

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/004/2020  
(Present: A.S. Dasappan)  
Dated: 25<sup>th</sup> May 2020

Appellant : Smt. Valsa K.K.,  
M/S Lakshmi Ice Plant,  
Chandiroor, Alappuzha

Respondent : The Assistant Executive Engineer  
Electrical Sub Division, KSEBL,  
Poochakkal,  
Alappuzha

### **ORDER**

#### **Background of the Case:**

The Appellant is the Managing Director of a small-scale industrial unit viz; M/s. Lakshmi Ice and Cold Storage, Aroor under low tension (LT) industrial tariff with consumer number 8437 under Electrical Section, Aroor. The power meter at the premises of the consumer was changed on 25.08.2003 due to the meter showing less consumption. The monthly average consumption recorded before changing the faulty meter was 1077 units (2/2003 to 8/2003) and the monthly average consumption increased to 15244 units after the meter changed on 25.08.2003 (consumption taken from 25.08.2003 for 90 days). Hence the respondent issued a short assessment bill for Rs. 296129/- dated 27.04.2004 to the consumer to compensate the loss sustained to KSEBL during the meter faulty period. The appellant filed Writ Petition WPC 14339 of 2004 against the bill before the Hon'ble High Court of Kerala. In compliance of the order dated 04.06.2004 of the Hon'ble High Court, the appellant remitted Rs.74033/- (25% of the bill amount). As per the final judgement dated 17/12/2018 in WP. No. 14339 of 2004 of Hon'ble High Court, the appellant filed appeal before Assistant Executive Engineer, Electrical Sub Division, Poochakkal on 25/3/2019. The Assistant Executive Engineer, Electrical Sub Division, Poochakkal vide order dated 24.06 2019 confirmed the bill dated 27.04.2004 for Rs.296129/-. The consumer filed complaint before the CGRF against this order and the Forum upheld the assessment bill issued by KSEBL. The appellant filed an appeal against the order in OP No.42/2019-20/395/Dated: 16.12.2019 of CGRF before this Authority on 20-01-2020.

**Arguments of the appellant:**

During August 2002, in the Ice Plant, there was leakage of Ammonia Gas and consequently the Additional Inspector of Factories as per his order dated 7.8.2002 issued an order prohibiting the appellant from operating the refrigeration system. So, the Ice plant was closed for repair for a period from 30.7.2002 to 1.11.2002. The said fact was intimated to the respondent on 30.7.2002. The factory was reopened after repair works only in November 2002.

The power meter in the premises of the Appellant was changed on 25/8/2003 without giving any notice to the Appellant and without examining whether the meter was faulty or not. There was no examination by any of the officers regarding the performance of the said meter which was changed on 25.8.2003. Neither any site mahazar regarding verification of the said meter, was prepared nor was any report submitted, giving copy to the appellant. After the installation of the new meter on 25.8.2003, Anti Power Theft Squad (APTS) inspected the premises on 17.9.2003 and found that the reading on the first and second phases normal and that of the third phase is zero. It is also found that the TMSR and Cover Seal of the meter is intact, the reading of one of the phases was found to be zero only due to the defect of C.T. A short assessment bill dated 6.10.2003 was issued for an amount of Rs. 15,193/- and the same was remitted by the appellant.

Thereafter a bill was issued on 27/4/2004 under the pretext of back assessment as per regulation 31 (c) of the Conditions of Electric Energy Regulations 1990 for 6 months from February 2003 to July 2003. The back assessment was done for 6 months taking the average consumption after installation of the new Meter, so as to compensate the loss to the Board in terms of Regulation 31(c) of the Electricity Regulations 1990. Thereafter bill was issued on 27/4/2004 for an amount of Rs. 2,96,129/-.

