

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/104/2019
(Present: A.S. Dasappan)
Dated: 09th March 2020

Appellant : Sri. Cheriyan Kurian
Managing Director,
HICABF Foods Pvt. Ltd.,
Industrial Development Area, Aroor,
Alappuzha

Respondent : The Deputy Chief Engineer
Electrical Circle, KSEBL,
Alappuzha

The Special Officer (Revenue)
Vydhyuthi Bhavanam, KSEBL,
Pattom, Thiruvananthapuram

ORDER

Background of the Case:

The appellant is the Managing Director of HIC ABF Special Foods(P) Ltd., a private limited company and a High-Tension Consumer of Electricity (tariff HT I (A) Industrial) with consumer no. 1355150003426 - 6/4244 under Electrical Section, Aroor with registered contract demand of 700 kVA. An inspection was conducted by Assistant Executive Engineer (Meter), TMR Division, Pallom, Kottayam on 24.03.2018 of the HT metering equipment of the appellant when it was noticed that ToD meter not working satisfactorily and declared faulty. The Deputy Chief Engineer, Electrical Circle, Alappuzha has directed the appellant to change the meter. The respondent has imposed penalty 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, Ernakulam as O.P. No. 25/2019-20. The CGRF, Ernakulam, dismissed the petition vide order dated 13-11-2019. Aggrieved by the order of the CGRF, the appellant has submitted this appeal petition before this Authority on 23-12-2019.

Arguments of the appellant:

An inspection was conducted by Assistant Executive Engineer (Meter) on 24.03.2018 of the HT metering equipment of the appellant when it was noticed that ToD meter not working satisfactorily. The reason for the observation was that the last digit was slightly faded.

The appellant immediately wrote back to the Assistant Engineer, KSEB requesting to suggest suitable CT PT ratio for 1000 kVA demand load so as to procure the correct ToD Meter and requested that it be given unmetered power till then. The appellant also informed the Assistant Engineer that it was applying for an increase in the contract demand to 1000 kVA from 700 kVA. There was no response from the Assistant Engineer, KSEB for two months in respect of the appellant's request to replace the ToD Meter. Meanwhile the appellant remitted the entire fee for installing the ToD Meter.

On 25.05.2018, Dy. Chief Engineer wrote back to the appellant for the first time requesting for certain documents. No mention of its request for replacement of the ToD Meter was made in the said letter. On 28.05.2018, Dy. Chief Engineer informed the appellant that it was finally approving its request for unmetered power supply. But to the appellant's surprise and dismay it was also informed that penalty would be imposed on the appellant.

The appellant had made a timely request for replacement of the ToD Meter and enhancement of its contract demand. It was the respondent/KSEB which did not act on its request for two months. The imposition of penalty, thus, had the effect of punishing the appellant even though it was not at fault.

Meanwhile a bill was raised on the appellant dated June 2018 levying penalty for meter default at approximately Rs. 11 lakhs. The appellant wrote back on 12-06-2018 reiterating its contention that it had submitted an application for unmetered power and installation of ToD meter as early as March 2018 and that no action was taken by KSEBL. The appellant reiterated its contentions and requested that the penalty claims be withdrawn vide its letter dated 19.06.2018.

On 26.06.2018 the appellant made another request for waiver of penalty and the appellant was informed that unless it remitted the penalty amount its application for enhanced contract load would not be considered. Accordingly, on 27.06.2018, the appellant was constrained to tender the purported penalty amount of approximately Rs. 11 lakhs under protest. Thereafter, on 03.07.2018 the appellant informed the Special Officer (Revenue) that the ToD Meter had been replaced. It was also clarified that there was no delay on part of the appellant.

Out of the blue, vide orders dated 18.03.2019 and 08.04.2019 the Special Officer (Revenue) informed the appellant that its request for recall/

waiver of the meter default penalty could not be considered. And in the demand notice for May 2019 the licensee included an amount of Rs. 22,05,768/- as 'undisputed arrear amount' being the penalty imposed by the licensee for meter fault. It is also stated that the last day for payment of bill, inclusive of the so-called penalty arrears is 28.05.2019.

