# THE STATE ELECTRICITY OMBUDSMAN Charangattu Bhavan, Building No.38/2829, Mamangalam-Anchumana Road, Edappally, Kochi-682 024 www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269 Email: ombudsman.electricity@gmail.com

# APPEAL PETITION No. P/033/2021 (Present: A.S. Dasappan) Dated: 28<sup>th</sup> September 2021

Appellant	:	Sri. Johny Joseph, Manjaly House, Kalady P.O., Ernakulam Dist.
Respondent	:	Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Kalady, Ernakulam Dist.

### <u>ORDER</u>

### Background of the case:

The appellant is a consumer of Electrical Section, Kalady having two numbers electric connections with Consumer numbers 26631 and 26632, both under LT VIIA tariff category. The premises of consumer number 26631 was used for "Honey Dews Curry" a restaurant and 26632 was being used for other connected works. The respondent claims that when the appellant started the shop's functioning, KSEB Ltd. replaced the energy meter. The appellant received two short assessment bills in respect of Consumer number 26631 and 26632 for Rs.3,4261/- and Rs.32,253/- respectively in the month of 12/2020. The period of short-assessment is 08/2017 to 10/2017, stating meter changed on 30-10-2017. The appellant filed petition before Consumer Grievance Redressal Forum (CGRF), Central Region vide OP No. 89/2021 and the Forum in its order dated 17-04-2021 issued the following :-

"(1) The petition is quashed due to lack of merits;

(2) The higher Officers of the Licensee may re-examine the period of short assessment bill issued.

Not satisfied with the decision of the Forum, the appellant filed this appeal petition before this Authority.

### Arguments of the appellant:

The restaurant was inaugurated on the 10th of November 2017. "As per the version of the respondent/licensee in the order", the faulty meter is said to have been first identified in 12/2014, and it was then rectified/replaced on 30/10/2017, against which the appellant do not have anything prove for or against as it is such a long period. If the change of meter was enforced on the said date, then it is strongly argued by the appellant that this could have been done rightly after they had seen the organization prepare for the inauguration right before the eyes of the KSEB field staff, and until then, there was no activity in the said premise. The said premise is abutting a public road on one side, a busy public road on the other side, and the third side is abutting a parking area of the busiest supermarket in the town. The restaurant was an open restaurant with minimal interiors, and it was open on all three sides, visible to everyone. Also, the appellant has timely enhanced and upgraded the load in the connection on time, and the appellant has been entirely transparent to the licensee to date. However, the CGRF cited the judgment of the Hon'ble Supreme Court as a reference in their order, and it is unjustified as the scenario in appellant's grievance, and the said case in the judgment is based on two different grounds. The scenario in the Hon'ble Supreme Court's judgment is related to a wrong tariff that was charged unintentionally by the licensee, wherein the consumption of the consumer was precise, and the liability hence is non-questionable. However, in the present case, the licensee is making arbitrary claims of consumption from the past to cover up on loss found out during audit conducted years later, and the burden is unanimously dumped on the appellant and on other consumers to cover up their loss as per audit. Instead, the licensee could have fulfilled their duty by rectifying the meters on time and initiated for an undercharged amount then and there if they had already known then that the meter was faulty for a long time. An undercharged accusation

against the appellant was not made at that time because they were convinced of the operations, and appellant had not started the works of the restaurant until then.

The CGRF's decision is based on section 156(2), additional / a supplementary demand after the expiry of limitation period 56(2) in the case of a mistake/bona fide error (referred to Hon'ble Supreme Court judgement in CA1673/2020). But in this case, it is not a bona fide error. The respondent agrees that those meters were faulty from 12/2014 to 30/10/2017. As per regulation 15 of the existing 'Standards of performance 2015', it is the liability of the Licensee to replace the LT meter owned by them found faulty within 7 working days from the date of detection of the defects. Regulation 117(2) of the Kerala Electricity Supply Code 2014 also agrees that the LT faulty meter must be replaced by the Licensee within 7 working days or within one billing cycle by the Licensee themselves. Within the above period (3 years), the Licensee had given lakhs of LT connections. The reason portrayed by the Licensee that it is due to the scarcity of LT meter, they were not able to replace the faulty meter on time, which is baseless and void. From this, it is evident that this is not a bona fide/sealed mistake, but the negligence and violation of duties and responsibilities. Any loss that occurred to the licensee due to this is to be charged on the responsible person alone and not on the appellant.