The said assessment was illegal and without following the procedure for back assessment. So the appellant challenged the said order by filing WP (C) 14439/2004. In terms of the interim order in that case the appellant paid 25% of the bill amount. The said Writ petition was disposed of on 17.12.2018 directing the appellant to file appeal invoking Rule 48 of the Regulations relating to Conditions of Electric Energy 1990. Pursuant to the said direction Appeal was filed. The appellate authority found that the faulty Meter at the premises of the appellant has been changed on 25.8.2003. It is further found that the short assessment bill for the period after the inspection of the Anti-Power Theft Squad on 17.9.2013 was remitted by the appellant. It was also found that the methodology adopted by the Board to assess the quantum is correct and thus confirmed the bill and rejected the Appeal directing payment of bill amount.

The CGRF has thoroughly failed to consider the legal provisions relied on by the appellant. Based on Section 26 (6) of the Indian Electricity Act 1910

it was argued that since the respondent has not acted in accordance with the provisions of Section 26 (6) of the Act the it was not able to raise any dispute as provided in Section 26(6) of the Act. Thus, due to the procedural lapse on the part of the KSEB, the appellant was denied his remedy under Section 26(6) of the Act. This aspect was not considered by the CGRF. Section 26(6) is extracted hereunder.

Section 26(6) reads as follows :- Where any difference or dispute arises as to whether any meter referred to in subsection (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days notice of his intention so to do."

The records in the above case shows that the respondent has thoroughly failed to follow the procedure prescribed in Section 26 of the Act which has caused prejudice to the right of the appellant to file application as mentioned in Section 26 (6). In the instant case it was due to the omission of the respondent that the appellant was not able to raise complaint before the Electrical Inspector to Government. Now the respondent is taking benefit of their own omission.

b) It is on the on the basis of Regulation 31 (c) back assessment was done in the instant case. In order to invoke Regulation 31(c), there should be a finding that the meter is incorrect and also that the average consumption of the previous month cannot be taken due to fault of the meter. In the instant case there was no finding that the meter which was installed prior to 25.8.2003 is faulty or incorrect. There is no case for the Respondent that, due to error of the meter the meter reading of the preceding three months cannot be recorded. So, there was no circumstance for the respondents to invoke the procedure for back assessment of bill as per the meter reading, after the installation of the new meter. Section 31 (c) is extracted hereunder.

Regulation 31 (c) reads as follow "31(C) -In the event of any meter being found incorrect (which includes meter ceasing to record running fast or slow, creeping or running in reverse direction) and where the actual errors on reading cannot be ascertained, the meter will be declared faulty and the correct quantity of energy shall be determined by taking the average consumption for the previous three months. Due regard being paid to the condition of working, occupancy etc. If the average consumption for the previous three months cannot be taken due to the meter ceasing to record the consumption or any other reason, the correct consumption will be determined based on the average consumption for the succeeding three months. Where

any difference or dispute arises as to the correctness of meter the matter shall be decided upon by the Electric Inspector to the Government upon the application of either the Board or consumer. During such period the consumer will be charged only the meter minimum. After determining the correct consumption due billing will be made and necessary adjustment made in the next invoice issued."

The provision of the above regulation based on which the impugned bill issued was not considered by the Forum. The fact that there was no circumstance for the respondents to invoke the procedure for back assessment, vitiates the impugned order.

The Forum has extracted Regulation 35 (a) for finding that the appellant has not requested to test the meter and thereby chance to prove that the meter was faulty or not was made impossible. The finding of the Forum that the chance to prove that meter was made impossible due to the non-request of the appellant is perverse and absurd. In the instant case, there was no occasion to the appellant to dispute the accuracy of the meter installed by the Board in her premises. According to the appellant, the Ice Plant was not working during the period 30.7.2002 to 1.11.2002. So, during that period there was no consumption. Thereafter since the plant was closed, the production was low after the repair of the plant and hence she had no occasion to dispute the accuracy of the meter. The appellant had no dispute regarding the accuracy of the meter. The energy meter was changed by the Board unilaterally on 25.8.2003. No notice was given to the appellant before changing the meter, informing the appellant that the meter was faulty. The respondent had not informed the appellant that the meter was not working or recording consumption before 25.8.2003. It is evident from the records that the meter was recording reading and the respondents had issued bill for the disputed periods. If the respondent had a case that the meter was not properly recording, the same should have been notified to the appellant and the meter should have been got tested by the Electrical Inspector. That was not done. All these aspects are revealed from the records. So, it is evident that the finding of the Forum that the appellant could have requested to test the meter is perverse and is not supported by any documents. The Forum ought to have found that the appellant had no occasion to request the respondent to test the meter, that in fact the acts and deeds and omission of the respondent had resulted in the denial of opportunity to the appellant to dispute the complaint against the meter and that the respondent has no right to accuse the appellant for not making any application to the Electrical Inspector and thus take advantage of their omissions.

