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APPEAL PETITION No. P/105/2019
(Present: A.S. Dasappan)
Dated: 09th March 2020

Appellant : Sri. Thomas Chacko
Thomson Plastics, Kinfra Park,
Kunnamthanam, Thiruvalla,
Pathanamthitta

Respondent : The Assistant Executive Engineer
Electrical Sub Division, KSEBL,
Mallappally,
Pathanamthitta

ORDER

Background of the Case:

The 3 phase service connection bearing Consumer No.20142, effected from Electrical Section, Mallappally under LT IV A (Industrial Tariff). having a contracted Load of 70050 Watts belongs to appellant Sri. Thomas Chacko, M/s Thomson Plastics, located in KINFRA Park at Kunnamthanam. The energy meter of the appellant was faulty from 11/2017 and the faulty meter replaced on 04-09-2018. During the faulty period, the appellant was billed based on previous average consumption of 4825 units. Thereafter the respondent has revised the bills from 11/2017 to 08/2018 considering the consumption as zero units and only monthly fixed charges was calculated as demand for the period and also accounted the already remitted monthly electricity charges of the faulty period as advance. Accordingly, the appellant has not remitted the monthly current charges from 10/2018 to 05/2019. On detecting this mistake, a short assessment bill amounting to Rs.1,96,665 was issued to the appellant on 19-06-2019. Against the short assessment bill, the appellant had approached the CGRF, Kottarakkara by filing a petition No. OP No. 107/2019. The Forum dismissed the petition vide order dated 22-11-2019 and allowed 12 monthly instalments to remit the amount. Aggrieved against this, the appellant has submitted this appeal petition before this Authority on 26-12-2019.

Arguments of the appellant:

1. The appellant is running an industry in KINFRA Park at Kunnamthanam, named 'Thomson Plastics' from the year 2012. The appellant is manufacturing pet bottles. The appellant is a consumer under Electrical

Section, Mallappally bearing Consumer No. 20142. The appellant's energy meter was fault from November 2017 up to 4th September 2018 (the date on which the meter was changed). The new meter was replaced only after 10 months with repeated complaint. The respondents were saying that because of the non-availability of the meter in the section office they are unable to change the meter. During the meter faulty period the appellant paid the monthly bill amount on the basis of the previous average consumption. The respondents also informed that they will refund the excesses amount on the basis of the future consumption.

2. On 6.6.2019 the appellant was received a bill for Rs. 40,490/- and the respondent that advance amount was due to the accounting error and the bill amount to be remitted immediately. The appellant contended the respondents that the production was very less due to the flood occurred in the year 2018 July to November. The appellant installed an additional Machinery on December 2018. After the erection of new machinery, the consumption was low. The appellant's complaint is that even though the additional load was used the consumption was less.

3. After hearing both the parties the Form has evaluated that there is serious lapse on the part of the respondent for changing the meter only after 10 months.

- (a) The appellant's grievance is that the Forum did not consider his statement of production output and the power consumption. The power consumption was only less unit after the meter was changed.
- (b) During the meter faulty period the production was very less due to the flood in the different places of Kerala. It can be seen from production statement.
- (c) The short assessment of Rs.1,96,665/- shown by the respondents without going into the merits and facts. The amount of the bill after changing the meter was less. If the average of the bill amount was taken it will comes to an amount of Rs.14,385 per month.

Arguments of the respondent:

The energy meter of the Service Connection (consumer no.1146233020142) of the appellant continued faulty for the period from 11/2017 to 08/2018. Due to non-availability of meter, it was resorted to make assessments on the basis of preceding average consumption. Faulty meter at the premises was replaced subsequently on 03/ 09/2018. During the meter faulty period the consumer has remitted Rs. 32930/- for an average unit of 4825 monthly without any objection.

When the faulty meter replaced on 03/09/2018 the status of meter in the billing system was wrongly entered as AA (Working), caused by transcriptional / human error. Hence the assessments / bill for the period from 11/2017 to 08/2018 has been wrongly revised automatically by the system (consumption become zero unit and only fixed charge of Rs.4815 was calculated as demand by the system for the 10 months from 11/17 to 08/18). Thereby the billing system accounted the actual remittances by the Consumer

during the meter faulty period as advance and resultantly the system adjusted the demands against actual recorded consumption in the succeeding months from the wrongly accounted advance amount. Hence the appellant evaded from the remittance of the monthly bill from 10/2018 to 05/2019.