Moreover, the licensee has to change faulty meters on time rather than keeping it faulty for an unjustifiable and unusually long period of nearly three years, causing ambiguity to consumers at a later stage which in turn leads to arbitrary and non-questionable claims relating to past for which appellant's plead not to be held liable.

Secondly, the short-assessed bills issued to the appellant are not as per the Electricity Act 2003 and Kerala Electricity Supply Code 2014. As per Kerala Electricity Supply Code 2014, Regulation 136 (3), any defaulted sum from any consumer cannot be recoverable after a period of two years. In this case, the period of the short-assessed bills and its calculation is dated to more than thirty-eight months back from the date of the bills issued to the appellant.

Section 56(2) of the Electricity Act 2003 states as follows, "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

The faulty meter 'as claimed' by the respondent was first detected on 12/2014. Hence, as per the version of the respondent in the CGRF's order, the fault/mistake was actually detected 7 years before the billed date, 28/12/2020 on which the appellant received the short-assessed bills, and 34 months after detecting the faulty meter for which the appellant again plead not to be held liable. Again, such a sum could have been made due at the time of meter change, and they did not do so, because the appellant was not functional at the time.

In the calculation details of the bills, the average calculation arrives from the readings of three billing cycles (178 days) after replacing the faulty meter. As per Kerala Electricity Supply Code 2014 Regulation 125, the procedure for the billing on a defective meter, the consumer shall be billed based on the average consumption of the past three billing cycles immediately preceding the date of the meter being found defective. It is also a violation of the Clause 125 of the Kerala Electricity Supply Code 2014 and Electricity Act 2003.

Also, in the order of CGRF, it is clearly mentioned that the licensee has only partially complied with Regulation 125 of the Kerala Electricity Supply Code 2014.

In the instant case, the readings of the previous billing cycles are available with the licensee right at the time of change of the meter in 10/2017 and even during the time of detecting it as a faulty meter in 12/2014. Also, the spike in consumption of units during the billing cycle, 10/2017 to 12/2017, is due to the commencement of business, which even the field officers were aware of. Hence, the computation of the short-assessed bills is also not done based on the Kerala Electricity Supply Code 2014, and the justification in the CGRF's order is biased and done arbitrarily. Furthermore, the meter readings are in tandem with the operation of the premises.

The request of the appellant is that the short-assessed bills issued from KSEB based on (1) arbitrary claims and assumptions built on past, (2) self-assertive and unrestrained calculations based on inconsistent justifications without considering the Electricity Act 2003 and the existing Kerala Electricity Supply Code 2014, may kindly be quashed.

### Arguments of the respondent:

The argument of the respondent is as follows: -

The service connection with consumer number 1155768026631 was in the name of Sri.Johny Joseph, Manjaly House, Kalady, and date of connection was 31/12/2011. Meter in the premises had been working from 12/2011 to 10/2014. Later, the meter was found faulty while taking meter reading during 12/2014 and an average bimonthly consumption of 10 Units were charged from 12/2014 based on the previous average consumption. Faulty meter could not be changed because of the non-availability of meters.

The faulty meter was later changed on 30/10/2017. Bimonthly consumption after effecting the meter change showed a huge increase with the same connected load of 1160 Watts. Details of consumption after meter change are as given below.

Meter change - 30/10/2017 30/10/2017 — 23/12/2017 - 1452 Units 23/12/2017 - 26/02/2018 - 1863 Units 26/02/2018 - 26/04/2018 - 1728 Units 26/04/2018 — 30/04/2018 - 1081 Units

The service connection was then converted to three phase with a connected load of 5720 watts with effect from 30/04/2018 in the name of the existing Consumer Sri. Johny Joseph, Manjaly House. Again, the connected load was reduced to 4986 watts from 5720 watts with effect from 29/10/2019. The present connected load is 4986 watts.

