

## STATE ELECTRICITY OMBUDSMAN

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### REPRESENTATION No: P 105/09

Appellant : Smt Nadeera ,  
Anas Bricks, Cheriya,  
Alummoodu, Kannanloor , Kollam

Respondent: Kerala State Electricity Board  
*Represented by*  
The Assistant Executive Engineer  
Electrical Sub Division, KOTTIYAM

### ORDER

Smt Nadeera , Anas Bricks, Cheriya, Kannanloor , Kollam submitted a representation on 26.10.2009 seeking the following relief:  
*The Complainant is aggrieved by the Order (on OP 384/2009 dated 14.8.2009 CGRF Kottarakkara) of CGRF to the extent it rejected the claim of the complainant for compensation interest and cost.*

Counter statement of the Respondent was obtained and hearing conducted on 5.1.2010. The Appellant is running a unit named M/s Anas Bricks engaged in the manufacturing of wire cut bricks with consumer number 4026. The Anti Power Theft Squad of KSEB (APTS) inspected the premises on 16.08.2007 . Based on the alleged irregularities an invoice for Rs 195169/- was issued under section 126 of the Electricity Act 2003 which was reviewed and revised to Rs 63873/-by the Appellate Authority Dy Chief Engineer. After a series of litigations the division bench of the Hon: High Court in their judgment dated 3.4.2009 on WA 801/2009 and WP 34428/08 observed that, if the Electrical Inspector had concluded that there was no theft involved , they need not go into the merits of the contentions with regard to the method of billing and permitted the Appellant to file a petition before the CGRF under Section 42(5) of the Electricity Act 2003. The CGRF quashed the impugned penal bill on 14.8.2009 based on the report of Electrical Inspector but refused to allow the claims of compensation, interest and costs.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation and during the hearing are summarized below:

The Anti Power Theft Squad of KSEB removed the electric meter and cut open the seals and inspected the internal mechanism. The site mahazar was not served to the Appellant. The proceedings initiated against the Appellant is not sustainable under law in the light of the report of Electrical Inspector. The orders of the Inspector had not been challenged by the Respondent before any appellate authority. And hence the same has become final. The directions permitting the Appellant to prefer an application under section 42(5) of the Act had been ordered because the Hon: Court has found that there is no unauthorized use of energy or theft of energy. In other words it was found that the assessment is not under section 126 of the Act. In view of the findings of the Inspector it has to be concluded that no tampering or theft or unauthorized use of energy had taken place, the meter was working properly and there was no reasons for the issuance of the penal bill. Hence the plea of the Appellant for compensation, interest and costs are justified.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

During the inspection on 16.08.2007 in the premises of the Appellant it was found that MRT seals of the meter were seen broken. Many markings and tampering indications were also seen on the meter. The paper seal provided on the counter was seen damaged. The plastic lock on the bottom of the counter was seen broken. It was concluded in the mahazar that the consumer had been frequently opening the meter counter and reducing the reading . The findings were recorded in the site mahazar , but the representative of the complainant refused to sign it and did not accept a copy of it. This fact was recorded in the mahazar.

The report of the Electrical Inspector says that ‘the meter was received in good condition and the errors are within the tolerable limit, counter was working properly and no evidence of tampering’. The report records the condition of screws and seals on the cover of the meter as ‘NA’. The report says that the meter was received with ‘broken seals’ or seals not available. The adjustment of reading by manipulation the counter will not be recognized in the lab test conducted subsequently. It is evident that the allegation raised against the consumer for attempt for theft still existed.

The demand for Rs 195169/- was raised under section 126 of the Electricity Act 2003. The demand had been reviewed and revised to Rs 63873/-by the Appellate authority Dy Chief Engineer duly constituted under the Act. The demand raised in the instant case do not fall within the scope of review by the Electrical Inspector.

Discussion and Findings:

The most important document relied upon by the Appellant for her claims is the report of the Electrical Inspector vide number T 35/2008/MTSL/28/2008/I/T/EM dated 20.01.2008. The Appellant claims that the allegations of the Respondent have been proved to be false by virtue of this report.

The report of the Inspector shall be examined in detail now.

