

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/135/2017
(Present: A.S. Dasappan)
Dated: 15th March 2018

Appellant : Sri. Reghunathan K
Finance Manager & Director,
M/s Covenant Stones Pvt. Ltd.,
Cheerankavu P.O.,
Thiruvananthapuram

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Venjaramoodu,
Thiruvananthapuram

ORDER

Background of the case:

The appellant is having HT industrial consumer with Consumer code LCN:10/6844 under Kanyakulangara Electrical Section with a contracted demand of 1000 KVA. On 26-06-2015, the Executive Engineer, TMR Division, Thirumala conducted an inspection in the premises and found that due to the malfunctioning of Test Terminal Block installed in the meter cubicle caused recording reduced energy consumption in the premises. Accordingly, the appellant was served with a short assessment bill for the period from 7/2014 to 6/2015, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 3241124/-. The consumer filed a petition before the CGRF, South, Kottarakkara, with Petition No. 467/2017 and the Forum dismissed the petition due to lack of merits, vide order dated 16-11-2017. Aggrieved by the decision, the appellant has submitted the Appeal petition before this Authority.

Arguments of the appellant:

The appellant's activity is quarrying granite and manufacturing different products out of it like sand, broken stone of different sizes, large granite blocks etc. This company is an HT consumer with Consumer code LCN:10/6844 under HT 1 (A) tariff with a contracted demand of 1000 KVA.

In this instant case, the cost of the meter was borne by this appellant. The licensee should have required this appellant to change the meter and or the associated equipments at the cost of this appellant as required under Clause 117 (2) (b) of Supply Code,2014 in the event of it detected defective. However, the licensee never ever informed this appellant at any time after the said inspection dated 26-06-2015 about defect in meter etc and never asked to replace the defective meter or associated equipments. Also there was no remark in the subsequent bills stating the meter or associate equipments defective. This appellant came to know about the matter of defect in meter only upon receiving the demand letter dated 17-11-2016, which is about 17months after the inspection dated 26-06-2015.

The Assistant Engineer inspected the metering equipments regularly and took meter reading and bills were issued accordingly. This petitioner remitted such bill amounts without fail and no arrear is outstanding towards electricity charges. No anomalies or defect in metering equipments and associated equipments were never ever reported in the bills issued at any time, or no such defects were intimated to this appellant at any time requiring this appellant to change meter or associated components, since it were provided by this appellant at his expenses. It is while so, the Special Officer Revenue issued a letter dated 17-11-2016 informing that the bills for the period from 07-2014 to 07-2015 is revised and a short assessment amount of Rs.32,41,124.00 have been arrived at and requested to remit the amount for the reasons stated in the demand letter. Along with this, a statement of remitted amount and amounts as per revision for a different period of 07-2014 to 06-2015 and the sum total amount was issued. Then revised bills for the period from 06-2014 to 05-2015 was also issued.

In the demand letter two documents were referred which were letters of the Deputy Chief Engineer Electrical Circle, Thiruvananthapuram (Rural) and the Executive Engineer, TMR Division, Thirumala. However, the copies of it were not at all communicated to this appellant. The reason for the revision of bills stated under the demand letter is that, the Executive Engineer, TMR Division

Thirumala inspected the HT service connection on 26-06-2015, detected the "Test Terminal Block" malfunctioning hence reduction in recording actual consumption occurred. However in the revised bills the status of the meter is stated as stuck kVA, kWh, kVAh & kVArh" from 06-2014 to 05-2015 at the same time continues and progressive increase in electrical quantities measured are observed in the bills. Also under the demand notice it was stated that the meter was replaced on 17-08-2015, the actual date from which the faulty status occurred is not known, then checking with the consumption pattern it was observed that it started during the month from 07-2014 till meter change dated 17-08-2015, hence the bill for the period from 07-2014 to 7-2015 is revised in order to compensate the revenue loss sustained to Board as per condition stipulated in Regulation 134 of Supply Code, 2014. Hence demanded to remit Rs.32,41,124.00. However based on what principle or the yardstick taken for arriving at the demand amount is not at all revealed.

