

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/064/2019
(Present: A.S. Dasappan)
Dated: 5th November 2019

Appellant : Sri. Vibil K.V.
Kalathil House, Vengali,
Eranhikkal P.O.,
Kozhikode

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Westhill,
Kozhikode

ORDER

Background of the case:

The appellant is a three-phase consumer having a connected load of 68646 watts and contract demand of 77 kVA with consumer number 9370 under LT 4 A tariff within the jurisdiction of Electrical Section, Eranhikkal. The connection is registered in the name of Sri. Korappan K.V., K.V.K. Ice Plant, Vengali, Puthiyangadi. The KSEBL conducted an inspection on 22-01-2019 in the premises of the appellant and found that the CT operated Energy Meter installed in the premises was not recording one phase and 1/3rd (33.33%) of actual consumption was not recorded in the meter. On the basis of site mahazar prepared, a short assessment bill amounting to Rs. 201348/- was served on the appellant. Aggrieved by this, the appellant approached the CGRF, Kozhikode with a petition which was dismissed, vide order OP No. 14/2019-20 dated 11-07-2019. Against the above order of the Forum, the appellant filed this appeal before this Authority on 20-08-2019.

Arguments of the appellant:

The appellant herein presently runs an ice factory at Eranhikkal, Kozhikode with the consumer no. 1166065009370 ever since the death of his father who originally commenced the functioning of the said ice plant. The said ice plant falls under the jurisdiction of the Electrical Section, Eranhikkal. On 22.01.2019

an inspection was conducted at the ice plant by the Sub Engineer, Electrical Section Eranhikkal of the Kerala State Electricity Board Limited in the presence of the Assistant Executive Engineer. A mahazar dated 22.01.2019 was prepared and handed over to the appellant in which it is allegedly found that the electricity meter at the said ice factory did not show the B phase reading thereby showing a deficit of 33.33% in the electricity consumption. It mentions that the cause for this is the malfunctioning of B Phase CT and that upon breaking the seal of the B Phase CT and inspecting it was found that the terminal connection appears to have been detached. It is mentioned that repairs have been made. Thereafter a demand cum disconnection notice dated 13.03.2019 under Section 56 of the Electricity Act 2003 based on the alleged unrecorded energy consumed during 12.10.2018 and 22.01.2019 was sent to the appellant amounting to Rs. 201348 (Rupees Two lakhs one thousand three hundred and forty-eight). A calculation for recovering the energy charge for the alleged unrecorded energy consumed during 12.10.2018 to 22.01.2019 was also provided to the appellant. The appellant thereafter submitted a representation before the Deputy Chief Engineer, KSEB, Electrical Circle, Vydhyuthi Bhavanam, Kozhikode mentioning that the average consumption of energy at the ice plant is only approximately Rs. 1,65,000/-. However, that the demand has been to pay a sum of Rs. 2,01,348/- and requested to take immediate steps to rectify the mistake. Thereafter a demand and disconnection notice for the month of March was sent to the appellant to the tune of Rs. 1,65,351/-. Thereafter, the Kerala Ice Manufacturers Association of Kozhikode District submitted a representation dated 14.01.2019 before the Deputy Chief Engineer, Kerala State Electricity Board, Sandhi Road, Kozhikode stating that the Anti Power Theft Squad (APTS) comes in often and examines ice plants and imposes exorbitant fines alleging that the CT is not functioning and that this puts at peril the functioning of the business itself. A request was made in the said representation that the officials who come into take the reading every month may check if all the 3 phases work and if there is anything wrong with the meter and write it down in a book. Thereafter, the Deputy Chief Engineer replied vide letter dated 02.02.2019 stating that the complaint has been sorted out and that the officials have been instructed to note down the voltage and current consumption of all phases when the monthly reading is taken and if any large difference is observed then to immediately conduct an examination for the rectification of the same. Thereafter, the appellant approached the Hon'ble High Court of Kerala vide a writ petition (W.P.(C) No. 9047 of 2019) praying to quash the bill and seeking direction to consider the representation. Since an alternative remedy of approaching the Consumer Grievance Redressal Forum was available to the appellant, the Hon'ble High Court vide an order permitted the appellant to withdraw the writ petition leaving him at liberty to file a complaint before the CGRF and directing the respondents therein not to take any action until 16.04.2019. The appellant thereafter approached the CGRF with a complaint. The CGRF on 12.04.2019 allowed an interim prayer of the appellant to stay the proceedings of disconnection by the licensee vide an order. Later the CGRF dismissed the complaint of the appellant herein vide an order dated 11.07.2019. Thereafter the appellant was issued bill for the month of July.