Factually consumer has never remitted any advance amount. The amount reflected as advance in the billing system was merely due to the mistake happened while on making entries in the billing system at the time of changing of faulty meter at the premises on 03. 09. 2018. The consumer is truly aware of these things. On detection of this mistake subsequently during 05/2019, at the time of periodic audit from the Regional Audit Office at Pathanamthitta, the wrong credits established against this Service Connection (Rs. 82,330/-) were rectified and actuated.

It is a fact that the meter continued faulty for the period from 11/2017 to 08/2018, in respect of the Service Connection bearing consumer No. 1146233020142, due to non-availability of meter at the field office. The faulty meter was replaced on 03/09/2018. The Reg.125 of Kerala Electricity Supply Code 2014 stipulates that in the case of defective damaged meter the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter been found or reported defective, provided that the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available'. Herein, during the meter faulty period the consumer has remitted Rs. 32,930/- (Current charge + Fixed charge) for an average monthly consumption of 4825 (which was reckoned on the basis of the average recorded consumption in the three preceding billing cycles) that too without any objection or protest.

Thereon it was resorted to issue a short assessment invoice of Rs.1,96,665/-, invoking Regulation 134(1) of Kerala Electricity Supply Code 2014, to the consumer on 19.06.19 towards realisation of the amount actually undercharged, allowing thirty days for the remittance. After receiving the notice, sticking on his wrong notions about assessment, the consumer did not turn up for the remittance of the amount actually undercharged. The details sought through application made by him under RI Act was also supplied to him on 01.07.2019. He was also given so many chances to substantiate his arguments in this connection. The production details/data belonged to his production unit, produced by him itself serve as speaking evidence for the high consumption at the premises.

The argument of the appellant that increase in consumption is only after connecting additional load w.e.f. from 01.12.18 is factually wrong, as one could evidence a steadily high consumption at the premises from the very beginning itself. When there is no dispute over the accuracy of average assessment during the meter faulty period, and in the absence of any valid reasons/ evidences to prove meagre consumption at the premises during the period in question, there is no reason for the consumer/ appellant to impugn the assessment on account of the amount actually undercharged.

The short assessment bill served on the consumer is genuine and reasonable. There is no surcharge or interest is levied up to the short assessment period. When the amount actually undercharged alone is demanded, reasonably the Appellant is legally and ethically bound to remit the same.

Analysis and Findings:

The hearing of the case was conducted on 24-02-2020 in the Vydhyuthi Bhavanam, Alappuzha and Sri. Thomas Chacko represented the appellant's side and Smt. Praseeda M.K., Assistant Executive Engineer, Electrical Sub Division, Mallappally represented the respondent's side. On examining the petition, the counter statement of the respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The appellants argument in this case is mainly based on Reg.125 (1) and (2) of Kerala Electricity Supply Code 2014 which stipulates that in the case of defective damaged meter the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter been found or reported defective, provided that the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available ' and charges based on the average consumption as computed above shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter. In this case the faulty meter was replaced after a period of 10 months and according to respondent due to non-availability of meter, the faulty meter at the premises was replaced on 03/ 09/2018 only. There were also serious lapses occurred on the part of the respondent in entering the consumption details in the system. The respondent admitted that the billing system accounted the actual remittances by the appellant during the meter faulty period as advance and resultantly the system adjusted the demands against actual recorded consumption in the succeeding months from the wrongly accounted advance amount. It is a fact that the appellant is not responsible for this accounting error.

The appellant has also averred that the production was very less due to the flood occurred in the year 2018 July to November 2018 which resulted less consumption. The severe flood happened in most part of Kerala from July to August 2018. The appellant's faulty meter was replaced on 03-09-2018. Hence the appellant was also billed in that period based on previous average. The appellant has stated that the production of pet bottles during July and August was 22484 and 34056 respectively. When compared this to other month's production, the quantity is very low, but the details are not supported with any documentary evidences. However, it is a true that the flood affected the appellant's area also.

The appellant is liable to remit the charges of electricity consumed actually by him during the faulty period of the meter. The appellant has contended that an additional machinery installed in December 2018 and even though the additional load was used the consumption was less since 2018. The appellant's contention of additional machinery is not substantiated with any documentary evidence and hence not admitted.

The monthly recorded units / billed units as per the meter readings produced by the respondent from the consumption months 01/2017 to 04/2019 is as below.