The CGRF has adverted to the version of the respondents in the impugned order. However, no statement was ever served on the appellant. Thus, the impugned order of the CGRF is in gross violation of the principles of natural justice in as much as the appellant was denied a chance to respond to the assertions of the respondent properly.

The Order was clearly passed without considering any of the appellant's contentions, especially that it had made a timely request for replacement of the ToD Meter and that the delay in installation of the ToD Meter was not attributable to the appellant but to the licensee. As per Regulation 117(2)(c) of the Kerala Electricity Supply Code 2014 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.

The finding of the Forum that "the petitioner was prepared to face the penalty imposition adherent in such a demand for un-metered supply", and further that 'it is felt that the petitioner had been virtually blocking the respondent by the aforesaid letters from exercising clause 4(e) of the terms and conditions', is patently incorrect, especially in light of the facts and circumstances of the case as well as reading of Regulation 117(2)(c) of the Supply Code.

The CGRF did not consider the fact that the allegation of the defective meter was raised as early as March 2018. However, the demand notice was only issued in May 2019. There is no provision under the applicable laws and regulations which permit the authorities to issue penalty more than a year after the alleged inspection and notice.

Reliefs sought for:

- (a) Set aside the order of the Consumer Grievance Redressal Forum dated 13.11.2019 in OP No. 25/2019-2020.
- (b) Direct the Licensee to recall/ quash the order no. SOR/HTB.6/4244//18-19 dated 18.3.2019 and order no. SOR/AMU/HTB.6/4244//18-19 dated 8.4.2019 issued by the Special Officer (Revenue) rejecting the appellant's request for waiver of penalty.
- (c) Direct the Licensee to recall/ quash the penalty demand notice for May 2019, being bill no. 2102811708573 dated 07.05.2018 in so far as it imposes a penalty of an amount of Rs. 2205768.00 as undisputed arrears amount included therein as penalty for meter fault/ undisputed arrears.
- (d) Direct the Licensee to recall/ quash the penalty demand notice for June 2018, being bill no. 2102811633646 dated 05.06.2018 in so

far as it imposes a penalty of an amount of Rs. 1102884.07 as penalty for meter fault.

- (e) Direct the licensee to reimburse the amount of Rs. 11,02,884.07 which was remitted by the appellant to the licensee as penalty for meter fault under protest on 27.06.2018.
- (f) Direct the Licensee to re-calculate the bills/ demand notice for June 2018 and May 2018 issued to the appellant after deducting the amounts included therein as penalty for meter fault/ undisputed arrears.
- (g) Grants or such other reliefs as are just and proper in the circumstances of the case.

Arguments of the respondent:

The officials of the TMR Division, Pallom inspected the HT metering equipments of the appellant firm on 24.03.2018 and found that the meter was faulty. They also recommended to bill the consumer for the month of 03/2018 on the basis of average consumption of previous three months. The officials of TMR Division intimated to the Assistant Engineer, Electrical Section, Aroor under proper intimation to the consumer that the unmetered power supply could be given on request of the consumer after obtaining sanction from the Deputy Chief Engineer, Electrical Circle, Alappuzha.

As mentioned by the appellant himself, on the very same day itself it was informed that the meter would be replaced immediately after getting it tested at TMR Division, Pallom. After two days, the appellant vide letter dated 27.03.2018 requested that he may be allowed a period of 2 or 3 months to replace the faulty meter and the same was sanctioned.

Thereafter on 06.04.2018, the appellant made known his intention to enhance contract demand. It was not made through an application form in conformity to Annexure-11 to Kerala State Electricity Supply Code 2014. But it was just a request seeking feasibility of load enhancement. Later on, an application form for the enhancement of contract demand was received at the office of the agreement authority, the Deputy Chief Engineer, Electrical Circle, Alappuzha on 23.06.2018 from the appellant. On finding some defects in the application, KSEBL intimated the fact to the appellant vide letter dated 03.07.2018. On receipt of the application back from the appellant, he was instructed to remit the additional security deposit of Rs. 12,97,200/- (Rupees Twelve Lakh Ninety-Seven Thousand and A Two Hundred only) for the enhancement of contract demand vide letter dated 11.09.2018 and same was remitted on 12.09.2018. This amount was not the cost of ToD meter as alleged by the appellant, but the additional security deposit required for the enhancement of contract demand. Replacement of faulty meter and enhancement of contract demand are entirely distinct and different matters. The appellant firm may have built castles in the air that they could replace the faulty meter along with enhancement of contract demand within the period of unmetered supply sanctioned by KSEBL. But when the appellant could not materialize the plan as he wished, now the appellant blames KSEBL for imposing meter faulty penalty by interpolating the matter of non- replacement of faulty