In this matter it is respectfully submitted that, The Executive Engineer, TMR Division, Thirumala never inspected the premises at any time as claimed under the demand notice. Regarding the allegation the Test Terminal Block has malfunctioned, Test terminal block is nothing but a connector at which the terminals of the meter and associated equipments etc are connected with. This is kept in a box sealed by the licensee. The Test Terminal Block and meter are further in a box and this box is also sealed by the licensee. There is no allegation of tampering with seals or Test Terminal Block or meter. Then the only possibility of malfunction of Test Terminal Block is due to flashover of it and chance for it is also remote. Also the licensee has no claim of any flashover. This connection was energized dated 05-03-2014 and the said inspection was dated 26-06-2015, which are just about 15 months after connecting the meter at the premises. The licensee was expected check/ test the meter on 05-03-2015 under Regulation 113(6) of Supply Code,2014 and should have checked/tested Current Transformer, Potential Transformer and wiring connection and the Test Terminal Block also as required under sub-regulation(7)of the same Code. But the licensee has never checked/tested it. There is no chance for the Test Terminal Block to become defective. This Test Terminal Block was never tested for its conductivity or connectivity or short circuit, no copy of test result delivered to this appellant proving the defect enabling this appellant to challenge such test result and got it tested at an NABL accredited laboratory as required under Clause 115 (8) of Supply Code, 2014. Thereby, there is not even of evidence to prove that, the Test Terminal

Block has malfunctioned. Even if the licensee have a claim that the Test Terminal Block malfunctioned and this appellant disapprove it, it has to be proved by a test conducted at an NABL accredited laboratory as required under Regulation 115 of supply Code,2014. Even if the defect proved so, assessment is only authorised for six months as regulated under Regulation 115 (9) of Supply Code, 2014.Otherwise assessment for the subsequent period after detecting the meter defect could be done as per Regulation125 of Supply Code 2014 and such defect shall be rectified within the period specified under the same Regulation. Therefore, the Test Terminal Block was defective is only a presumption or assumption or hypothesis. Any amount arrived at basing presumption or assumption or hypothesis is not an amount due at all and hence not payable by this appellant.

The inspection itself is marred with procedural impropriety and arbitrariness and hence illegal. Also copy of inspection report or mahazar was never delivered to this appellant under receipt. Here in this case, the license never intimated this appellant to replace the Test Terminal Block as required above, at the same time made false statement that this appellant has requested for that. Also under Regulation 108 (14) of Supply Code 2014, the inspection official shall enter any faults in the meter, repairs, replacements etc in the meter particulars sheet which has been provided as under sub regulation (11) (12) & (13) of the same regulation. No such entries were made and no copy of such meter particular sheet is given to this appellant.

It is claimed that the Test Terminal Block was changed on 17-08-2017. How this letter can be dispatched on an early date of 02-08-2017 narrating an event of change of Test Terminal Block occurred on a subsequent date of 17-08-2017. The licensee may plead that it is an in advertent error crept in to, but this date of 02-06-2014 itself is a corrected date. Thereby, this is nothing but a fabricated story only with the intention of extracting money illegally from this appellant and to make unjust enrichment. There is also a recommendation in the letter that, "the short fall of energy consumption and MD during the malfunctioning period of Test Terminal Block may be realized from the consumer by considering the average reading of the succeeding months (from26-06-2015) at the earliest". This recommendation is nothing but wrong and legally illiterate one. Even if average consumption is to be taken it can be taken only after the date of change of Test Terminal Block which is on 17-08-2015 but not from the date of inspection which is 26-06-2015.

Thereby, since Regulations under Supply Code, 2014 also regulates the assessment of electricity charges on the event of the meter becomes defective and where meter is also defined under Regulation 2(57) of the same Code, the licensee is prevented from adopting ingenious methods to declare a meter defective or to assess on the plea that the meter is defective. Defect of the meter which includes associated equipment also should be proved through a test in an NABL accredited laboratory as per Regulation 115(8) of Supply Code, 2014 and Regulation 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 before making any assessment in obedience with Regulation 115(9) of Supply Code, 2014.

Nature of relief sought from the Ombudsman

1. To hold and declare that Exhibit P1 short assessment demand amounting to Rs.32,41,124.00 is illegal and to quash it.
2. To issue orders to pay such amounts this Hon: Electricity Ombudsman may find appropriate towards the expenses for this appeal.
3. Such other reliefs the appellants pray for, during the course of appeal.