The CGRF should have found that it was the respondent who was having complaint about the meter. It was the respondent who changed the meter on 25.8.2003 without informing the appellant regarding the complaint of the meter. In spite of the dispute of the Board regarding the accuracy of the meter, the respondent did not choose to test the meter either by itself or by the Electrical Inspector to Government. The appellant was unaware of the alleged fault of meter before 25.8.2003. The respondent was in custody of the meter after 25-8-2003 and could have tested the meter with Electrical Inspectorate. As per regulation 35(a) if on testing by the Electrical Inspector

the meter is found to be beyond the limits of accuracy as prescribed in the Indian Electricity Rules, then only, action can be taken under Regulation 35 i.e. adjusting the bill of the consumer in accordance with the result of the test taken with respect to the meter reading of three months prior to the month in which the dispute has arisen. Sub clause (b) of regulation 35 specifically states that if the meter is found to be incorrect, the period during which the meter shall be deemed to have been incorrect and the amount of energy supplied to consumer during the period shall be decided by the Electrical Inspector, whose decision shall be final. So, according to Regulation 35 without the report of the Electrical Inspectorate with regard to correctness of the meter, the respondent has no right to decide the amount of energy supplied to the consumer. In the absence of such a legal evidence the reliance of the Forum on the consumption pattern before and after the meter change is arbitrary illegal and liable to be rejected.

As per the Regulation 31 (c) relating to Conditions of Electric Energy 1990, the authority of the respondent to proceed under Regulation 31 or 35 of the regulation, there should be a declaration or finding by the competent authority i.e. the Electrical Inspector to Government that the meter is faulty. Then only the correct quantity of the energy consumed can be quantified by taking average consumption for the previous three months. In the instant case there was no such declaration that the meter fitted with the appellant's connection was faulty. No information was passed to the appellant regarding fault of the meter in recording consumption. It was changed unilaterally without notice. So, there is no legal basis for the action of the respondents to invoke the provisions of Rule 31 (c) or Rule 35 for quantification of consumption which culminated in the Bill. This aspect, even though was raised by the appellant has not been considered by the forum.

In fact, the CGRF has found that both the appellant and the respondent have not tested the meter in spite of provisions of Regulation 35. To mulct liability on the appellant the Forum found that the appellant could have requested to test the meter. But the fact is that before changing the meter no information was given to the appellant to request for testing the meter is ignored by the Forum. The meter was changed unilaterally by the respondent. The regulations mentioned above clearly indicates that the respondent is also legally bound and entitled to raise dispute. So, it is evident that the procedure adopted by the respondent for back assessment of bill on the basis of the average consumption and issuing the bill is void.

The Indian Electricity Rules in Rule 57(3) specifically provides that every supplier shall provide and maintain proper condition of the meter and Sub Rule 4 provides that every supplier shall examine, test and regulate all meters, for ascertaining the amount of energy supplied before their first installation at the consumer's premises and at such other intervals. So, it is evident that the respondent had a duty to provide and maintain meters in proper condition and should examine and test the meters in regular intervals. In the instant case had the respondent provided a meter with proper condition and tested the same at regular intervals there would have been no occasions to change the meter on 25.8.2003. There is a responsibility cast on the Board to conduct periodic check-up of Meter and install a trouble free meter in the

premises of the consumer. So, it was due to the default on the part of the respondent that the bill was happened to be issued penalizing the appellant.