During RAO audit on 4/2020, consumption pattern of the changed meters was checked and an anomaly was found in the case of Consumer No. 26631. The appellant was charged 10 units bimonthly for the faulty meter period. But after effecting the meter change with the same connected load bimonthly consumption was seen come to 1681 units. This average consumption was observed mismatching with the connected load. RAO Wing suggested for short assessment for a period of Two billing cycles with average 1681 units bimonthly. The previous average of the existed faulty meter was not reliable since it was faulty for a long period of time of nearly three years. Therefore, average consumption after meter change was considered for short assessment bill.

Therefore, the appellant was short assessed for two billing cycles just before the meter change as per section 125(1) and (2) of supply code and a short assessment bill for Rs. 34261/- was issued to the appellant.

On the short assessment bill issued, the appellant filed an objection regarding the bill. Based on the objection, the premises was inspected and the appellant was requested to submit proof of the documents if any supporting their arguments. But the appellant did not respond to the same.

There is another service connection was in the name of Sri. Johny Joseph Manjaly House, Chengal, Kalady, and date of Connection was 31/12/2011. The Energy Meter in the premises had been working from 12/2011 to 10/2014. Later the meter was found faulty from 12/2014 and an arrear bimonthly average consumption of 18 units were charged from 12/2014 to 10/2017 based on the previous average consumption. The faulty meter could not be changed because of the non-availability of the meters.

The faulty meter was later changed on 30/10/2017. Bimonthly consumption after effecting the meter change showed a huge increase with the same connected load of 440 Watts. Details of consumption after meter change are as shown below. 30-10-2017 - 23-12-2017 - 1068 Units 23-12-017 - 24-12-2018 - 1606 Units 24-02-2018 - 25-04-2018 - 2010 Units 25-04-2018 - 28-04-2018 - 101 Units

Connected load was then enhanced to 4440 watts from 28-04-2018. The same connection was converted to three phase from 31-10-2019. Later, connected load was again enhanced to 10632 watts. The reading pattern of the connection after effecting meter change showed that there is a huge increase in consumption (1558 Units against the consumption when there was healthy meter in service).

During their audit on 04/2020, the RAO Audit team had observed while checking the consumption pattern of the changed meters that, the above mentioned increased consumption was an anomaly in the case of the appellant's Consumer No.26632. The appellant had been charged 18 units bimonthly for the faulty period of three years. But after meter change with the same connected load bimonthly consumption was 1558 units. The average consumption showed a clear mismatch with the connected load.

The Audit team, then suggested for short assessment for two billing cycles with the arrear of 1558 units bimonthly. The previous average consumption of the existed faulty meter was not reliable since it was taken before three years. Therefore, average consumption after effecting the meter change was considered for short assessment.

Thus, the appellant was short- assessed for two billing cycles just before effecting the meter change as per Section 125 (1&2) of the Kerala Electricity Supply Code 2014 and a short-assessment bill for Rs.32,253/- was issued to the appellant.

On the short assessment bill issued, the appellant filed an objection regarding the bill. Based on the objection, the premises was inspected and the appellant was requested to submit proof of the documents if any supporting their arguments. But the appellant did not respond to the same.

### **Analysis and findings:**

An online hearing of the case was conducted at 3-30 PM on 13-09-2021 with prior intimation to both the appellant and the respondent. Sri. Amal Madhu attended the hearing for the appellant and Sri. K.C. Suresh, Assistant Engineer in Charge, Electrical Sub Division, Kalady from the respondent's side in the hearing. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