meter with the matter of the enhancement contract demand. The argument of the appellant that the entire cost of ToD meter was remitted is highly misleading because what the appellant paid during the course of time was the additional Security Deposit required for enhancement of contract demand and not the cost of the meter.

Letter dated 25.05.2018 of the Deputy Chief Engineer, Electrical Circle, Alappuzha addressed to the Executive Engineer, Electrical Division, Cherthala was regarding the concurrence of the Deputy Chief Engineer, Transmission Circle, Alappuzha that the 11 kV Kumbalangi Feeder from 110 kV Substation, Aroor is well equipped to cater the excess demand sought and the said proposal is feasible as far as KSEBL is concerned. In the light of the feasibility report, the appellant was requested to submit application for enhancement of contract demand. In addition to this, the Deputy Chief Engineer, Electrical Circle, Alappuzha vide letter dated 28.05.2018 addressed to the Executive Engineer, Electrical Division, Cherthala accorded sanction to the appellant to avail unmetered supply up to 24.06.2018. It was also informed therein that penalty for non-replacement of faulty meter would be imposed as per rules in vogue. From the said letters, it is undoubtedly clear that each subject was treated by the agreement authority separately with the gravity it deserved and made the appellant aware that the non-replacement of faulty meter beyond the stipulated period will call for penalty. The aftermath in case of non-replacement of faulty meter was well informed to the appellant in advance. At that time the appellant did neither make any correspondence nor question the said penalty.

Enhancement of contract demand is regulated as per Regulation 99, Kerala State Electricity Supply Code 2014, whereas the imposing of meter faulty penalty is regulated by General Condition 4(d), Part B, Tariff order dated 16.04.2017 since here the appellant requested for unmetered supply till the period of replacement of faulty meter. The appellant has not conformed with said condition as well as regulations. As long as the appellant does not replace the faulty meter within the stipulated period, KSEBL has no other option but to impose penalty on the appellant. The contention of the appellant is unsustainable.

Application submitted by the appellant for unmetered supply does not provide any exemption from being imposed penalty when unmetered supply is used by the appellant beyond the stipulated period.

The appellant was intimated to replace the faulty meter and the same was admitted by the appellant on the same day itself vide letter dated 24.03.2018. As per tariff order dated 16.04.2017, the appellant should have replaced faulty meter before 24.05.2018. But the appellant replaced the faulty meter on 29.06.2018 with a new one suitable for the enhanced contract demand. Here the dubious intention of the appellant was for obtaining pecuniary benefit by installing a new meter suitable for the enhanced contract demand before the date of 24.05.2018 but the appellant could not turn it out as he wished. Now the inefficiency of the appellant in this regard is tried to be put on the shoulders of the KSEBL.

The C.G.R.F considered the matter of non-replacement of faulty meter and that of enhancement of contract demand distinctively and dismissed the OP No.25/2019-20 filed by the appellant in the absence of any merit.

All the supporting documents submitted at the time of hearing before the C.G.R.F, Ernakulam were handed over to the appellant. The appellant has never raised any contention other than cancellation of penalty of Rs. 22,05,768/- (Rupees Twenty Two Lakh Five Thousand Seven Hundred Sixty Eight only) before the Forum. Hence, the contention of the appellant is baseless.

The appellant vide letter dated 27-03-18 and 24-05-2018 requested for extension of time for replacement of faulty meter and the KSEBL taking a lenient view sanctioned unmetered supply to the appellant up to 24 06 2018. It is also cautioned that penalty would be imposed as per rules prevailing in KSEBL. Hence, the consumer was well aware of the fact.

The short assessment of undercharged amount now demanded does not come under the purview of limitation and KSEBL has all the right conferred by virtue of Regulation 134, Kerala State Electricity Supply Code 2014 to recover the undercharged amount found on review or otherwise.