Arguments of the respondent:

M/s. Covenant Stones (P) Limited is a high tension consumer within the jurisdiction of Electrical Circle, Thiruvananthapuram with 1000 KVA contract demand, engaged in quarrying granites

This Respondent submits that on 26.06.2015, the HT Meter Testing Unit attached to the TMR Division, Thirumala tested the metering equipments of the appellants and in that testing it was revealed that the button type Text Terminal Block (TTB) installed at the metering cubicle is malfunctioning and as a result the meter is not recording the actual consumption. The said anomaly was intimated to the consumer. As a temporary arrangement the CT-PT connection were given directly to the meter, by-passing the TTB and further a New TTB was installed on 17.08.2015. In order to recoup the energy undercharged as per regulation 134(1) of Electricity Supply Code, 2014 a demand notice for Rs 32,41,124/- for the period from 07/2014 to 07/2015 was issued to the appellants. The amount demanded is towards the energy charges actually consumed by the consumer and he is liable to pay the same. Aggrieved by the said demand this appellants approached the Consumer Grievance Redressal Forum (SR). The Hon'ble Consumer Grievance Redressal Forum, after

thoroughly analyzing the consumption pattern of the consumer before and after the TTB failure concluded and ordered that the said demand issued for the short fall of consumption by these respondent is sustainable and in order to make good the loss occurred to Kerala State Electricity Board Ltd., the above demand was issued.

The contentions raised by the appellant are fabulous. The defect of the meter which was detected by the officials of TMR was communicated to the representative electrician of the appellant firm Sri. Selvin Roy and thereafter as per the prevailing provisions of Supply Code, 2014 the undercharged demand was issued based on scientific and objective evaluation of the consumption pattern. The CGRF found out after analyzing the consumption pattern that there was drastic reduction in consumption during the period from 06/2014 to 05/2015. After rectifying the TTB failure accurate consumption was recorded in the meter and it was certified by the authority concerned. The Hon'ble Consumer Grievance Redressal Forum vide its order dated 16.11.2017 ordered that the demand issued by the licensee to the consumer is sustainable.

The contention of the appellant further raised in the appeal is that the Assistant Engineer regularly take the meter reading and issued bills and never disclose the fault of the TTB. In this context it is submitted that the Assistant Engineer goes to the consumer premises regularly to take meter reading. The metering unit and other equipment can be tested only by a specialized agency which deals in technical parameters of metering equipments, in this case TMR Division. The malfunctioning of the TTB was found out by the Meter Testing Unit, the authoritative Unit of TMR on 26.06.2015. The representative of the appellant firm submitted an application to the Executive Engineer, TMR, Thirumala for installing a new TTB in the place of improperly functioning TTB. Accordingly on 17.08.2015 new TTB was installed and calibrated by using the Accucheck meter. All the procedure relating to the changes was convinced to the representative of the appellant firm Sri.Selvin Roy and he himself agreed and signed the site mahazar.

The Respondent Special' Officer (Revenue) issued demand for the escaped energy due to the failure of the TTB invoking the Regulations 134 (1) of Supply Code, 2014.

Almost all the averments of appellant is regarding the duties and responsibility of the licensee for maintaining the meter albeit the appellant indirectly agrees the under consumption due to TTB failure.

In the light of the above, the amount raised by the Kerala State Electricity Board Limited is as per law and is in conformity with the regulations hence this appeal petition may be dismissed with Costs.

Analysis and Findings: -

The Hearing of the case was conducted on 26.02.2018 in the Court Hall of CGRF, Kottrakkara. Sri. Anandakuttan Nair and Sri. K. Reghunathan represented the appellant's side and Smt. Sheeba M., Assistant Executive Engineer, Electrical Sub Division, Venjaramoodu represented the respondent's side.

On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The Assistant Engineer, O/o the Executive Engineer, TMR Division, Thirumala inspected the premises of the appellant on 26-06-2015 and detected the malfunctioning of the Test Terminal Block which caused not recording of actual consumption of energy. The appellant's version that the Executive Engineer, TMR Division, Thirumala never inspected the premises is not sustainable as the site mahazar is a clear evidence for his inspection and the same was witnessed by the appellant's employee. Further, as an immediate solution, the CT-PT connections were then given directly to the meter bypassing the TTB. Later on 17-08-2015, as per the request of the appellant, the faulty TTB was replaced with a new working one. The appellant contended that the documents like site mahazars dated 26-06-2015 and 17-08-2015 and the request dated 17-08-2015 for installing new TTB are the forged one. These arguments are not correct and denied since he had not put forward any substantiating evidences to prove his claims. The CGRF has observed that 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 previous period 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, the period of failure cannot be established.

