THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/016/2020

(Present: A.S. Dasappan)

Dated: 11th August 2020

 Appellant : Dr. Ravi Sanker. S.,

 Sreekantapuram Hospital,

 Kandiyoor, Mavelikkara,

 Thattarambalam P.O.,

 Alappuzha

 Respondent : The Assistant Executive Engineer

 Electrical Sub Division, KSEBL,

 Mavelikkara, Alappuzha

 **ORDER**

**Background of the Case**:

The appellant was a LT VI B tariff consumer under Electrical Section, Thattarambalam bearing consumer number 2043 and is running a hospital named Sreekandapuram Hospital at Thattarambalam. Later the connection was changed to HT service connection with consumer number 03/8168 from 07/06/2017 onwards. The appellant has raised dispute regarding the accuracy of the energy meter at the premises and complained that the energy was supplied with faulty meter which showing abnormally high reading previously when the service connection was on LT tariff. Later the meter was replaced with a new ToD meter on 10-12-2015. The new meter showed a lesser consumption compared to the previous consumption in the old meter. Since there was decline in recording of energy consumption after meter change, the appellant was billed for 48200 units from 1/2016 to 9/2016 as per the consumption recorded for 11/2015. The appellant’s grievance in this petition is that he had remitted excess electricity charges more than his actual energy consumption during the period from 1/2016 to 9/2016 and for the past twelve years due to the faultiness of the meter and hence requested to refund the excess amount remitted by him. The appellant had approached the CGRF, Ernakulam by filing a petition in OP No. 64/2019-20. The Forum disposed of the case vide order dated 22-01-2020 as follows:

“1. The respondent has to refund the excess amount remitted by the petitioner.

2. The calculation mistake on Electricity Duty and meter faulty has to be reviewed by the petitioner.”

 Against the decision, the appellant has submitted this appeal petition before this Authority on 19-02-2020.

 **Arguments of the appellant:**

The appellant suspected exorbitant energy charge in his hospital than the energy charge of nearby hospitals and had requested many times to the respondent to test the meter for accuracy but they did not consider and directed to remit required fee for the testing. The respondent had not tested the meter as per the provisions of Kerala Electricity Supply Code, 2014, Section 113 (6) & 114 for a long period of 11 years. The respondent replaced the meter on 10-12-2015 and installed another meter with ToD facility without conducting any testing to ascertain whether the meter was recording correct consumption. The consumption recorded in the new meter for 19 days from 10-12-2015 to 01-01-2016 is half of the consumption recorded for 12280 units for 9 days from 01-12-2015 to 10-12-2015 in the previous meter. As such the respondent declared the new meter as suspected faulty and billing done till 11/2016 by taking the consumption for 48200 units in 11/2015 which is the highest consumption recorded in the previous meter. The billing procedure is against the Regulation 125 (2) and 109 (20) of the Supply Code, 2014. The bills issued from 01/2016 to 10/2016 are more or less same amount. The appellant approached the respondent in 8/2016 with an application for testing the meter, but they did not accept it, but an accurate meter was provided in parallel with the premise meter and analyzed the consumption recorded in both meters from 28/6/2016 to 28/8/2016. The energy recorded in the test meter is 2086 units and in the premise meter 2094 units. The above testing of the meter reveals the following:

1. The consumption recorded in the premise meter installed on 10-12-2015 is slightly greater than (0.578%) the consumption recorded in the test meter and as such the argument of the respondent that the ‘suspected faulty’ consumption is wrong.
2. The complaint of the appellant that the meter provided in the premises from 2003 to 10/12/2015 was recording more than double of the total consumption is right.

The above observations are the base of the petition filed on 13-12-2018 to the Deputy Chief Engineer, Electrical Circle, Haripad for the refund of the excess amount paid prior to 10/12/2015 and revise the bill from 1/2016 to 9/2016. The Deputy Chief Engineer ordered to reassess the consumption from 1/2016 to 9/2016 as 42933 units taking average of the consumption recorded in the old meter for six months prior to 10/12/2015 and refund the excess amount remitted.

 It may be noted that the version filed by the respondent before the Consumer Grievance Redressal Forum. “The petitioner requested the Deputy Chief Engineer, Electrical Circle, Haripad on 13-12-2018 on reassessing the monthly consumption based on average consumption. So the consumption recorded as 42993 units which is the average of the previous 6 monthly bills and excess amount collected was refunded including the electricity duty collected” is false and such a request was not made by the appellant.