In this subject, the argument of the appellant is as follows: -

The restaurant with consumer number 26631 started functioning during last week of October 2017 and commenced the activities in all respect from 10<sup>th</sup> November 2017. The other premises with consumer number 26632 was being

used for other connected works. Furnishing and arrangement for the restaurant were going on before the month of November, for which a small quantity of power was used for the lighting purpose. Before October 2017 the rooms were not being used by the appellant. After the functioning of the restaurant the appellant increased connected load in the premises many times as per the requirement. Certain documents were lost in the flood 2018. If the meter is faulty from 12/2014 onwards, it should have been changed within seven working days from the date of detection of the defect as per Regulation 15 of Kerala State Electricity Regulatory Commission (Standards of Performance of Distribution Licensee) Regulations 2015, but changed only on 30-10-2017. As per Regulation 136 of Kerala Electricity Supply Code 2014, the respondent has no right to recover the amount. The consumption in the new meter is taken by the respondent for reassessing the consumption prior to the meter change, the period for which there was no functioning of the restaurant. As such the appellant wants to exempt from paying the short assessment bills.

The argument of the respondent is as follows: -

The short assessment bills were issued as directed by the Audit Team since they found higher consumption in the premises than the consumption prior to the meter change. The meters were in faulty conditions, the respondent could not take reliable details since the faulty period is three years. Change of meter could not be done due to the non-availability of meters, but KSEB Ltd. has reason to believe that there were activities in the premises. The appellant could not produce any documents to substantiate that the functioning of the premises was started after the replacement of the meters. The short assessment bills were issued by the respondent as per Regulation 125 (1) and 125 (2) of Kerala Electricity Supply Code 2014 and hence, the amount is to be remitted by the appellant and requested accordingly.

In this case, it is to be decided whether the appellant is liable to remit the short-assessed bill amount, issued based on the Audit Report for the month of April 2020.

The respondent issued two short assessment bills in respect of the premises

having consumer numbers 26631 and 26632 for Rs.34,261/- and Rs.32,253/respectively. The single-phase energy meter in both premises were changed by the respondent on 30-10-2017 stating that the meters were faulty. The respondent stated that the meters became faulty in between 10/2014 and 12/2014 and changed only on 30-10-2017, due to non-availability of meters. Though the meters were changed on 30-10-2017, there was no short assessment made by the regular staff, but done as per the Audit Report prepared in the month of 04/2020. Based on the Audit Report, the respondent tried to explain their arguments for the realization of the amount.

On going through the meter readings available from 26-12-2015 to 25-06-2021 of the consumer number 26631, it is observed as below: -

The bimonthly energy consumption recorded from 26-12-2015 to 28-04-2016 is "zero" and billed for 10 units in each bi-month. The meter reading on 27-06-2016 is 32 units and which was continued for two bi-months up to 28-10-2016 and billed for 10 units in each bi-month. Again, the meter shows "zero" reading on 28-12-2016 and continued for two bi-months up to 27-04-2017. The meter reading in the next bi-month 27-06-2017 is "32" units and remain the same up to 28-10-2017.

The single-phase meter was changed on 30-10-2017 with IR = 0 and recorded a bimonthly consumption in between 1081 units and 1863 units till the conversion of the single-phase connection to three-phase connection with a variation of connected load for 1160 watts in single phase to 5720 watts in three-phase on 30-04-2018. Thereafter the bimonthly consumption varies in between 1048 units and 2880 units up to the month of 02/2021. It is pertinent to note that 1681 units/bi-month is taken as the average consumption after the meter change on 30-10-2017 for a connected load of 1160 watts by the respondent for the reassessment prior to the meter change. There are no remarks from the part of respondent that any additional load was connected prior to the conversion of the electric connection from single phase category to three-phase category.

The appellant produced a 'printed notice' prepared for the publicity of the restaurant "Honey Dew Curries" in which it is printed "Grand Opening on 10<sup>th</sup>

November 2017". On analyzing the meter reading details as discussed above, it can be seen that the opening of the restaurant was made after the replacement of the single phase every month on 30-10-2017. As such, and on the analysis of meter reading, realization of short assessment is not justifiable. The meter reading furnished by the respondent prior to 30-10-2017 is not convincing figures. The status of single-phase meter is furnished as SF (Suspected Faulty) from 26-12-2015 to 28-10-2017. The respondent had not taken any action as per rules to inspect the meter and premises to ascertain the accuracy of meter and activities or connected load in the premises, which led to a lesser consumption.