The work in the Ice plant for some months after repair was low, which aspect is revealed from the sales returns submitted by the appellant. The appellant had also produced documents to show that the factory was not working from 8.6.2002 to 28.10.2002 and also. The document showing that the same was intimated to Assistant Engineer, Electrical Section, Aroor. The appellant had also produced documents to show the average sale of the appellant's Ice plant so as to substantiate that the plant was not working from 8.6.2002 to 28.10.2002. The said documents also prove that the average consumption of electrical energy by the appellant was almost constant leading to the conclusion that the meter which was changed on 25.8.2003 is not faulty. It is also to be noted that the production of the ice in the Ice Plant is directly related to the demand for Ice which in turn relates to the seasons. It is also to be noted that ice cannot be produced and kept for long period. So the production has a direct bearing on the demand and consumption of energy. The fact that in two or three months in a year, there is high consumption of energy due to high production of ice to satisfy demand does not mean that throughout the whole year such production will be maintained. In the instant case while issuing the bill, the respondent had taken the consumption for the peak season as average for calculating the consumption for the previous six months where in the production of ice was much less which is evident from sales returns produced by the appellant. On that factual ground also the finding of the Forum that back assessment is proper is liable to be set aside.

The appellant requests to set aside the order or the Forum vide order No. CGRP -CR/OPNo.42/2019-20/395 dated in 16.12.2019 and to set aside the bill and allow the appeal with cost.

**Arguments of the respondent:**

The details of the faulty meter change on 25.08.2003 at the premises of the consumer had been recorded in the premises meter card as per the provisions in regulation 31(a) of conditions of supply 1990 and the consumer has already admitted the same. As per the provisions of section 26(6) of Indian Electricity Act 1910, in case of any dispute regarding the correctness of the meter, the consumer or licensee can approach the Electrical Inspector. In the present case the consumer has not exhausted the provisions of 26(6) of IE Act 1910.

The consumer had neither filed any objections before the licensee nor approached Electrical Inspectorate regarding the correctness of the meter changed on 25.08.2003. The consumer was not denied any opportunity to file complaint in this regard. The consumer had approached High Court against the assessment and Hon'ble High Court also didn't give any directions to KSEBL to get the meter tested by Electrical Inspector. Raising such an argument after so many years is also not genuine. It has been found without

any doubt that the meter installed at the premises of the consumer was faulty and the faulty meter was replaced with a new meter on 25.08.2003.

On analysing the records, it is noted that, from few months back to the faulty meter replacement, recorded consumption was showing a downward trend. The consumer had submitted that the plant was having ammonia leak and the working of the plant had been stopped completely from 8.06.2002 for few months for maintenance works and produced documents in support of this and stated that is the reason for the low recorded consumptions. The consumer also stated that the production for the succeeding months after the maintenance work was also low.

The recorded consumption for the succeeding months after September 2002 were low. And the recorded consumption for the month of July 2003 was merely 640 units which was an abnormal value for an ice plant. An Ice Plant has to run for approximately 20 to 24 hours for producing ice. Hence it can be confirmed that the consumption 640 units (units as per recorded reading for the month of July 2003) is an abnormal value. This is abnormal reading for an ice plant having considerable production as on be understood even from the data submitted by the consumer relating to the monthly sales during 2003. Thus, it can be confirmed that actual consumption has not been recorded in the meter due to meter fault. Such anomalies will be noticed by the manufacturer also while comparing with sales(income) and expenditure, the charges of electricity being the major component on the expenditure side. The faulty meter was replaced with good one on 25.08.2003.

Even though the documents submitted by the consumer sales details/sales return etc., could not be considered for a fair analysis, the details submitted surely substantiate the action of the Board in taking steps to recover the losses due to the undercharging of the consumer due to meter fault.

The contention of the consumer that she was not informed about the detection of fault with the meter is not true. In the premises meter card, which was maintained as per Reg. 31(a) of Conditions of Supply 1990, kept near to the meter and open to the inspection of the consumer, it was clearly recorded that the meter became faulty due to less and erratic reading recorded by the meter. The consumer herself admitted in the writ petition WPC 14339/2004 itself that during the month of August 2003 the meter installed in the premises of the consumer became faulty and new meter was installed in the premises. The consumer had also submitted the copy of the meter card as an exhibit in that petition.