Further the appellant also contended that Regulation 134 (1) of Supply Code, 2014 is not at all applicable in this case of meter defective case. According to the appellant, this provision applies in only a case where the KSEBL has undercharged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately. It is stated that this provision not deals with a situation where the meter is inaccurately recording the energy consumed on account of a wrong connection given to the meter.

The appellant's further contention is that no test report of CT or test report of meter or down loaded data of meter was ever issued to this appellant establishing the claim of the licensee that, the meter was defective due to defect in TTB and the date of occurrence of defect. By not giving such reports, the licensee denied this appellant to challenge the report and to ask for a second report after test in an NABL accredited laboratory as per the regulations under Supply Code, 2014. Hence according to the appellant, the fact in evidence proves beyond doubt that the meter was not defective at any time before until it was detected on 26-06-2015. The appellant also put forward another argument that there is no provision under statutes enabling the licensee to reassess a consumer basing the consumption after TTB change on the reason of meter defect and higher rate of consumption is observed on metering after TTB change. Likewise observing higher consumption on metering after TTB change does not legitimize a bill issued for short assessment which was issued on the presumption that the meter was defective before TTB failure since there are other factors deciding increase in consumption.

Refuting the above contentions, the respondent relied upon the consumption pattern for establishing the period of reduced energy consumption. According to him, the dip in consumption from 06/2014 onwards is the result of the TTB failure. Undercharging of prior bill is established due to an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 134(1) is applicable.

The issue arising for consideration in this appeal is whether the period assessed and the quantum of energy loss computed are in order and the appellant is liable for the payment of short assessment for Rs.3,24,1124/- .

Normally, the respondent is bound to rectify the defect of the TTB, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 32,41,124/-, for non-recording of energy due to defects of the TTB, for the period from 07/2014 to 06/2015, i.e, till the date of bypassing TTB. On perusing the Mahazar, this Authority feels that the contention regarding the TTB fault noticed during inspection by TMR Division was correct, since the mahazar was duly witnessed by the employee of the appellant. Also, a rise in energy consumption obtained after bypassing TTB from 26-6-2015 and the consumption pattern before 06/2014, corroborates the same findings. Thus it is convinced that the energy recorded in the Meter during the disputed period was not correct and very less than the actual consumption.

The site mahazar also justifies missing of energy measuring parameters in the appellant's metering equipment in the appellant's premises. In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording less than the actual consumption on the inspection date of 26-06-2015.

Further this Authority is of the opinion that 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 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 reduced energy consumption on the basis of the inspection conducted in the premises, mahazar prepared and based on consumption details during the dispute period and before and after the dispute period.

From the above it is revealed that there is a drastic reduction in consumption which may be due to the malfunctioning of TTB. On going through the consumption pattern of the appellant, it is revealed that the average consumption of the appellant from 6/2014 to 5/2015 was only 4869 units. But after replacing the TTB, the average consumption increased to above 65000 units. As such, a portion of the actual consumption escaped from the premises of the appellant. Anyhow the loss sustained to KSEBL has to be compensated

by the appellant in compliance with the provisions of Regulation 152 (3) of the Supply Code, 2014. Accordingly the bill for Rs. 3241124/- is sustainable and the appellant is bound to pay the amount.

Decision

In view of the factual position I don't find any reason to interfere with the findings and decision taken by the CGRF, Kottarakkara in this case and hence the order of CGRF is upheld. The appeal is found devoid of any merits and hence dismissed. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/135/2017/_____ /Dated:_____

Delivered to:

1. Sri. Reghunathan K, Finance Manager & Director, M/s Covenant Stones Pvt. Ltd., Cheerankavu P.O., Thiruvananthapuram
2. The Assistant Executive Engineer, Electrical Sub Division, Venjaramoodu, KSE Board Ltd, Thiruvananthapuram

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, KSEBoard Ltd, Kottarakkara