The CGRF ought to have found that procedure under regulation 113 of the Kerala Electricity Supply Code, 2014 was not followed in examining the meter. The meter has not been tested in any accredited or approved laboratory. Procedures are prescribed in order to ensure that there is justice and fair play. Violation of such procedures infringes the rights of the Appellant who is a layman. The appellant does not know whether the said meter was really faulty and whether the calculations made by KSEBL is correct. Non-adherence to the procedures prescribed in the Regulations vitiates the order of CGRF and hence deserves to be quashed.

The order of the CGRF states that regulation 116 to 120 of the Kerala Electricity Supply Code, 2014 is not applicable in the instant case since it deals with the procedure regarding replacement of defective meter/test meter. It also states that regulation 125 of the same is not applicable to the instant case since it deals with the procedure regarding preparation and issuance of bill when meter reading is not available due to total non-recording of the meter or malfunctioning of meter and that it is not applicable here as the meter records correctly on the basis of current input to the meter. This is arbitrary and unjust. It is admitted by KSEBL that the meter was not showing correct reading. This means that the meter was malfunctioning, and procedures established by law ought to have been followed. The appellant is seriously prejudiced and aggrieved by the gross injustice perpetrated on him by the KSEBL.

Further, the tariff which has been calculated and fixed by KSEBL per unit normally includes inspection and administrative charges of KSEBL and not generation and supply charges alone. Hence, KSEBL was duty bound to discharge its duties and responsibilities regarding proper inspection and maintenance of their equipment installed at the consumer's (the appellant herein) premises. Hence the abdication of that duty by the officers of KSEBL should not result in mulcting the liability on to the appellant. After accepting the prompt payment of all the bills from the appellant, the KSEBL should not penalize the appellant for their mistake.

Such arbitrary demands such as the bill will break the back of small establishments such as the appellant's which totally depend on the volatile, unpredictable and unreliable trends prevalent in the Fishing Industry for their survival.

The calculation parameters used to calculate the bill amount is erroneous and does not take note of the date of identification of the alleged fault.

Reliefs sought:

- a) The above arbitrary and unjust order of the CGRF, Northern Region be quashed.

- b) Quash the bill thereby exempting the appellant from paying any amount as demanded by KSEBL.

Arguments of the respondent:

The electric connection with consumer No. 9370 is registered in the name of Mr. Korappan KV., K.V.K. Ice Plant, 4/410 A Vengali, Puthiyangadi under Electrical Section. Eranhikhal. The said connection is given under LT IV-A Tariff with a connected load of 68646 Watts and contract demand of 77 kVA. This is a three phases connection and energy meter is connected through CTs. Upon noticing considerable reduction in energy consumption of the consumer, an inspection was conducted in the premises of the consumer on 22-01-2019. In the inspection it was found that terminal connection on the CT secondary of B phase was snapped and disconnected. The B phase current consumed by the consumer was not going to the meter. Out of three phase current, only two phases were going to the meter. The meter data were downloaded and found that B phase current was continuously absent from 12-10-2018 and other two phases R and Y were present. The meter was working correctly, and it has recorded the energy coming to it correctly. But even though the consumer was consuming current and energy through three phase of the connection, only energy from two phase namely R and Y phase are coming to the meter and B phase is not coming to the meter, i.e., 1/3rd (33.33%) of the total energy consumed for this period is not received and hence not recorded by the meter. As a result, from 12-10-2018 onwards the consumption was being recorded and the consumer was being billed only for 2/3rd (i.e., 66.67%) of the actual energy consumed by him.

