

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/026/2019
(Present: A.S. Dasappan)
Dated: 30th May 2019

Appellant : Sri. Imran,
Manager, M/s Arch Ply N Boards,
Kunjathur P.O.,
Kasaragod

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Uppala,
Kasaragod

ORDER

Background of the Case:

The appellant is a HT service consumer bearing LCN 17/3941 in the name of M/s. Arch Ply N Boards at Kunjathur under Electrical Section, Manjeshwar. The Assistant Engineer, Electrical Section, Manjeshwar had detected that the display of the meter was not visible and could not be able to take meter reading. The Deputy Chief Engineer, Electrical Circle, Kasaragod has directed the appellant to replace the ToD meter with a new 3 phase 4 wire (Class 0.2 S, CTs with CT units of accuracy class 0.2 S and PTs with PT units of accuracy class 0.2) having CT ratio 10/5A and get it tested from TMR Division, Kannur for replacing the same urgently failing which penalty will be imposed as per rules, vide letter dated 26-03-2018. The respondent has imposed penalty for an amount of Rs. 4,75,805/- as 50% extra over the prevailing rate applicable both demand and energy for two months during which the appellant failed to replace the faulty metering component, and one month thereafter. The appellant has challenged the bill and filed an appeal before Consumer Grievance Redressal Forum, Kozhikode as O.P. No. 138/2018-19. The CGRF, Kozhikode, dismissed the petition vide order dated 28-02-2019.

Arguments of the appellant:

The appellant's meter was found faulty during the month of January 2018 and he was advised to purchase a new meter. Due to some personal reasons, the appellant was not able to purchase new metering equipments at that time. Afterwards the appellant had received a letter dt.26.03.2018, from Deputy Chief Engineer, Electrical Circle, Kasaragod, intimating him that penalty will be imposed as per rules, if the appellant had not replaced the meter.

As per the clause No.117 (2) (c) of Supply code 2014, which states that "If the consumer fails to replace the meter and the associated equipments, the licensee shall install a correct meter and require the consumer to furnish security and start charging meter rent as per relevant positions of the code". But the licensee did not replace the meter and the associated equipments instead, they had imposed penalty of 50% over the prevailing rates applicable as per tariff order dated 17.04.2017. The tariff order does not mention anywhere that this 50% extra is the penalty; instead it states that licensee can charge 50% extra over the prevailing rate for the said 2 months and 1 month thereafter. This seems to be collected as an advance so that once the meter is replaced, and in the next billing cycle, this amount has to be adjusted for actual consumption, according to the next available reading in the new meter.

But in the case of the appellant, the licensee had collected 50% of the prevailing charge both for demand and energy as penalty for a total of 3 months from the date of declaration of meter faulty, and even after charging 50% extra for two months, they had not taken action to replace the meter as per clause No. 117 (2)(c) of Supply Code 2014 and continued to bill for the average of the previous billing cycle till the meter had replaced during the month of August 2018 that is after 7 months of "meter declared Faulty", which they are not supposed to do. They have rights to collect electricity charges based on average consumption for two months only, within which the meter should be replaced by the licensee, if the consumer fails to do so.

Instead the respondent had collected electricity charges based on average consumption for February, March, April, May, June, July 2018 (for 6 months) By this action the Licensee has violated the rules of Supply Code 2014 {Clause No. 117 (2) (c)}

The appellant has prayed that suitable guidance may please be given to the KSEB officials to return excess amount collected from him as penalty and the respondent may please be directed to discharge their duties strictly following the rules of Supply Code, 2014.

Arguments of the respondent:

While taking routine monthly reading the Assistant Engineer, Electrical Section, Manjeshwar found that the meter is not running and detected faulty from 01/2018. The matter had been informed to the consumer and average bill issued thereafter. The consumer did not replace the faulty meter with new one.

As per Tariff Order dtd: 17.04.2017 Part B - HT & EHT Tariff General condition 4(d) ,if any existing consumer having elected to purchase and supply the meter, for replacement of the defective meter in his premises, fails to do so within 2 months such consumer will be charged 50% extra over the prevailing rate applicable to him both for demand and energy for the said two months and one month thereafter. Since the consumer did not replace the faulty meter after the expiry of 2 months, extra bill of 50% of monthly bill of 04/2018 for Rs. 1,58,935/- (50% of Rs. 3,17,870/-) had been charged.

In 05/2018, extra charges for balance 2 months charged since the consumer did not replace the faulty meter which amounts Rs.3,16,870/-. Now the appellant has stated that the bill has been exempted as per the order of supply Code 2014 clause No. 117 (2). But as per the Board order existing in the KSEB Ltd. the bill of 04/2018 & 05/2018 had been issued as per the direction in Tariff order dtd. 17.04.2017, which is prevailing in the KSE Board Ltd now.

Analysis and findings:

The hearing of the case was conducted on 16-05-2019 in the Office of the State Electricity Ombudsman, Edappally and Sri. Imran and Sri. Purushothaman P.K. represented for the appellant's side and Sri. P.T. Jayaprasad, Assistant Executive Engineer, Electrical Sub Division, Uppala appeared for the respondent's side. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the decision.

The appellant's main argument is based on the fact that the respondent had not taken action to replace the faulty meter as per regulation 117 (2) (c) of Supply Code 2014.

