause 24 (5)of Supply Code, 2005:- If the Licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the Licensee shall specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account.

Clause 134 (1) of Supply Code, 2014:- 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 judgment in WA No. 114 of 2013 in WP(C) 5614/2007 dated 13-02-2014, the Hon'ble High Court of Kerala ordered and held that:-

5. Insofar as Clause 24(5) of the Supply Code is concerned, that provision states that if the licensee establishes that it has undercharged the consumer either by review of the bill or otherwise, the licensee may recover the amount undercharged from the consumer. It is true as contended by the learned counsel for the appellant this provision does not specify any limitation on the period up to which the recovery is permitted. However this provision also may not have much relevance in so far as this case is concerned because this provision takes in only a case where the licensee has undercharged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately. Therefore, none of the aforesaid three provisions pointed out by both the sides specifically deal with a situation where the meter is inaccurately recording the energy consumed on account of a wrong connection given to the meter. On the grounds above, it is evident that, order and bill could not be issued by the Assistant Engineer in reliance with Clause 134 (1) of Supply Code, 2014 and hence it is not sustained.

8. Clause 152 of (2) and (3) of Supply Code, 2014 also does not entitle the licensee to issue the order and bill. Sub clause (2) and (3) have no self existence without Sub Clause (1) and it was never stated under the statement of facts or in the argument before the CGRF during the hearing, how sub clause (2) and (3) is applicable in this short assessment for meter defect case detected by a Sub Engineer dated 23-07-2016 after regular check of meter dated 02-07-2016 in which meter was found good and not defective and which is well receded in the bill for the month of 07/2016. The regulation is extracted here under for ready reference. 152. Anomalies attributable to the licensee which are detected at the premises of the consumer.- (1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.

Here in this case the meter was reported effective since one phase voltage was missing. Under the extracted Regulation above, under sub clause (1) defect in meter is not at all included, thereby Clause 152 of (2) and (3) of Supply Code, 2014 are not at all applicable to issue the order and the bill. "Inaccuracies in metering" means only accurate meter reading is not taken or the meter reading is erroneous and hence billing is erroneous or billing is erroneous in some other way. "Inaccuracies in metering" cannot and shall not be translated to defect in meter. If "inaccuracies in metering" also meant defect in meter, or improper recording of consumption due to some imperfection, fault in any of the components of the meter, there was no need for the KSERC to bring in Clause 125 of Supply Code, 2014, exclusively for the case of "defective or damaged" meter in which, the method of billing for defective period etc are well explained. For convenience Clause 125 of Supply Code, 2014 is extracted here under.

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. Therefore, Clause 152 (2) & (3) of Supply Code, 2014 also doesn't come to the rescue of Exhibit P6 order and Exhibit P7 bill. Hence also Exhibit P6 order and Exhibit P7 bill are illegal.

9. The opposite party had an argument in statement of facts submitted before the CGRF that, the meter is not defective, to attract Clause 125 of Supply Code, 214. The fact of the matter is, the meter was defective since the terminal connection of the meter was defective and hence one phase voltage was missing in the meter. Meter defined as under Supply Code, 2014 is extracted here under for ready reference, 2. (57) "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 capacitance

voltage transformer (CVT) necessary for such purpose; The meter is not a recording or display unit only but as defined above all the components above including lead wires include a meter. Moreover, this is not a whole current meter but a CT operated meter, where external CT is connect with metering unit using lead wires and phase voltage from all three phases are tapped from the source of supply and then connected with the same metering unit. There by wiring is also there for this metering system. The coordinates for computing energy is lead to the processing unit of the meter unit from different components of the meter then various electrical quantities are processed then recorded cumulative or otherwise and displayed in the display unit. Any defect in any part or component of meter is defect in meter. It is with this position; the KSERC has brought in Clause 113 of Supply Code, 2014. This regulation is extracted here under for ready reference.

113. Testing of meter:- (1) It shall be the responsibility of the licensee to satisfy itself regarding the accuracy of the meter before it is installed and the licensee shall test them or get them tested in an accredited laboratory or in an approved laboratory.

(2) The licensee shall also conduct periodical inspection or testing or both and calibration of the meters, as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.

(3) The periodical testing of consumer meters shall normally be done at site.

(4) The licensee may, instead of testing the meter at site, remove the meter to be tested, replace the same with a correct meter and test the removed meter in an accredited laboratory or in an approved laboratory.