Consumption Month	Consumption				Remarks
	Normal period	Peak period	Off peak period	Total	
1-17	3424	177	1205	4806	
2-17	3814	156	1929	5899	
3-17	2468	73	730	3271	
4-17	3467	621	1217	5305	
5-17	3534	1367	1184	6085	
6-17	0	0	0	0	Meter faulty from 6/2017
7-17					
05-07-17 To 19-07-07	0	0	0	0	
19-07-07 To 22-07-17	0	0	0	0	
22-07-17 To 04-08-17	0	0	0	0	N-1408, P-123, O-560 = Total 2091 Sum as average
8-17					
04-08-17 To 25-08-17	0	0	0	0	N-2167, P-189, O-861 = Total 3217 is seen issued as average
25-08-17 To 05-09-17	724	339	346	1409	Meter changed on 25/8/17
9-17	3119	1259	695	5073	
10-17	0	0	0	0	Meter faulty from 10/17 to 8/18
11-17	0	0	0	0	
12-17	0	0	0	0	
1-18	0	0	0	0	
2-18	0	0	0	0	
3-18	0	0	0	0	
4-18	0	0	0	0	
5-18	0	0	0	0	
6-18	0	0	0	0	
7-18	0	0	0	0	
8-18	0	0	0	0	
9-18	1484	204	296	1984	Meter changed on 03-09-2018.
10-18	788	6	4	798	Multiplication factor 20 instead of 40 from 9/2018 to 11/2018
11-18	876	44	62	982	

12-18	3576	68	384	4028	
1-19	2540	68	1712	4320	
2-19	2124	100	1368	3592	
3-19	3144	36	124	3304	
4-19	5040	468	736	6244	

While analysing the above consumption history from 1/2017 to 4/2019, furnished by the respondents, the following are observed.

The energy meter provided in the premises became defective from 6/2017 and which was replaced on 25/08/2017. The said meter was again defective in 10/2017 and which was changed on 03-09-2018. But the respondent had not mentioned the defectiveness of the former meter anywhere in the statement of facts. The average consumption per month for the billing during the defective period for 4825 kWh from 10/2017 to 8/2018 was arrived at by the respondent as follows,

Recorded consumption from 9/2017
(Billing month 10/2017) 5073 kWh

Average consumption seen in the meter
reading data from 04/08/2017 to 25/08/2017
(Billing month 09/2017) (in the data 3217 kWh only) 3317 kWh

Recorded consumption from 5/2017
(Billing month 08/2017) 6085 kWh

Though the above consumption is seen mentioned for 10/2017, 9/2017 and 8/2017 in the average assessing statement, the actual consumption months is 9/2017 & 5/2017 and the average units allotted from 04/08/2017 to 25/08/2017.

The above method for computing the average energy consumption for defective period of a meter is absolutely improper. Here, the respondent picked certain quantum of energy in the previous period conveniently and hence it is against the rules. It is to be noted that 6085 kWh is the recorded consumption of another meter, which was replaced on 25/08/2017 due to the defectiveness. The only consumption that can be taken for assessment is 5073 kWh.

The multiplication factor for computing the actual energy consumption for the month of 9/2018, 10/2018 & 11/2018 is taken as '20' instead of '40'. But the respondent informed, after hearing, that this error was set right and finalized. The respondent had not prepared any site mahazar while replacing the faulty meter.

The appellant contented that the consumption was less for 7/2017 to 08/2018 due to the "Flood 2018". The respondent contented that the amount assessed is correct and to be remitted by the appellant as there was mistake

in the entries in the computer system. The consumptions prior to 6/2017 and after 11/2018 are high compared to the consumption from 9/2018 to 11/2018.

Decision

From the conclusions arrived at as detailed above, the disputed bill for Rs. 1,96,665/- is quashed. The respondent is directed to reassess the consumption period of the meter from 10/2017 to 6/2018 by taking the average of the consumption from 12/2018 to 2/2019 (3980 kWh) and the consumption period of the meter from 7/2018 to 8/2018 by taking the average of the consumption from 9/2018 to 11/2018 (2509 kWh), both under ToD billing system.

Accordingly, the respondent shall prepare an adjustment invoice comprising the period of defectiveness from 10/2017 to 8/2018 and period of non-remittance from 09/2018 to 4/2019.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is allowed as ordered and stands disposed of as such. The order of CGRF in OP No. 107/2019 dated 22-11-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/105/2019/ _____ /Dated: _____

Delivered to:

1. Sri. Thomas Chacko, Thomson Plastics, Kinfra Park, Kunnamthanam, Thiruvalla, Pathanamthitta
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Mallappally, Pathanamthitta

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, Kottarakkara - 691 506.