The appellant is a HT consumer and the meter is owned by the consumer. The intimation of defect of the metering system with a direction for replacement was issued vide letter dated 26-03-2018 by Deputy Chief Engineer and the same was received by the appellant on 30-03-2018. In this case the appellant purchased the meter after two months of receipt of the intimation notice and the appellant submitted the test report on 30-07-2018. The

metering components were replaced on 21-08-2018, i.e., 5 months after the intimation to the appellant. As per clause 9 (b) of the agreement executed between the respondent and the appellant, the tariff notification issued by the KSERC for the Licensee from time to time shall form part of the agreement and the agreement shall stand modified to that extent. As per this agreement, the licensee and the consumer have to adhere the provisions in the tariff notification. The appellant has produced only a portion of regulation 117 of the Supply Code 2014. Regulation 117 reads as follows:

117. Cost of replacement of defective meters.- (1) If as a result of inspection or testing it is established that the meter has become defective or damaged due to technical reasons such as voltage fluctuation, transients etc. attributable to the licensee, the cost of replacement of the meter shall be borne by the licensee.

(2) If it is established that the meter was rendered defective or damaged due to reasons attributable to the consumer, such as defect in installation of the consumer and connection of unauthorised load by the consumer, the cost of replacement of the meter shall be borne by the consumer as specified below:-

(a) If the meter was owned by the licensee, the licensee shall replace the meter with a correct meter within seven working days and recover from the consumer, the residual cost after deducting the cumulative depreciation from the original cost of the meter;

(b) If the cost of such meter was borne by the consumer, the licensee shall require the consumer to replace the meter and associated equipment at the cost of the consumer within seven working days;

(c) If the consumer fails to replace the meter and associated equipment, the licensee shall install a correct meter and require the consumer to furnish security and start charging meter rent as per the relevant provisions in the Code.

(3) The licensee and the consumer shall take necessary corrective action to avoid such damage in future.

(4) If as a result of testing, it is established that the meter was rendered defective or damaged due to tampering or any other deliberate act by the consumer or his employee or any person acting on his behalf, to interfere with the meter, the licensee shall initiate action against the consumer, as permissible under the provisions of the Act for pilferage, tampering or unauthorised use of electricity, as the case may be.

There is a clear direction from the Deputy Chief Engineer to replace the faulty meter and as per the tariff Order, the appellant has to replace the same within two months and if he fails to do so within two months, such consumer

will be charged 50% extra over the prevailing rates applicable to him for both demand and energy for the said two months and one month thereafter. Considering the above facts, the regulation 117 (2) (c) is not applicable and sustainable in this case. Further it is known that the licensee is not supplying the HT and EHT meters to the consumers.

Another argument of the appellant is that in the tariff order dtd: 17.04.2017 Part B -HT & EHT tariff General condition 4(d), does not mention any where that 50% extra is the penalty, instead it states that licensee can charge 50% extra over the prevailing rate for the said 2 months and 1 month thereafter and according to the appellant, it seems to be collected as an advance so that once the meter is replaced, and in the next billing cycle, this amount has to be adjusted for actual consumption, based on the next available reading in the new meter.

The respondent has stated that 50% extra over the prevailing rates for both demand and energy for the prescribed period was raised by the Special Officer (Revenue), KSEB Ltd. strictly in adherence with the general conditions for HT and EHT tariff under para 4 (d) of part B.

In this case, it is clearly proved from the records that the appellant has been received the letter issued by the Deputy Chief Engineer on 30-03-2018 as admitted by the appellant himself. The general conditions for HT and EHT tariff under para 4 (d) of part B provides that "if any existing consumer, having elected to purchase and supply the meter for replacement of the defective meter in his premises, fails to do so within two months, such consumer will be charged 50% extra over the prevailing rates applicable to him for both demand and energy for the said two months and one month thereafter."

This provision has never stipulates that the 50% extra over the prevailing rate for the said two months and one month as an advance and adjustable in future bills as claimed by the appellant. The explanation for the delay in purchasing the metering system and failure for replacement in time is not sustainable.

On verifying the meter reading details, it is seen that the metering system became defective in between 30/11/2017 and 31/12/2017 and continued up to the replacement on 21-08-2018. That is the meter was defective at least from 31-12-2017 to 21-08-2018. The meter declared as defective on 31-01-2018 as the reading is same as on 31-12-2017.

As per the documents produced by the appellant and respondent, the period availed by the appellant for the replacement of the effective metering was from 30-03-2018, the date on which the appellant received the letter of Deputy Chief Engineer intimating the meter defect, to 02-07-2018, the date on

which the appellant produced the meter and other components before the Assistant Engineer. In short, the defective metering system existed in the premises for more than 3 months. (4/18, 5/18, and 6/18)

Decision:

From the analysis done above and the conclusions arrived at, the appellant's plea to waive the 50% extra imposed is rejected and it is ordered that the billing to be done for the entire period of defective metering system from 1-1-2018 to 21-8-2018 based on the average of three months consumption prior to 30-11-2017 in case of energy charge and based on the maximum demand during corresponding month of the previous year, when the meter was functional and recording correctly. Hence average energy charge for the defective period can be calculated taking the energy consumption for 9/2017, 10/2017 and 11/2017. The 50% of the monthly energy charge and demand charge calculated as above shall be realised as excess for 4/2018, 5/2018 and 6/2018 for the non-replacement of the defective metering system within the prescribed period.

The respondent is directed to revise the bills as ordered above and this shall be done at any rate within 30 days from the date of receipt of this order. 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/026/2019/ _____ /Dated: _____

Delivered to:

1. Sri. Imran, Manager, M/s Arch Ply N Boards, Kunjathur P.O., Kasaragod
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Uppala, Kasaragod

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