The actual consumption of the appellant for the month of October 2018 was 30728 units but he was billed only for 23520 units (from 12-10-2018 onwards energy from two phases were received and recorded by the energy meter). Similarly, the actual consumption for the month of 11/2018, 12/2018 and 1/2019 was 30285 units, 26460 units and 25485 units respectively. However, he was billed for 20190 units in 11/2018, 17640 units in 12/2018 and 18810 units in 1/2019. The Recorded Maximum Demand of the consumer is 25 kVA to 43 kVA during this period whereas the normal RMD of the consumer before occurrence of break in connection wire of CT and after the rectification is 60 kVA to 78 kVA. Also, the RMD of the corresponding period in the previous year (October to December 2017) is 69 kVA to 72 kVA. On an analysis of RMD data of the appellant, it can be seen that after rectification of the CT secondary connection, the RMD increased to 60 kVA in January 2019 itself as against a maximum RMD of 42 kVA till the preceding month when one phase current was absent. To make up the above loss the appellant was served with a short assessment bill for Rs. 2,01,348/- on 13-03-2019. The above bill was raised only for the consumption made by the appellant but not paid by him. No penalty or surcharge or fine was included in the bill.

As per Regulation 134 (1) Kerala Electricity Supply Code 2014 if the consumer is undercharged the licensee may recover the amount so undercharged from the consumer. As per Regulation 152(2) the amount of electricity charges short collected by the licensee shall be realised from the consumer under normal tariff applicable and as per Regulation 152(3) the electricity charge short collected can be realised without interest.

Based on the above, short assessment is done for the missing 33.33% of energy consumed through the B phase current that was missing from 12-10-2018 to 22-01-2019. The short-assessed amount is Rs 2,01,348/- and the demand notice with detailed calculation sheet was issued to the consumer.

The appellant states that KSEBL has not followed Regulation 113 of Electricity Supply Code, 2014. On an examination of the wording of the said regulation, it would reveal that it is the licensee who should satisfy itself regarding the correctness of the meter. Going by the said regulation the licensee has got ample freedom to take an appropriate decision on the correctness of the meter. The problem in the instant case is not the accuracy of the meter, on the other hand it is whether the meter installed at the premises of the appellant got the actual input. Therefore, on an analysis of the matter one can see that the current input of the meter from one phase of the CT terminal was missing which in turn prevented the meter from recording the actual consumption of the appellant. The appellant also tries to invoke regulations from 116 to 120 and 125 out of context. The above regulations are meant to be invoked when the energy meter per se is not functioning well and exhibits signs of sluggishness, creeping, etc.

These characteristics of a faulty meter cannot be attributed to the functioning of the meter installed at the premises of the appellant. Here in the instant case, break in the connection wire of CT terminal was proved beyond doubt and once the said absence of one phase current input to the energy meter was detected and got corrected, the complete energy consumed by the consumer was received and recorded by the meter. To put it in brief the meter was not faulty and hence Regulations 116 to 120 and 125 cannot be applied. The appellant wants a mechanical application of regulations to suit his interest and tries to interpret them in a prejudiced manner. The appellant has very well been apprised of the matter in person. However, he pretends to be ignorant of the circumstances where a short assessment bill had to be raised and this attitude of the appellant reminds one of the adage that "one who is fast asleep can be woken up but not the one who pretends to be asleep"