Analysis and findings:

The hearing of the case was conducted on 24-02-2020 in Vydhyuthi Bhavan, Alappuzha and Sri. P.T. Suresh, Sri. C.K. Byju, and Sri. Jacob Joseph. represented for the appellant's side and Sri. Pradeep P, Superintendent, O/o the SOR, and Smt. Preetha A, Assistant Executive Engineer, Electrical Circle, Alappuzha 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 though the appellant had made a timely request for replacement of the ToD Meter and enhancement of its contract demand, the KSEB did not respond on its request for two months. The imposition of penalty, by issuing the arrear bill had the effect of punishing the appellant even though it was not at fault. Another contention of the appellant is that it had made a timely request for replacement of the ToD Meter and that the delay in installation of the ToD Meter was not attributable to the appellant but to the licensee. As per Regulation 117(2)(c) of the Kerala Electricity Supply Code 2014 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. The appellant also averred that there is no provision under the applicable

laws and regulations which permit the authorities to issue penalty more than a year after the alleged inspection and notice.

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.

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."

The appellant vide letter dated 27-03-18 and 24-05-2018 requested for extension of time for replacement of faulty meter and the Deputy Chief Engineer, Electrical Circle, Alappuzha vide his letter dated 28-05-2018 has sanctioned unmetered supply to the appellant up to 24-06-2018 and at the same time, cautioned the appellant that penalty would be imposed as per rules prevailing in KSEBL.

The respondent has further argued that the short assessment of undercharged amount now demanded does not come under the purview of limitation and KSEBL has all the right conferred by virtue of Regulation 134, Kerala State Electricity Supply Code 2014 to recover the undercharged amount found on review or otherwise.

The appellant's meter is found faulty in the inspection conducted by the Assistant Executive Engineer, TMR Division, Pallom on 24-03-2018 and hence the respondent has issued bills to the tune of Rs. 1102884/ and Rs.2205768 the penalty for failure to replace the meter within the prescribed period.

The appellant had approached the CGRF in OP No. 25/2019-20 against the billing 50% extra over the prevailing rate applicable both demand and energy charges for the two months and one month thereafter during which the appellant failed to replace the faulty metering component.

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. The metering components were replaced on 29-06-2018, i.e., 90 days after the intimation to the appellant.

The HT metering system in the premises having contract demand of 700 kVA found defective in the inspection conducted by the Assistant Executive Engineer, TMR Division, Pallom on 24-03-2018 and informed the fact to the Assistant Engineer, Electrical Section, Aroor on the same day and unmetered supply was arranged by the respondent. On 27-03-2018,

the appellant informed the Assistant Engineer that they required to enhance the contract demand from the existing 700 kVA to 1000 kVA and the present CT ratio is 40/5. The appellant requested for the specification of the new metering system. It is found from the records that again after two months, on 24-05-2018, the same request was placed before the Assistant Engineer by the appellant. It is understood from the above that no action was taken either by the licensee or by the appellant to install a new metering system suitable for 1000 kVA contract demand within the period to avoid the unmetered supply. After the expiry of two months the Deputy Chief Engineer, the agreement Authority, sent a letter to the Executive Engineer, Electrical Division, Cherthala with copy to the appellant intimating the extension of unmetered supply up to 24-06-2018 with penalty.

Regulation 99 of the Electricity Supply Code 2014 deals with the 'Enhancement of connected load or contract demand'.