From the consumption pattern of the consumer it can be understood that the recorded consumption was abnormally low for many months. The consumer can also detect such reduction in the recorded consumption comparing to the ice produced at their plant during any month. Analysing the sales data furnished by the consumer, it is noted that the total turnover of the plant for the year 2003-04 as furnished by the consumer and as per the Assessment order of Sales Tax Officer, Kuthiathode was very much lower than the electricity charges paid by the consumer during the period. Hence a fair

analysis by comparing the production /sales details with the energy consumption at the plant found not possible using the data furnished by the consumer. But even comparing with such an available details/sales returns/monthly sales details, it can be seen that the consumption based on the recorded energy meter readings are less during- many months back to the faulty meter change on 25.8.2003.

After changing the faulty meter with new, the recorded consumption increased considerably. The total recorded consumption of the consumer for 90 days immediately after the replacement of the faulty meter on 25.08.2003 was 45733 units. The monthly average consumption calculated from the above figure comes to 15244 units. But the recorded monthly consumption for the months 2/2003 to 7/2003 ranges from 640 to 1620 units only. The recorded consumption for the months 2,3,4,5,6 and 7/2003 were 1520, 1120,1540,1020,1620 and 640 units respectively.

Hence it can be found that KSEBL has incurred heavy loss due to the undercharging of the consumer due to the faulty meter and hence short assessment for the previous 6 months (2/2003 to 7/2003) has been made by taking the average monthly consumption of 15244 units, in order to recover the loss sustained to KSEBL and bill for an amount of Rs. 296129/- dated 27.04.2004 was issued to the consumer.

As per prevailing rules and regulations, and the then Conditions of Supply of Electrical Energy 1990, the licensee is at liberty to realize the undercharged amount from a consumer. The Short Assessment is made only for a period of six months. The adopted mode of estimation of average consumption for the faulty period is reasonable and best suited.

As per regulation 31(c) of Conditions of Supply 1990, in the event of any meter being found incorrect which include meter ceasing to record running fast or slow, creeping or running in reverse direction, and where the actual errors, on reading cannot be ascertained, the meter will be declared faulty and the correct quantity of energy shall be determined by taking the average consumption of previous three months. Due regard being paid to the condition of working, occupancy etc. if the average consumption for the previous three months cannot be taken due to the meter ceasing to record the consumption or any other reason, the correct consumption will be determined based on the average consumption for the succeeding three months.

In this case the consumption of the previous months was abnormally low and hence could not be taken for calculating the average consumption and hence the average consumption has been arrived based on the recorded consumption after the replacement of the faulty meter with good one. The fault of the meter has been recorded in the premises meter card and consumer has already admitted the same. The abnormal increase in the recorded reading after meter replacement confirms that the previous meter was faulty for many months back to the meter replacement. Even the sales details submitted by the consumer confirms the same. The CGRF has observed that the recorded consumption has increased very much after the faulty meter change in 8/2003 and the consumer could not explain the reason for such a



hike during this period. The consumer has not produced the monthly sales statements for the succeeding months (after 7/2003).

The claim of the consumer that the firm had been under shutdown for the period from 8.06.2002 to 28.10.2002 is acceptable and no short assessment for the above period has been done by KSEBL. Also, the short assessment has been limited to 6 months only, even though the discrepancies has been observed in some more months also. The average consumption is not taken with the figures of high consumption months as alleged by the consumer. The average consumption was taken by taking the consumption of 90 days immediately after changing the meter as per the provisions in regulation 31(c) of conditions of supply 1990. Consumption of some succeeding months can be found more than this average value. But those figures are not taken for calculating the average.

The Board periodically conducts the testing of the meter through the Meter testing wing of KSEB and inspection squads like APTS etc. As admitted by the consumer in this petition, APTS wing had conducted an inspection at the premises of the consumer on 17.09.2003 and detected that one CT associated with the energy meter was faulty and the same was rectified later.