The unrecorded energy loss is not on account of any illegal action by the consumer or on account of any inefficiency of the employees of KSEBL. It is only because of the break in the connection wire of CT secondary terminal of one phase CT in the system. From the downloaded meter records, it is clear that the B phase current to the energy meter was absent from 12-10-2018 to 22-01-2019 and there by 1/3rd (33.33%) of the total energy consumed for this period is not received and recorded by the energy meter. The demand notice for the actual

energy consumed and non-recorded by energy meter is only served to the consumer without any interest or surcharge. No punishment is inflicted on the consumer as is made out by him. It is only the current charge which the licensee instructs the appellant to remit. It is the responsibility of the appellant to pay electricity charges for the energy he used. The contentions raised by the appellant that KSEBL has violated the provisions of Kerala Electricity Supply Code, 2014 doesn't hold much water. As per Regulation 116(2) "if the meter is found defective the licensee may test it at site, if feasible and not feasible the meter shall be replaced with a correct meter and the defective meter shall be got tested in an accredited laboratory". In the instant case the energy meter is not defective, and the meter was not changed, but the connection wire of CT secondary terminal of B phase CT was found broken and the same was rectified at the site itself.

The period of short assessment is fixed based on the downloaded data recorded from the energy meter memory. If the consumption pattern of the appellant after the rectification of CT secondary terminal connection and before the rectification (i.e., from 12-10-2018 to 22-01-2019) is examined it can be seen that there is a short fall of 33% in the recorded consumption for the above said period. On finding out the error the appellant was instructed only to remit the short assessed current charge without any penalty. Current charge bill on the basis of average consumption is issued when the actual consumption of consumers for a particular period cannot be ascertained. In the case at hand the consumption pattern of the appellant is crystal clear and hence Regulation 125 need not be invoked.

Earlier the Ombudsman had considered a very similar petition (No. P/024/2019) wherein the appellant belonged to Electrical Sub Division, West Hill to which the appellant in the instant case also belongs. The above petition also dealt with missing of one phase voltage resulting in a reduction of 33% in recorded consumption of energy. This Ombudsman disposed of the matter vide order dated. 24-05-2019 directing the consumer to remit the short-assessed amount raised on account of the missing one phase voltage.

Analysis and Findings: -

The Hearing of the case was conducted on 03-10-2019, in my chamber at Edappally. Smt. Niharika Hema Raj, Advocate represented the appellant's side and Sri. A. Vijayakumar, Assistant Executive Engineer, Electrical Sub Division, West Hill, Kozhikode, 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 appellant had directly approached the Hon. High Court of Kerala by filing writ petition No. 9047/2019 for quashing the short assessment issued by the respondent to him. Later the appellant was allowed to withdraw the writ petition for approaching the CGRF.

The KSEBL has inspected the consumer's premises on 22-01-2019 and found that terminal connection on the CT secondary of B phase was snapped and disconnected, thus resulting in the recording of a lower consumption than what is actually consumed. The connected load of the appellant in the premises is 69 kW and contract demand is 77 kVA. A site mahazar was prepared and meter data was downloaded. As per the data downloaded, B phase current was continuously absent from 12-10-2018. The appellant was issued a short assessment bill for Rs. 201348/- on 13-03-2019 to recover the energy escaped from billing due to CT's fault in one phase for the period from 12-10-2018 to 22-01-2019. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable and hence dismissed the petition.

The appellant's contention is that he may not be burdened for the negligent act of the respondent who failed to perform its duty in ensuring that the meter was in proper working condition. Further it is submitted that the respondent has no case that the appellant manipulated the meter in any manner. Procedures are prescribed in order to ensure that there is justice and fair play. Violation of such procedures infringes the rights of the Appellant who is a layman. The appellant has contended that procedure under regulation 113 of the Kerala Electricity Supply Code, 2014 was not followed in examining the meter. The meter has not been tested in any accredited or approved laboratory. The appellant does not know whether the said meter was really faulty and whether the calculations made by KSEBL is correct. Further the appellant contended that no scientific analysis was done by the respondents to find out the period for which the current in B phase was missing.

Further the appellant contended that, according to CGRF, that regulation 116 to 120 of the Kerala Electricity Supply Code, 2014 is not applicable in the instant case since it deals with the procedure regarding replacement of defective meter/test meter and regulation 125 of the same is not applicable to the instant case since it deals with the procedure regarding preparation and issuance of bill when meter reading is not available due to total non-recording of the meter or malfunctioning of meter and that it is not applicable here as the meter records correctly on the basis of current input to the meter. The appellant has stated that the meter was not showing correct reading which is admitted by KSEBL. This means that the meter was malfunctioning, and procedures established by law ought to have been followed.