99. Enhancement of connected load or contract demand.- (1) Consumer shall apply to the licensee for enhancement of contract demand in case of consumers under demand based tariff and of connected load in the case of others, in the form specified in Annexure - 11 to the Code and the licensee shall process the application form in accordance with the relevant provisions of the Code. (2) For site inspection as well as issuance and payment of demand note for the estimated cost of work if any, both the licensee and the applicant shall follow, mutatis mutandis the procedure and timelines as laid down in regulations 77 to 83 of the Code. (3) The licensee shall give a written intimation along with the demand note to the consumer which shall include the following:- (a) whether the additional power can be supplied at the existing supply voltage or at a higher voltage; (b) addition or alteration, if any, required to be made to the distribution system and the expenditure to be borne by the consumer, on that account; (c) amount of additional security deposit and expenditure for alteration of service line and apparatus, if any, to be deposited in advance by the consumer; (d) change in classification of the consumer and applicability of tariff, if required; and (e) any other information relevant to the issue. (4) The application for enhancement of load shall not be considered if the consumer is in arrears of payment of the dues payable to the licensee. (5) If the enhancement of load is feasible, the consumer shall:- (a) pay additional security deposit, expenditure for alteration of service line and apparatus, if any, required to be made, and the cost to be borne by the consumer for modification for distribution system if any, within fifteen days of receipt of the demand note; and (b) execute a supplementary agreement; (6) If the consumer pays the required charges and executes a supplementary agreement, the licensee shall execute the work of modification of the distribution system, service line or meter and other apparatus within the time line specified under regulation 85, mutatis mutandis, and sanction the additional contract demand or connected load. (7) The licensee shall issue order on the application for the enhancement of load within thirty days from the date of its receipt and intimate the applicant whether or not the enhancement of load is sanctioned. (8) If the licensee does not intimate its decision on the application for the

enhancement of load within the above period, sanction for enhancement of load or contract demand, as the case may be, shall be deemed to have been granted with effect from the thirty first day of the date of submission of the application by the consumer.

The above procedure is not strictly followed in the instant case.

In this case, it is clearly proved from the records that the appellant has been received a copy of the letter 24/03/2018 issued by the Assistant Executive Engineer, TMR, Pallom addressed to Assistant Engineer, Electrical Section, Aroor and it does not contain a definite instruction to replace the meter within the specific time span. 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 never insists the installation of the meter within two months from the date of receipt of the communication from the licensee, but the consumer has to purchase and supply the meter within two months. Any delay caused beyond the two months for testing, calibrating, sealing and installing the meter by the licensee is not the liability of the consumer. In this case the appellant has informed the Assistant Engineer on 12-06-2018 regarding the purchase of the meter and requested to take necessary action for the testing of HT ToD Meter and CT-PT Unit.

Further it is mandatory to comply with the provisions relating to issue of Notice to the Consumer under Regulation 174 and 175 of the Supply Code, 2014. This was not seen done by the respondent.

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.

If there is a clear direction from the Deputy Chief Engineer to replace the faulty meter with specification of the new metering system 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. This Authority is of the opinion that the subject matter is not a case of changing a defective metering system as usual of the same contract demand but change to a metering system suitable for the enhanced contract demand for 1000 kVA, that is rectification as well as alteration of a metering system.

The intention of imposing a penalty for the delay in changing the defective metering system which procured by a consumer is to put a correct meter within the period permitted by rules and regulations. The actual consumption in the period of unmetering is unknown whether is more than or less than the average consumption fixed for the unmetered period. In this case lapse in monitoring or follow up occurred on the part of the Licensee and the appellant.

The appellant had purchased and supplied the new metering system suitable for the enhanced contract demand on 12-06-2018 to the Assistant Engineer that is within the extended unmetered supply and installation on 29-06-2018 after inspection. The new CT ratio is 60/5. The total penal amount demanded by the respondent is Rs. 33,08,652/- for three months of 05/2018, 06/2018 and 07/2018. The appellant has remitted 1/3rd of the above amount for Rs.11,02,884/- on 27-06-2018.

Decision

From the conclusions arrived at as detailed above, I decide to quash the penal assessment of 50% extra imposed for Rs. 22,05,768/- issued to the appellant. The penalty is limited for one month amounting to Rs. 11,02,884/- and which was remitted by the appellant.

Having concluded and decided as above it is ordered accordingly. The order of CGRF in OP No. 25/2019-20 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/104/2019/_____ /Dated:_____

Delivered to:

1. Sri. Cheriyan Kurian, Managing Director, HICABF Foods Pvt. Ltd., Industrial Development Area, Aroor, Alappuzha
2. The Deputy Chief Engineer, Electrical Circle, KSEBL, Alappuzha
3. The Special Officer (Revenue), Vydhyuthi Bhavanam, KSEBL, Pattom, Thiruvananthapuram

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, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.