(5) When the consumer opts to purchase the meter, the licensee shall receive it and test the same in an accredited laboratory or in an approved laboratory and install it as per the following time schedule:-

LT meters	within a maximum of fifteen days
HT or EHT meters	within a maximum of twenty days

(6) The licensee shall conduct periodical inspection or testing or both of the meters as per the following schedule:-

Single phase meters	once in every five years
LT 3-phase meters	once in every three years
HT or EHT meters including maximum demand indicator (MDI)	once in every year

(7) Wherever applicable, Current Transformer (CT) and Potential Transformer (PT) and the wiring connections shall also be tested along with meters.

Under the regulation above, sub clause (7) requires the licensee to test the CT, PT and the wiring connections, where ever applicable while testing the meter. Needles to say the testing is done to find out whether the meter is defective or not. Therefore, reading of Clause 2 (57) and Clause 113 of Supply Code, 2014 together make it clear that the meter was defective due to missing of one phase voltage due to defect in wiring connection. Therefore, Clause 125 of Supply Code, 2014 is the only regulation applicable in this instant dispute. The findings in the mahazar are such that the wiring connection was

defective. Thereby, it is nothing but defect in meter. Therefore, there is no substance in the argument of the licensee. Thereby appropriate action for which the licensee is entitled is to take actions as required under Clause 125 of Supply Code, 2014 only. The licensee is not at all entitled take action either under Clause 134 (1) of 152 (2) & (3) of Supply Code, 2014.

10. The inspection, checking of meter and meter reading at the premises was always done by a Sub Engineer who is the authorized officer of the licensee. Immediately before the inspection and preparation of mahazar dated 23-07-2016 by Mr. R. Vijayan Achary Sub Engineer, a Sub Engineer inspected checked and read the meter dated 02-07-2016 and accordingly bill for the month of 07-2016 was issued. In this bill or in the previous bills there was no remark that the meter is defective or in the display, in meter one phase is showing at very low voltage or there were no such other reports as reported in the mahazar. Whereas, the status of the meter is recorded CN/Working, OK/AA, which is according to the licensee the meter is defect free or good in all respects. It is well stated in the mahazar that, upon plain inspection of the meter, it displayed R-phase voltage 237 V, Y-Phase 5.7 V and B Phase 235 V.

It is respectfully submitted that, no sensible person can believe, that the meter display above could not be seen by the Sub Engineer/ Sub Engineers who checked and read the meter all along the preceding period of two years and on 02-07-2017 also, on which date the just previous inspection, checking of meter and reading was taken before 23-07-2016. Therefore, it is a well established fact that the meter became defective by not reaching the full voltage in one phase after the last meter checking and reading date of 02-07-2016, based on which the bill for the month of 07-2016 was issued. Thereby, there is no base for the presumption of the Assistant Engineer that, the meter was defective from a date unknown and to limit the period of assessment to two years. If any authenticated scientific data is available to prove that, the meter was defective for unknown periods before or was defective for some periods before then also there is no enabling regulations for the licensee to issue short assessment bills.

It is simply because of the reason that the licensee is duty bound to supply electricity only through a good meter and various regulations under Supply Code, 2014 requires the licensee to check, and test the meter periodically. Thereby it is only because of that reason the licensee has entrusted regular reading of this meter with a Sub Engineer who is well qualified to check the meter, to report the imperfections noticed and to rectify it. If such an officer/ officers failed in that endeavour, it is a systemic failure and for that failure this appellants could not be held responsible and amounts could not be demanded by way of short assessment bills and for which there is no enabling regulations available.

11. It is respectfully submitted that, there are binding regulations under licensing conditions under which distribution license is issued to this licensee. The related regulation is extracted here under.

Under sub-clause (1) of Clause (4) under Part III, General Conditions for Distribution Licensee, issued by the State Electricity Regulatory Commission, it is specified that, "the distribution licensee shall comply with the provisions of the Act, Rules,

Regulations and directions issued by Commission from time to time and the provisions of other applicable laws for the time being in force."

Having stated as above, it is respectfully submitted that, under Clause 104 (1) of Supply Code, 2014 and under Section 55 of Electricity Act, 2003, the licensee shall supply electricity through a correct meter installed in accordance with the provisions of CEA (Installation and Operation of Meter) Regulations', 2006, Thereby, the onus for remaining a defective or damaged meter for long periods than permitted under Clause 125 of Supply Code, 2014, rests with the licensee and not with the consumer. There by even if the meter was defective for the periods from 08-2014 or even before or any time after, that appellant is not at all responsible for that and thereby not required to pay the arbitrary electricity charges demanded under the order and under the final bill. More over other regulations mandates the licensee to keep the meter good at all times by taking steps under various provisions under Supply Code, 2014 as detailed here under.