The physical condition of the Meter is shown in Para 1 of the report as follows:

No	Position of screw/seal	Whether screw provided	Whether seal provided	Whether condition of screws were intact	Whether condition of seals were intact
a	Top left screw /seal	NA	NA	NA	NA
b	Top right screw /seal	NA	NA	NA	NA
c	Bottom left screw /seal	Yes	No	Yes	NA
d	Bottom left screw /seal	Yes	No	Yes	NA
e	Centre left screw /seal	NA	NA	NA	NA
f	Centre left screw /seal	NA	NA	NA	NA
g	Top screw/seal	Yes	No	Yes	NA
h	Bottom screw/seal	NA	NA	NA	NA

In the above report what is meant by 'NA' is not clear. It can be either 'Not Available' or 'Not Applicable'. Since the review of the physical condition of the meter is part of inspection by the Inspector and is very important it can be concluded that the second option is out of question. As such it can be seen that the even as per the report of the Inspector, the crucial screws and seals were Not Available(NA) and the physical external condition of the meter was as narrated in the site mahazar.

The Respondent had no case that the meter counter was not working on inspection. As such the observation of the Inspector that 'counter was working properly' is also undisputed. The contention of the Respondent that the adjustment of reading by manipulation the counter will not be recognized in the lab test conducted subsequently is technically correct and acceptable.

Hence I am inclined to conclude that the allegation raised against the consumer on intervention in the functioning of meter and attempt of theft, based upon the physical conditions of the meter, has not been proved wrong by the report of the Inspector. The Appellant should be relying on the remarks of the Inspector that 'the counter was working properly and no irregularity or evidence for tampering as recorded in the site mahazar was noticed'. It is clear that the above remark is related to the working condition of the meter counter at the time of testing. The findings in Para 1 is not contradicted in the above remark.

The Electrical Inspector is the authority to decide on the disputes regarding accuracy of energy meters when the matter is referred to him with the required fees. In the instant case neither the Respondent nor the Appellant had disputed the accuracy of the meter. How the meter was sent to Inspector for testing is not known. The allegation of the Respondent is that the physical condition of the Screws/Seals/Counter Lock/Paper seal etc leads to the conclusion that the consumer had been frequently tampering with the readings of the meter.

Electrical Inspector has no authority or jurisdiction to decide the issues *related to theft of energy*. The Electricity Act 2003 do not confer any power on the Inspector to interfere or decide on such issues. Neither the consumer nor the Licensee can refer the issues involved under section 135,126 etc to the Inspector.

As such I think that the observation of the Electrical Inspector on the findings of the scene mahazar is not binding on both parties as per the provisions of the Electricity Act 2003.

The judgment of the Hon: High Court dated 3.4.2009 on WA 801/2009 and WP 34428/08 says that : 'But it has come out from Ext P7 report of the Electrical Inspector that there was no theft. *If that be so*, this court need not go into the merits of the contentions ....' From the above one can not jump into the conclusion, as claimed by the Appellant , that *the Hon: Court has found that there is no unauthorized use of energy or theft of energy*. The contention of the Appellant on these lines can not be accepted.

Upon perusing the documents filed by the Appellant and the counter affidavit filed by Respondent along with all the connected records relating to the case and upon hearing the arguments of both sides I conclude and decide as follows:

1. The report dated 20.01.2008 of the Electrical Inspector do not exclude the possibility of continuous attempts for theft of electricity by the Appellant consumer as recoded and narrated in the scene mahazar dated 16.8.2007.
2. The Electricity Act 2003 and the regulations made there under do not confer any authority or jurisdiction for the Electrical Inspector, Consumer Grievance Redressal Forum or Electricity Ombudsman to interfere or decide on any issues *related to offences under Section 135 or assessment under Section 126* of the Electricity Act 2003
3. The Appellant consumer has to resort to Section 127 of the Act for remedy .
4. The Order dated 14.8.2009 of CGRF Kottarakkara on OP 384/2009 is to be set aside since the CGRF is barred from entertaining 'complaints' related to the above Sections of the Act as per Section 2 of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005
5. The undersigned has not gone into the merits of the scene mahazar dated 16.8.2007 and to the issues flowing out of it for want of jurisdiction.

#### Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The arguments/claims/points raised by the Appellant in support of the reliefs sought for are devoid of merit and hence the reliefs are not allowed and the representation is dismissed*
2. *The Order dated 14.8.2009 of CGRF Kottarakkara on OP 384/2009 is set aside*
3. *No order on costs.*

Dated this the 28<sup>th</sup> day of January 2010 ,

P.PARAMESWARAN  
Electricity Ombudsman

No P 105 /09/ 485 / dated 3.2.2010

Forwarded to: 1. Smt Nadeera ,  
Anas Bricks, Cheriya,  
Kannanalloor , Kollam

2. The Assistant Executive Engineer  
Electrical Sub Division,  
KOTTIYAM , Kollam Dt

Copy to : The Chief Electrical Inspector , Electrical Inspectorate,  
Thiruvananthapuram for information please.

Copy to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam, Vellayambalam,  
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,  
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,  
VaidyuthiBhavanam Kottarakkara