 The observation made by the Consumer Grievance Redressal Forum in its order dated 22-01-2020 “The respondent reassessed bills for the period from 10/10/2015 to 6/2016 by taking the average of prior 3 months reading viz. 9/2015, 10/2015 and 11/2015. Thus, the bills for these assessments were given to the petitioner who remitted the same without any complaints” is false as such an order was not received and not remitted the amount. The following observations made by the CGRF, in its order dated 22-01-2020.

“11). Thereafter on 13/12/2018 the petitioner filed the complaint before the respondent against the bills served upon him for the period from 10/12/2015 to 10/2016 i.e. this complaint is seen raised after a duration of 2 years and that too after LT connection was dismantled after settling all arrears.

12). The respondent argued that if the petitioner had raised complaints sufficiently early then the meter could have been tested. Moreover, the complaint is put up by the petitioner after a long period particularly when the disputed connection was no longer existing” are also false. The appellant received the bills for the same amount and the bills were not self explanatory as per the provisions of the Supply Code.

 The other observations made by the CGRF “In the meantime, the respondent, after the hearing on 7/1/2020 furnished before the Forum an additional document dated 9/1/2020, in which it is noted that the petitioner had been apprised by the respondent on 25/7/2019 to submit the stamped payment voucher so that an amount of Rs.467355/- shall be refunded to the petitioner in parity with the order of the Deputy Chief Engineer, Electrical Circle, Haripad”. “The petitioner is not seen to have complied with this or no dispute is seen made against this”.

 The appellant had not requested for refund as per the provisions in the order of Deputy Chief Engineer as the order was not acceptable.

 The following details are the proof of the meter which removed from the premises on 10-12-2015 was defective and recorded abnormal consumption.

Final reading of the removed meter on 10/12/2015 = 89014

Meter reading on 1/12/2015 = 88707

Consumption from 1/12/2015 (89014 – 88707) 40 = 307 x40

to 10/12/2015 – 9 days = 12280 kWh

Consumption in the newly installed meter = 4938 kWh

 from 10/12/2015 to 19/12/2015 (9 days)

Consumption from 1/2/15 to 10/12/15 (322 days) = 438420 kWh

Old meter

Consumption from 10/12/15 to 20/10/16 (322 days) = 176440kWh New meter

Consumption from 1/11/12 to 10/12/15 (3 years) = 1347280 kWh

 Old meter

Consumption from 10/12/15 to 1/11/18 (3 years) = 748116 kWh

 New LT meter and HT meter)

The consumption for 11/2015 is 48200 kWh in the previous LT meter and the consumption has never exceeded 25000 kWh since 10/12/2015.

The request of the appellant:

1. To quash the bills issued from 10/12/2015 to 26/10/2016 suspecting the meter as faulty and revise the bill for the actual consumption recorded in the ToD meter (new) installed on 10/12/2015 and refund the excess amount.
2. Revise the energy consumption recorded in the meter removed from the premises on 10/12/2015 for the entire period treating the meter recorded 2½ times the actual consumption and refund the excess amount as per Section 134 (3) of Kerala Electricity Supply Code, 2014.

**Arguments of the respondent:**

Consumer No. 2043 was an electric connection provided to Sreekandapuram Hospital near Mavelikkara town from Electrical Section, Thattarambalam under LT VI B tariff. The service connection was dismantled in 07/2017 following the conversion to High Tension tariff on 7/6/2017 with Consumer No. HT3/8168. The energy meter had been changed on 12/03/2004 while the connection was under LT category. The energy consumption prior and after the above change was 8535 units and 8470 units respectively and hence the new meter was an accurate one. Besides, the appellant had not raised any complaint regarding the functioning of the meter within the period of 12 years up to 10/12/2015, which reveals that the appellant was convinced in the quantity of the energy consumed. During the above period, the appellant had completed the construction of a specialty hospital and a nursing school. The appellant had remitted an amount of Rs. 1,80,000/- towards the charges for the unauthorized extension to the nursing school. The hospital entertained more patients following the shutdown of nearby hospitals by name, P.M. Hospital and Gems Hospital, but later by 2016, the energy consumption became low due to the functioning of new hospitals in the nearby area and usage of energy efficient equipments by the appellant.