Under Clause 109(20) of Supply Code, 2014, it shall be the responsibility of the licensee to maintain the meter and to keep it in good working condition at all times. Being this a mandating regulation, the onus for any meter remaining defective rests with the licensee only and by virtue of that, this appellant is not at all liable to pay any amount towards electricity charges demanded as in this case for the preceding periods pleading the meter defective.

Under Clause 113 sub clause (2) of Supply Code, 2014, the licensee shall also conduct periodical inspection or testing or both and calibration of the meters as specified under Central Electricity Authority (Installation and Operation of Meter) Regulations, 2006. Under sub clause (3), the periodical testing of meters shall normally be done at site. The licensee may, instead of testing the meter at site, may remove the meter to be tested, replace the same with a correct meter and test the removed meter in accredited laboratory or in an approved laboratory. Under sub clause (7) wherever applicable, the CT and PT and wiring connections shall also be tested along with the meters. If ever the licensee failed in the above mandated duties and the meter at the premises remained defective or the wiring connections remained defective as stated in Exhibit PI mahazar for longer periods or brief periods, this consumer could not be held responsible for that by issuing bills.

This consumer belongs to the group of demand based tariff consumers where maximum demand indicator is available for metering. Under sub clause (6) of clause 113 of Supply Code, 2014, the licensee shall conduct periodical inspection or testing or both of the meters HT or EHT meters including maximum demand indicator (MDI) once in every year. The licensee pleads that this meter was been defective for a long time since due to missing of one phase voltage due to defect in wiring and it was detected only on 23-07-2016 and has limited short assessment for a period of two years could not be accepted by virtue of regulation above. Here, the licensee have the mandated is duty to check the meter periodically and a qualified person authorized by the licensee checks the meter every month and he never observed the display of low voltage in one phase in the meter as reported in the mahazar. Also the licensee is mandated to check or test this meter every year since this meter is having a maximum demand indicator also. It is never revealed such test has ever been conducted or not. Therefore, despite being mandated to check the correctness of the meter at every instant of inspection every month and there is not even a

shred of evidence to prove that the meter was defective before 23-07-2016. If there is any lapses at the hand of the licensee to detect the defect in meter on time it had occurred at the hand of the Sub Engineer concerned and the Assistant Engineer, since the licensee have no case that the meter was tested for its correctness at any time after installation of it at the premises.

12. Under Clause 116 (1) of Supply Code, 2014, also, the licensee shall periodically inspect and check the meter. Here in this case, in every month a Sub Engineer who is the authorized person of the licensee to inspect and check the meter and to energies LT three phase connections have inspected and checked the meter and took the meter reading. The licensee can never plead that this Sub Engineer's check of meter and reading was not proper, if pleaded so, the inspection and checking of the meter at this instant case causing the mahazar by another Sub Engineer is also wrong.

13. The production cost of the products also includes the cost of electricity used for producing it. This appellant has fixed price of it accordingly and sold it. Now after a very long period the licensee comes up with a statement that the bills issued earlier did not contain the actual cost of electricity supplied, thereby the appellant has to pay the remaining cost now. Then this appellant could not collect proportionate amount from the earlier buyers of the product.

Reliefs sought for:

1. To hold and declare that order dated 22-09-2016 and bill amounting to Rs. 5,93,588.00 of the Assistant Engineer are arbitrary and illegal and to set aside.
2. To issue orders to pay such amounts this Ho: Electricity Ombudsman may find appropriate towards the expenses for this appeal.
3. Such other reliefs the appellant prays for, during the course of appeal.

Arguments of the respondent:

The APTS Unit of Kollam made an inspection in the premises on 23-07-2016 along with Sri Vijayan Achary, Sub Engineer of Electrical Section Valakom. It was noticed that one of the phase voltages (and thus power) is not accounted in the three phase CT meter due to failure in connection lead. Even though the correct three phase voltages and current are supplied to the three phase loads in the premises. Voltage display of Y Phase in the meter was not recording properly. In this situation, only 2/3rd of the actual consumption will be recorded in the meter. To compensate for the loss sustained to KSEB Ltd in this account, a provisional short assessment bill for the unrecorded portion (i.e. 50% of the recorded units and maximum demand) was served to the consumer as per Regulation 134 (1) of Kerala Electricity Supply Code 2014' Petitioner was heard based on his appeal dated 03-08-2016 and final bill for Rs 5,93,588/- with calculation details based on the recorded reading was served to the consumer limiting to 24 months prior to the date of inspection. Short assessment bill issued to the consumer is in order as per Kerala Electricity Supply Code, 2014 Regulation 134(1),152 (2) and 152 (3),which was admitted and upheld by the Hon'ble CGRF (South). The consumer is liable to pay the bill.