The meter reading and consumption details of consumer number 26632 from 26-12-2015 to 25-06-2021 were also analyzed by this Authority, and observation is given below: -

The energy meter reading on 26-12-2015, 26-02-2016 and 29-08-2020 is 429 units; on 28-04-2016 is 235 units; on 25-05-2016 is 281 units; on 27-06-2016 is 283 units; on 28-10-2016 is 487 units; on 28-12-2016 is 545 units; on 25-02-2017 is 595 units; on 27-04-2017 is 787 units; on 27-06-2017, 26-08-2017 & 28-10-2017 is 1366 units. Though consumption was recorded in certain months, the appellant was given regular bimonthly bills for 18 units. Even without inspecting or conducting any tests on the meter, the status of the meter is recorded as SF (Suspected Faulty) during the period from 26-12-2015 to 28-10-2017. In the above meter reading details, it is reflected lapses of the officials entrusted by the Licensee. Moreover, the connected load during the above period is only 440 watts in the single-phase connection. The single-phase energy meter was changed on 30-10-2017 with Initial Reading "Zero" and recorded a bimonthly consumption in between 101 units and 4245 units till the conversion of the single-phase connection to three-phase connection with a change of connected load from 4440 units to 10632 watts in 10/2019. Earlier the connected load in the premises was changed from 440 watts to 4440 watts in 04/2018. Thereafter the bimonthly consumption varies from 2374 units to 5637 units till 25-06-2021. The respondent had taken 1588 units as the bimonthly average for the reassessment prior to 30-10-2017. It is revealed from the meter reading details that the readings are not convincing figures.

Regulation 116 of Kerala Electricity Supply Code 2014, says on the replacement of defective meter: -

Regulation 116 (2) : "If the meter is found defective, the licensee may test at site, if feasible, and if not feasible, the meter shall be replaced with a correct meter and the defective meter shall be got tested in an accredited laboratory or in an approved laboratory".

Another question is whether the claims of KSEB Ltd. is barred by limitation under Section 56 (2) of the Electricity Act 2003 read with Regulations 136 (3) and 136 (4) of the Kerala Electricity Supply Code 2014. Section 56 (2) of Electricity Act 2003, which reads as under: -

"Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity".

The Apex Court have interpreted this section in detail in the reported decision in Tata Steel Vs Jharkhand State Electricity Board (2008 KHC 7794 AIR 2008 Jha99) & others and Brihanmumbai Municipal Corporation Vs Yathish Sharma & others {2007 KHC 3784 : 2007 (3) KLTSN 11 (Bom)} where it was held as follows respectively.

"The period of two years as mentioned in Section 56 (2) of the Electricity Act 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of Electrical energy". "Amount of charges would become due and payable only with the submission of the bill and not earlier. Word "due" in the context must mean due and payable after a valid bill has been sent to consumer."

Here, the meter was not tested to ascertain its accuracy and there is no site mahazar explaining the status of meter other than remarks of "Suspected Faulty (SF)". The respondent made the short assessment based on the Audit Report. It is to be noted that a meter can be declared as 'defective', only after an inspection and a testing in the premises. The respondent had not declared the meter as 'defective' in the short assessment period. If an energy meter in a premises recording 'NIL' consumption, it is to be verified and found reason whether the non-recording of energy consumption is due to the defectiveness of the meter or no load is connected in the premises.

# Decision: -

From the findings and conclusions arrived at as detailed above, I decide to quash the short-assessed bills for Rs.34,261/- in respect of consumer number 26631 and for Rs.32,253/- in respect of consumer number 26632.

Having concluded and decided as above, it is ordered accordingly and the Appeal Petition filed by the appellant, stands allowed as above. The order of CGRF, Central Region in OP No: 89/2020-21 dated 17-04-2021 is set aside. No order on costs.

# ELECTRICITY OMBUDSMAN

### Delivered to:

- 1. Sri. Johny Joseph, Manjaly House, Kalady P.O., Ernakulam Dist.
- 2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Kalady, Ernakulam Dist.

### 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.