Since the faulty CT, which was detected at the time of inspection on 17.09.2003, was replaced only on 21.10.2003 regular monthly bills for the months of 9/2003 and 10/2003 (for Rs. 86,787/- and Rs.74,760/-) were Issued to the consumer by adding 50% of the recorded consumption for the period during which the CT was faulty. These bills were challenged by the consumer before Honourable High Court of Kerala and later before the Kerala State Electricity Appellate Authority in 2019. Appellate Authority ordered to cancel the bills issued and directed to collect only the normal regular bill without the additional 50% of recorded consumption. The short assessment bill for Rs.2,96,129/- is not inclusive of the bill which is cancelled by the Appellate Authority. The monthly average consumption of 15244 units is arrived with the recorded readings only and the 50% of the recorded readings extra to compensate for the loss due to CT fault has not been taken for calculating the average monthly consumption after the faulty meter replacement.

The short assessment bill dated 27.04.2004 for Rs. 2.96,129/- is in order. The consumer is liable to pay the balance amount with up to date interest as per the notice No.BB/Notice/2019-20/18 dated 4.07.2019 of the Assistant Engineer, Electrical Section, Aroor. The consumer has not remitted the amount till date.

**Analysis and findings:**

The hearing of the case was conducted on 24-02-2020 in the Vydhyuthi Bhavanam, Alappuzha and Sri. Ravikumar P.K. represented for the appellant's side and Sri. Unnikrishnan V.R., Assistant Executive Engineer of Electrical Sub Division, Poochakkal 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 disputed bill amount is Rs.296129/- and the appellant remitted Rs.74033/- as per the direction of Hon'ble High Court of Kerala. This case of the impugned demand covers the period of 02/2003 to 07/2003 that is before coming into force of the Electricity Act 2003 and the short assessment was issued to the appellant on 27-04-2004.

The contention of the appellant is that no inspection in the premises or any testing of the meter was done before declaring the meter as faulty. The findings of the Assessing Officer that the meter was sluggish during the period from 02/2003 to 07/2003 is only a presumption and hence the short assessment bill is not sustainable. On the other hand the respondent argued that the meter became faulty during 02/2003. The monthly average consumption recorded before changing the faulty meter was 1077 units (2/03 to 7/03) and the monthly average consumption by taking three months after changing the meter was 15244 units. So, average energy consumption was arrived by taking the consumption of 90 days immediately after changing the meter as per the provisions in regulation 31(c) of Conditions of Supply 1990.

***The point to be decided in this case is as to whether the issuance of revised short assessment bill dated 27-4-2004 for Rs. 296129/- to the appellant after reassessing on the basis of average consumption after replacement of meter is in order or not?***

On going through the records it can be seen that the respondent has issued monthly bills based on the recorded consumption and the appellant remitted the same without any fail. It is to be noted that the respondent has detected that the meter was faulty for the period from 02/2003 to 07/2003 and a lesser consumption was recorded during that period. The respondent replaced the power meter on 25-08-2003 with remarks in the premises meter card by recording the reason "due to less and erratic reading." Following the inspection of APTS on 17-09-2003, the faulty CT was also changed on 21-10-2003. Variation of consumption recorded is not a reason to declare a meter as faulty.

The appellant has stated that as per the Regulation 31 (c), the authority is the respondent to proceed under Regulation 31 or 35 of the regulation, there should be a declaration or finding by the competent authority i.e. the Electrical Inspector to Government that the meter is faulty. Then only the correct quantity of the energy consumed can be quantified by taking average consumption for the previous three months. In the instant case there was no such declaration that the meter fitted with the appellant's connection was faulty and no information was passed to the appellant regarding fault of the meter. It was changed unilaterally without notice. So, there is no legal basis for the action of the respondents to invoke the provisions of Rule 31 (c) or Rule 35 for quantification of consumption which culminated in the Bill.

Regulation 31 (c) of the Conditions of Supply 1990 stipulates the procedure for billing in the case of defective or damaged meter.