Mr Vijayan Achari, Sub Engineer of Electrical Section accompanied the inspection team APTS Unit Kollam and site mahazar was prepared. Meter is not reported as faulty, it is functioning properly when all the inputs are proper and hence there is no need of testing the meter. It is the voltage connecting lead to the meter in one of the phases detected as missing/abnormal. The same meter is still functioning in the premises. From the basic theory itself, when one of the phase voltages to a three phase meter is missing, it will record only 2/3rd of the actual consumption. To compensate the unrecorded portion, the same is billed (for 50% of the recorded units) for an amount of Rs. 5,93,588/-. Voltage missing from the meter is evident and established from the downloaded reading data of the meter for the prior period and the amount due arrived is not arbitrary. Consumer is liable to pay the bill amount as per supply code 2014 regulation 152(2) and 152(3) read with regulation 134(1). The meter installed in the premise is not reported as defective or damaged and hence the respondent submits that Regulation 125 of Supply Code, 2014 is not applicable in this case. Under charging of prior bill is established due to an anomaly detected at the premises. Hence Kerala Electricity Supply Code, 2014 Regulation 134(1) and Regulation 152(2) and 152(3) are applicable. Downloaded data pertaining to the prior period is available and the same was convinced by the Hon'ble CGRF. A copy of the document was handed over to the appellant also. All the other allegations are raised with malafide intention only.

The meter installed in the premise is not reported as defective or damaged. The voltage terminal of the CT was found missing (somehow) and Regulation 125 of Supply Code, 2014 is not applicable in this case. Under charging of prior bill is established due to an anomaly detected at the premises. Hence Kerala Electricity Supply Code, 2014 Regulation 134(1) and Regulation 152(2) and 152(3) are applicable. Argument that regular meter reader could have reported anomaly earlier and similar arguments with Supply Code 2005 is raised only with the malafide intention to evade from paying the established liability.

The Hon'ble State Electricity Ombudsman upheld a similar case in its order dated 17-10-2015 in Appeal No. P/110/2015. The Hon'ble State Electricity Ombudsman again upheld another similar case in its order in petition no P/010/2017 Dt 30-03-2017.

KSEB Ltd has issued the bill with authority and in order, complying the existing statutes and regulations in force and hence the consumer is liable to pay the bill amount. KSEB Ltd has issued the bill with authority and in order, complying the existing statutes and regulations and hence the consumer is liable to pay the bill amount.

Analysis and Findings: -

The hearing of the case was conducted on 27-07-2017, in the Court hall of Kottarakkara, and the appellant was represented by Sri. K Anandakuttan Nair and the respondent by the Assistant Executive Engineer of the Ayoor Sub Division, Sri A.M. Nizar and they have argued the case, mainly on the lines stated above.

On examining the petition and argument notes filed by the appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

The appellant was served with a short assessment bill for Rs. 5,93,588/- towards the non recording of consumption in one phase of the 3 phase meter due to missing of one phase voltage, as per Regulations 134 (1), 152 (2) and 152 (3) of the Kerala Electricity Supply Code, 2014. The CGRF has observed that from the downloaded data, it is clear that the 'y' phase of the meter is missing from 31-12-2012 onwards and the short assessment bill issued by the respondent is genuine and sustainable and hence the consumer is liable to pay the amount.

The appellant has contended that if the failure of the CT connection was from 12/2012 onwards as assumed by the licensee, it could be easily found out by the Sub Engineer who had taken the monthly readings regularly. Since it was not reported by the Sub Engineer during the meter reading of 06/2016 or before, the failure was between the date of meter reading for the month of 06/2016 and the inspection date of 23-07-2016. Further the appellant has also argued that since the failure of one phase was due to voltage missing, the missing of one phase current might not be for the whole time of the functioning of the meter. Another point of objection raised by the appellant is that the down loaded reading data of the meter which establishes voltage missing was not communicated to the appellant and convinced him. The appellant also contended that the application of Regulations 152 (2) and 152(3) are not relevant in the case of the applicant. According to him, "Inaccuracies in metering" means only accurate meter reading is not taken or the meter reading is erroneous and hence billing is erroneous or billing is erroneous in some other way. "Inaccuracies in metering" cannot and shall not be translated to defect in meter. If "inaccuracies in metering" also meant defect in meter, or improper recording of consumption due to some imperfection, fault in any of the components of the meter, there was no need for the KSERC to bring in Clause 125 of Supply Code, 2014, exclusively for the case of "defective or damaged" meter in which, the method of billing for defective period etc are well explained.