The energy meter of the appellant was replaced on 10-12-2015 as per the programme of changing mechanical CT meters to ToD electronic meters. But the consumption recorded was low in the new ToD meter. The appellant was billed 48200 units from 1/2016 to 9/2016 (consumption from 11/2015). The details of consumption in the new meter and bill amount are furnished below:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Bill Date | Reading | Consumption | Billed | Bill Amount | Remarks |
| MF=40 | consumption |
| 04-01-16 | 248.7 | 9948 | 48200 | 491610 |   |
| 05-02-16 | 589.3 | 13624 | 48200 | 491610 |   |
| 05-03-16 | 1024.8 | 17420 | 48200 | 491610 |   |
| 07-04-16 | 1527.3 | 20100 | 48200 | 491610 |   |
| 05-05-16 | 2055.6 | 21132 | 48200 | 491610 |   |
| 05-06-16 | 2491 | 17416 | 48200 | 491610 |   |
| 04-07-16 | 2912 | 16840 | 48200 | 491610 |   |
| 04-08-16 | 3409 | 19880 | 48200 | 491610 |   |
| 05-09-16 | 3930.3 | 20852 | 48200 | 491610 |   |

The appellant filed a complaint to the Deputy Chief Engineer, Electrical Circle, Haripad on 13/12/2018 and the Deputy Chief Engineer revised the monthly bills taking the average of the consumption recorded for 6 months prior to the meter change.

A test meter was provided with the premise meter on 26/08/2016 and found consumption for 2084 and 2096 units respectively for a particular period.

The detail of the bill issued from 7/10/2016 to 5/2017 is furnished below. Multiplication factor is 40.

|  |  |  |  |
| --- | --- | --- | --- |
| Bill Date | Reading | Consumption | Amount |
| 07-10-16 | 585.4 | 21328 | 225578 |
| 03-11-16 | 1096.9 | 20460 | 216984 |
| 03-12-16 | 1595.1 | 19928 | 211718 |
| 01-01-17 | 2124.6 | 21180 | 224112 |
| 02-2017 | 2550.6 | 17040 | 183126 |
| 03-2017 | 3047.2 | 19864 | 211084 |
| 04-2017 | 3590.1 | 21716 | 229419 |
| 05-2017 | 4185.8 | 23828 | 250328 |

As the test meter is more accurate than the premise meter, the meter was replaced with the test meter and continued billing afterwards.

The subject was once considered by the Deputy Chief Engineer, Electrical Circle, Haripad and again considered by the CGRF, it is submitted that the appeal filed by the application may be rejected.

**Analysis and findings**

A hearing of the case was conducted at the Conference Hall, KSEBL, Mavelikkara on 23-06-2020. Sri. T. Sukumara Pillai and Sri. J. Unnikrishna Kurup were present for the appellant and Smt. Been Kumari K.S., Assistant Executive Engineer, Electrical Sub Division, Mavelikkara represented the respondent’s side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

At present the appellant is a High Tension (HT) consumer whereas the LT connection was dismantled in 07/2017. The appellant approached the Ombudsman as the order of Consumer Grievance Redressal Forum is not having clarity. The respondent billed the appellant for 48200 units, which is the highest in the previous period (ie. for 11/2015). The appellant filed appeal on the billing to the Deputy Chief Engineer, Electrical Circle, Haripad for reconsideration and the officer revised the consumption from 1/2016 to 9/2016 as 42993 units taking the average of six months’ consumption prior to the date of changing of the meter in 12/15.

 The request of the appellant is to cancel the bill prepared by the respondent as directed by the Deputy Chief Engineer and to bill in accordance with the consumption recorded in the meter installed in 12/2015 and refunded the excess amount so remitted. The period of dispute is from 10-12-2015 to 24-10-2016. The appellant remitted all the bills issued by the respondent in due course and only request is to revise the consumption from 12/2015 to 9/2016 as recorded by the meter. The new meter was installed in 12/2015 as per the general direction for the installation of ToD meter. The meter was changed in 12/2015 and the replaced meter is not tested. The appellant had no objection in the correctness of the new meter installed in 12/2015.

Further a parallel meter was installed in the premises with the main meter on 26-08-2016 and after 2 days i.e. on 28-8-2016 it was found that the premises meter recorded consumption greater than the test meter by 12 units. Hence the ToD meter was replaced with the parallel meter in the premises on 26-10-2016. The removed ToD meter was not tested at any NABL accredited lab by the respondent to confirm its accuracy.

 As per respondent, the appellant had not requested at any time prior to 12/2015, the month on which meter replaced, to test the meter even at the time of changing the meter.

 The further requirement of the appellant is to refund the excess amount paid, as explained in the petition, prior to 12/2015.