"31(C) -In the event of any meter being found incorrect (which includes meter ceasing to record running fast or slow, creeping or running in reverse direction) and where the actual errors on reading cannot be ascertained, the meter will be declared correct quantity of energy shall be determined by taking the average consumption for the previous three months. Due regard being paid to the condition of working, occupancy etc. If the average consumption for the previous three months cannot be taken due to the meter ceasing to record the consumption or any other reason, the correct consumption will be determined based on the average consumption for the succeeding three months. Where any difference or dispute arises as to the correctness of meter the matter shall be decided upon by the Electric Inspector to the Government upon the application of either the Board or consumer. During such period the consumer will be charged only the meter minimum. After determining the correct consumption due billing will be made and necessary adjustment made in the next invoice issued."

According to the respondent the monthly consumption shows enormous decrease from 05/2002 onwards. In the case of defective or damaged meter, if the previous billing details are not available, the consumer shall be billed on the basis of average consumption of the three billing cycles immediately succeeding the date of meter being found or reported defective. The assessment made in this case is relying on succeeding months consumption for the months of 09/2003, 10/2003 and 11/2003 as 13340 units, 15200 units and 18400 units respectively. Here the appellant was billed based on the average consumption of 15244 units during this disputed period. The appellant is bound to pay the electricity charges for his actual consumption.

Here in this case, the respondent argued that the appellant's consumption was increasing after replacement of the meter. On going through the meter readings of the appellant's premises, during the years 2001 to 2004, it shows the consumption varies considerably per month. The consumption details of the appellant from 10/2001 is as follows:

**Consumption details of Consumer No; 8437 under Electrical Section,  
Aroor (Smt. Valsa K.K.) as per recorded readings**

Month	Consumption (Power Meter) Units	Consumption (Light meter) Units	Remarks
10-2001	7700	182	
11-2001	6740	202	
12-2001	8740	296	
01-2002	9680	0	
02-2002	7060	22	
03-2002	9520	166	

04-2002	12820	152	
05-2002	1580	105	
06-2002	RNF	RNF	
07-2002	D/L	D/L	
08-2002	D/L	D/L	
09-2002	1680	194	
10-2002	4120	196	
11-2002	2660	100	
12-2002	1900	92	
02-2003	1520	102	
03-2003	1120	79	
04-2003	1540	88	
05-2003	1020	140	
06-2003	1620	166	
07-2003	640	198	
08-2003	3700 (consumption after meter change)	137	Faulty Meter changed on 25-08-03
09-2003	13340	141	
10-2003	15200	165	Faulty CT changed on 21-10-2003
11-2003	18400	107	
12-2003	29780	340	
01-2004	760	18	
02-2004	16900	123	
03-2004	4920	70	
04-2004	25940	151	
05-2004	12660	118	
06-2004	5440	91	
07-2004	18380	155	
08-2004	25620	90	

According to the appellant, the Ice Plant was not working during the period 30.7.2002 to 1.11.2002 due to some repairs and there was no consumption. This fact was informed to the respondent by the appellant. The respondent has also not denied this fact. The appellant had no dispute regarding the accuracy of the meter. Hence it is the responsibility of the respondent to conduct testing of the meter in an accredited lab or with a standard reference meter with better accuracy class or referring the issue to Electrical Inspector before declaring the meter as faulty. There is patent illegality in issuing the short assessment bill to the appellant. Though the appellant has not given any convincing evidence about the conditions of working and occupancy of concerned premises during the said period, the

short assessment bill preferred for the period in dispute based on presumption is not sustainable. There is no justification for issuing such a demand for a previous period from 02/2003 to 07/2003, after raising average consumption of units per month for the disputed period and also as there is no allegation of any wilful misuse by the appellant. Without complying with the statutory formalities, the assessment made in this case is not sustainable before law and liable to be quashed.

### **Decision**

From the conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 296129/- issued to the appellant. The respondent shall refund Rs. 74033/- to the appellant with the applicable interest.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant stands disposed of as such. The order of CGRF, Ernakulam in OP No.42/2019-20 dated: 16.12.2019 is set aside. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/004/2020/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Smt. Valsa K.K., M/S Lakshmi Ice Plant, Chandiroor, Alappuzha
2. The Assistant Executive Engineer. Electrical Sub Division, KSEBL, Poochakkal, Alappuzha

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.