Refuting the above contentions, the respondent has averred that the Sub Engineer of the Section took the reading of every monthly consumer as his normal duty and he did not inspect the premises of the appellant at this time, since he noted only the present reading in the PDA.

It is submitted by the respondent that the meter installed in the premise is not reported as defective or damaged. The voltage terminal of the CT was found missing (somehow) and Regulation 125 of Supply Code 2014 is not applicable in this case. Under charging of prior bill is established due to an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 134(1) and Regulation 152(2) and 152(3) are applicable. It was also contended that the downloaded data was convinced by the CGRF.

The issue arising for consideration in this appeal is whether the period assessed and the quantum of current loss computed are in order and the appellant is liable for the payment of short assessment for Rs. 5,93,588/- as per Regulation 152 of Supply Code, 2014.

Here in this case, the respondent declared that the voltage connecting lead to the meter in one of the phases detected as missing/abnormal on the basis of the inspection

conducted in the premises. But he has admitted that the APTS failed to download the data from the meter on the spot. The data is downloaded on 28-07-2016 and the same is found authenticated by the responsible officer of TMR, Thirumala. Though the respondent has claimed the failure of one phase voltage missing from 12/2012 onwards, the Assistant Executive Engineer, APTS, Kollam, in his letter dated 04-10-2016, has reported that the 'Y' phase voltage failed from 31-01-2015 to 23-07-2016. It is also found that the consumption of the appellant before the disputed period is not furnished by the respondent.

From the site mahazar, it is revealed that the failure of one phase current was due to missing of one phase of the CT terminal connected to the terminal. It is an admitted fact that the missing of one phase current due to voltage missing contact of the CT terminal might not be for the whole time of the functioning of the meter. The meter will record the time and date of tampers, and the same can be downloaded using MRI/Laptop and can be analyzed. Date of occurrence of CT open/bypass/short, voltage missing/low voltage/ unbalance etc can easily be found out using downloaded data. Considering these facts, an assumption of missing of 1/3rd consumption during the disputed period cannot be sustained.

The missing of voltage in one phase of the appellant's metering equipment in the appellant's premises was detected by the licensee during the inspection conducted on 23-07-2016 and the site mahazar also justifies these facts. In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording in two phases of actual consumption on the inspection date of 23-07-2016, but not confirmed the missing of one phase voltage at the rate of 1/3 from 12/2012 onwards.

Further this Authority is of the opinion that if the data was downloaded during the inspection of the metering system on 23-07-2016, the period of defect could have been detected and convinced by the appellant. Moreover, if the respondent had to inspect the metering system soon after the recorded consumption decreases considerably during the disputed period, it can be easily detected the defect in the metering and to avoid the loss if any occurred to the licensee.

The respondent has issued the short assessment bill for a period of 24 months from 08/2014 to 07/2016 taking 50% of the recorded consumption for 24 months following the inspection conducted on 23-07-2016 and detecting of non-recording of energy in one phase. It is found that the consumption of the appellant varies from 3920 units to 10420 units per month. But as per the down loaded data from 31-12-2012 to 28-07-2016, a continuous "current without volts" starts on Line Current L2 at 13:40 hrs on 31-01-2015 and ends at 16:17 hrs on 23-07-2016. During the above period the consumption is also comparatively low, 2756 units during 02/2015 and 5120 units during 06/2016. But the consumption for the 3 months prior to 02/2015 is 8080 units, 10420 units, 7336 units and after 07/2016, it is 5800 units 3920 units and 1360 units. Hence it is proved that there are no convincing records to charge the short assessment for a period of 24 months.

According to Clause 18(2) of Central Electricity Authority (Installation and Operation of Meters), Regulations, 2006, the testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test

laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of the consumer meters up to 650 Volts. In the instant case, the respondent has not followed the procedures prescribed above before charging the appellant as meter recoding correct consumption.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Hence revision of the bill on the basis of the test report is not possible in this case. Here in this case, the respondent confirmed the non recording of one phase on the basis of the inspection conducted in the premises and load survey/tamper report down loaded. Considering the above facts, I am of the opinion that the short assessment bill is to be limited from 02/2015 to 23-07-2016.

Decision

In view of the above observations, it is hereby ordered that the short assessment bill for Rs. 5,93,588/- issued stands cancelled. However, it is made clear that the respondent is directed to reassess the appellant for the period from 02/2015 to 23-07-2016 by taking 50% of the recorded consumption from 2/2015 to 23-07-2016. The order dated 14-03-2017 of CGRF Kottarakkara in No. OP 259/2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/42/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Joy S., Povottu Industries, Ambalakara P.O., Valakom, Kottarakkara
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Ayoor, Kollam.

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, Kottarakkara - 691 506.