On going through the records, it can be seen that the respondent has issued monthly bills for the period from 10-12-2015 to 24-10-2016 based on the previous average consumption and the appellant remitted the same without any fail. It is to be noted that the respondent has detected that the meter was suspected faulty and a lesser consumption was recorded during that period and average 48200 unit charged. It is pertinent to note that even without conducting any testing the appellant’s meter, the respondent declared the meter as suspected faulty for the previous period due to the reduction in consumption. Regulation 125 of Supply Code, 2014 stipulates the procedure for billing in the case of defective or damaged meter. *“In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of meter being found or reported defective.*

*Provided that the average shall be computed from the 3 billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available”.*

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. *Regulation 115 (9) says that “in the case the meter is found to be faulty, revision of bill on the basis of test report shall be done for a maximum period of 6 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 two subsequent bills”.*Here in this case, the respondent declared the meter as suspected faulty that too even without conducting any testing, but based on the reduction in the consumption. There is no justification for issuing such a demand for a previous period of 10-12-2015 to 24-10-2016 as there is no allegation of any wilful misuse by the appellant.

According to Clause 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, *the testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of the consumer meters up to 650 Volts.* In the instant case, the respondent has not followed the procedures prescribed above before charging the appellant as meter faulty. Further, there is no mechanism for the appellant to know whether the meter is working properly or not.

The respondent’s contention is that the meter showed decrease in consumption which might have been a result of meter faultiness. It is found that the appellant was billed for an average consumption of 48200 units for the months in dispute. Hence the argument of meter faultiness from 12/2015 can not be proved conclusively without conducting testing of the meter. It is noted that the disputed energy meter of the appellant was tested, at the consumer’s premises, by installing a good energy meter (Check meter) in tandem with the existing meter; so that both meters slightly differs in the reading, consumed by the party. When the test is undertaken by KSEBL on the consumer’s meter, it is the best practice to prepare a mahazar, in the presence of the petitioner or his representative, recording the facts of, Check meter installed, the details of both meters with their seals, recording their initial reading etc on the first day and got it witnessed and then leave both meters in service for one weeks time, for joint working. Similarly, after informing the consumer, a final recording of meter readings in his presence, would have cleared the doubts and the said mahazar so prepared will surely be a valid document before any Legal Forum. The statutory requirement of testing of the meter in an accredited lab is not done before declaring the meter as faulty. There is patent illegality in issuing the bills to the appellant. Without complying with the statutory formalities, the assessment now made in this case is not sustainable before law and liable to be quashed.

In this case, the respondent assumed that the meter is faulty since the monthly consumption shows enormous decrease from 12/2015. In the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately succeeding the date of meter being found or reported defective. The appellant is bound to pay the electricity charges for his actual consumption, as the meter was not declared faulty after testing of the meter in an accredited lab.

Here in this case, the respondent argued that the appellant failed to produce any evidence to show that there was variation in their consumption pattern. Though the appellant has not given any evidence about the conditions of working and occupancy of concerned premises during the said period, the bill preferred for the period in dispute based on presumption only and hence is not sustainable. There is no material to show that the respondent has conducted any detailed checking of the appellant’s meter. In this background, the issuance of average bills for the period from 01/2016 to 09/2016 on the appellant merely on the basis of presumption cannot be justified before law and liable to be quashed.

At the same time, the appellant’s argument that the meter provided in the premises from 2003 to 10/12/2015 was recording more than double of the total consumption is not admitted because no evidence was produced to prove the old meter faultiness. The meter replaced on 12/2015 (old meter) was not tested while replacing it or during the period from 2003 to 12/2015. If the appellant had complaint on meter faultiness, he was free to request a testing of the meter by submitting an application for testing after remitting the required fee. There was no evidence produced by the appellant that he had submitted complaints during this period before the licensee regarding excess consumption due to the faultiness of the meter. The appellant raised this complaint based on the low consumption recorded in the new meter installed after 12/2015. By verifying the consumption pattern of previous period comparing with a later period is not a sufficient proof that meter was defective. The consumption during the period depends on the conditions of working and occupancy of concerned premises during the said period, hence the argument of the appellant based on presumption only that the old meter was faulty from 2003 onwards and hence is not sustainable.

**Decision: ‐**

 From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

 The respondent is directed to revise the bill for the period from 01/2016 to 09/2016 based on the actual consumption recorded in the meter installed on 10-12-2015 and excess amount if any, collected from the appellant shall be refunded or adjusted in future bills. The respondent shall also rectify the mistakes on calculation of electricity duty. The order of CGRF, Ernakulam in OP No. 64/2019-20 dated 22-01-2020 is set aside.

 The request of the appellant for the revision of energy consumption prior to 10/12/2015 and the refund of energy charge is rejected.

 Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed. No order on costs.

 **Electricity Ombudsman**

P/016/2020

Delivered to:

1. Dr. Ravi Sanker, Sreekantapuram Hospital, Kandiyoor, Mavelikkara, Thattarambalam P.O., Alappuzha
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Mavelikkara, 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.