Refuting the above contentions, the respondent has averred that from the downloaded meter records, it is clear that the B phase current to the energy meter was absent from 12-10-2018 to 22-01-2019 and there by 1/3rd (33.33%) of the total energy consumed for this period is not received and recorded by the energy meter. The demand notice for the actual energy consumed and non-

recorded by energy meter is only served to the consumer without any interest or surcharge. No punishment is inflicted on the consumer as is made out by him. It is only the current charge which the licensee instructs the appellant to remit and it is the responsibility of the appellant to pay electricity charges for the energy he used. According to him, the dip in consumption is the result of the energy missing in the meter and it is proved by examining the previous consumption of the appellant and the consumption of corresponding period in the previous year. It is submitted by the respondent that the meter installed in the premise is not reported as defective or damaged. Further the respondent has argued that regulations from 116 to 120 and 125 are meant to be invoked when the energy meter per se is not functioning well and exhibits signs of sluggishness, creeping, etc.

Normally, the respondent is bound to rectify the defect of the metering system, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 201348/- for non-recording of energy due to defects of the B phase for 12-10-2018 to 22-01-2019, by taking the lost energy as 1/3rd of the actual energy. There was also three phase load connected. On perusing the mahazar, this Authority feels that the contention regarding the current missing in one phase noticed during inspection by KSEBL was correct, since the mahazar was duly witnessed and the appellant has not disputed the mahazar. Thus, it is convinced that the energy recorded in the meter during the disputed period was not correct.

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.

The site mahazar dated 22-01-2019 and the down loaded data justifies missing of current in one phase of 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 in two phases from 12-10-2018 to 22-01-2019. The appellant's arguments mainly depend on whether the meter was really faulty since the procedure under regulation 113 of the Kerala Electricity Supply Code 2014 was not followed in examining the meter and appellant also questioned the calculation made by the respondent in the short assessment bill.

The respondent has issued the short assessment bill for a period from 12/10/2018 to 22/01/2019 by taking 50% of the recorded consumption following the inspection conducted on 22-01-2019 and detecting of non-recording of energy in one phase by scientific analysis. It is found that energy consumed in one phase was not recorded in the meter. 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 connected 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. Thereby wiring is also there for this metering system. This 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. The fact of the matter is the metering system was defective since current in one phase was missing in the meter. Under the regulation 113, sub clause (7) of Supply Code 2014 requires the licensee to test the CT, PT and the wiring connections, where ever applicable while testing the meter.

Regulation 115 (9) of Supply Code 2014 says “(9) In case the meter is found to be faulty, revision of bill on the basis of the test report shall be done for a maximum period of six months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in the two subsequent bills”.

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 issued the short assessment bill for the disputed period on the basis of the down loaded data. The respondent has argued that the short assessment bill raised is only for the electricity consumed by the appellant and it is the responsibility of the consumer to pay electricity charges for the energy he has used and the same is issued without any interest.

On going through the records, the following facts are revealed. The CT was changed on 22-01-2019. The consumption recorded after CT change for 2/2019, 3/2019, and 4/19 are 25560 units, 30120 units and 22290 units respectively. The average consumption of the appellant during the period from 3/10/2018 to 1/1/2019 is 20450 units. From the above it is revealed that there is a reduction in consumption during the period from 12-10-2018 to 22-01-2019 which may be due to the defect of the CT.

Decision:-

From the analysis done above and the conclusions arrived at, the appellant's plea to quash the short assessment bill issued to him is rejected and this Authority uphold the decision taken by the CGRF, Kozhikode in OP No.14/2019-20 dated 11-07-2019. The appellant is allowed 6 instalments without interest, to remit the short assessment bill, if he desires so.

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/064/2019/_____ /Dated:_____

Delivered to:

1. Sri. Vibil K.V, Kalathil House, Vengali, Eranhikkal P.O., Kozhikode
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Westhill, Kozhikode.

Copy to:

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