

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/021/2022**(Present: A. Chandrakumaran Nair)****Dated: 20th June, 2022**

Appellant : Smt. Thahira,
Vellalil Enterprises,
Evoor (South),
Keerikkadu P.O.,
Kayamkulam
Alappuzha Dist.

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Kayamkulam, Alappuzha Dist.

ORDER**Background of the case:**

The appellant is the consumer of KSEB Ltd. (Licensee) with consumer number 1155304022245 under LT IVA demand-based tariff. The connected load is 53 kW. The Sub Engineer of the Licensee visit the premises every month, readings are taken and bills are issued accordingly. The appellant used to remit the charges as per the bills regularly without fail. On 14-09-2021, the Anti-Power Theft Squad (APTS), Alappuzha team along with Sub Engineer of Licensee inspected the premises in the presence of the representative of the appellant and found that the 'R' phase of the meter was recording electricity below 29.7% of the actual consumption. A site mahazar was prepared in presence of the representative of the appellant. The appellant was issued a short assessment bill for Rs.96,147/- for the period from 03-07-2021 to 14-09-2021. The appellant challenged the bill before the Consumer Grievance Redressal Forum

(CGRF), Central Region, Ernakulam vide OP No. 53/2021-22 and the Forum ordered to reassess the short assessment by revising the bills of 07/2021 and 08/2021 based on the average consumption computed from the three billing cycles after the replacement of the phase wire i.e., from 10/2021.

Aggrieved by the decision of the Forum, the appellant filed the appeal petition to this Authority.

Arguments of the appellant:

In the mahazar, it is stated that, on inspection it was observed sludge formation is there at the connecting point of R phase. Also, it is stated that, the R phase voltage recorded in the meter is 30.4 V and other phases 234 and 230V respectively at the time of inspection and then the Sub Engineer arrived at a conclusion that the consumption recorded in the meter will be less than actual. According to the mahazar, this Sub Engineer for finding out the difference in actual consumption and the one recorded in the meter, connected a meter which is claimed to be calibrated at the testing and calibrating facility of Electrical Inspectorate and found out that the premises meter records 29.70% less energy than actual. After obtaining this result, the respondent concluded the inspection and no other tests were done or measurements taken to find out the actual occurrence time and date of dip in R phase voltage.

The above inspection was on 14-09-2021. As per the bill dated 01-09-2021, the previous inspection at the premises and meter reading just before the inspection dated 14-09-2021 was on 01-09-2021, the inspection during 08-2021 was on 02-08-2021 and the inspection for reading during 07-2021 was on 01-07-2021. In the bills for the months of 07, 08 & 09 -2021, the meter status is recorded as working. Therefore, it is evident that the dip in voltage in R phase occurred as stated in the mahazar at a date between meter reading on 01-09-2021 and inspection dated 14-09-2021. No other test is conducted and recorded as per mahazar and no records of tests are issued to this appellant along with the mahazar to prove otherwise.

As per regulation 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, *Testing of consumer meters may be carried out through NABL accredited mobile laboratory using secondary injection kit, measuring nil and phantom loading or at any accredited test laboratory and recalibrated if required at manufacturer's works.* Here in this case, Sub Engineer, Electrical Section, Cheppadu pleads under mahazar that the meter has tested and found the premises meter is recording 29.70% less consumption. Since the Sub Engineer is not an officer of an NABL accredited mobile laboratory or he himself is not part of any NABL accredited laboratory as above, he has no authority under law to test a meter. Such an illegal test can never be an instrument for this sort of assessment. Therefore, the findings of the respondent are not acceptable and hence the bill is illegal. Here in this case the defect in the meter noted in the mahasar is as extracted.

Meter defined under Regulation 2(57) of Supply Code, 2014, is as extracted hereunder.

"meter" means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system; and shall include, wherever applicable, other equipment such as current transformer (CT), voltage transformer (VT), or capacitance voltage transformer (CVT) necessary for such purpose;

The Regulation 2(57) of Supply Code, 2014 extracted above well decides that the defect observed during inspection and noted in the mahasar as extracted above is a clear case of meter defect. As per Section 55 of Electricity Act, 2003, it is the universal duty of the distribution licensee to supply electricity always installing correct meter. Since meter is equipment which can render faulty at any time and it will disadvantage the licensee to bill the consumer for the period of defect. For overcoming this difficulty, the State Electricity Regulatory Commission has brought the Regulation 125 of Supply Code 2014 which is extracted hereunder for ready reference.

125. Procedure for billing in the case of defective or damaged meter: -

(1) In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective:

Provided that, the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available:

Provided further that any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average.

(2) Charges based on the average consumption as computed above shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter.

(3) In case, the maximum demand indicator (MDI) of the meter at the installation of the consumer is found to be faulty or not recording at all, the demand charges shall be calculated based on maximum demand during corresponding months or billing cycle of the previous year, when the meter was functional and recording correctly.

(4) In case, the recorded maximum demand (MD) of corresponding month or billing cycle of past year is also not available, the average maximum demand as available for lesser period shall be considered:

Provided that the above sub regulations shall not be applicable in the case of a tampered meter for which appropriate action under the provisions of the Act shall be initiated by the licensee.

The Licensee is only authorized to assess the period of meter defect during which the meter was defective and shall assess only as decided under Sub Regulation(1) above and any other way of assessment resorted by the licensee is unauthorized and illegal. Since the defect in the meter was rectified at the same time on 14-09-2021, the meter was only defective for 13 days at it should have been assessed as desired under Regulation 125 (1) of Supply Code 2014. Thereby the short assessment bill amounting to Rs.96147.00 dated 01-11-2021 under Exhibit P10 which is under challenge under this petition is illegal.

The Licensee considering statutes under Electricity Act, 2003, issued clear direction to its employees how meter faulty cases are to be addressed and meter

faulty period is to be assessed vide circular No.D(D&S)/D2/Genl-08/2015 dated 25.02.2016. The bill under challenge is issued also in violation to circular. Thereby also the bill is illegal.

Above all these illegalities, another illegality is also done in the billing. As per mahazar, the defect observed in the meter during the inspection dated 14-09-2021 was rectified at the same time itself. Thereby, the meter was correct for the remaining days of the month. However, as per calculation statement, short assessment is found done for the entire month and hence this also illegal. The bill fails the facts and statutes and hence, it is arbitrary improper and illegal.

However, during the hearing before the CGR'F, the opposite party produced the tamper data download of the meter. From that, it could be seen that R Phase voltage was varying within the period from 03-07-2021 to 14-09-2021 various level of voltages below the effective voltage on other phases. Since these variations in voltage is not uniform so that the consumption is uniformly 29.70% less always during meter defect period charging the consumer at uniform level of 29.70% is illegal. Moreover, why this vital fact of tamper data downloading was not stated in the mahazar and result furnished in it and copy of the printout of downloaded data not issued to this appellant is astounding and this is a serious laps on the part of the respondent who recorded the mahazar.

The reduction in effective voltage in R phase is very visible in the meter while taking the meter reading if looked for. Despite having repeat directions to the spot billers and Sub Engineers to check the correctness of the meter during meter reading, the Sub Engineer who took reading at the premises failed in checking the meter and hence has shown callous negligence to his duties and it have caused much hard ship to this appellant. This type of negligence, dereliction to duty on the part of the meter reader have caused grievances to the sister concerns in the same compound earlier also. If the meter reader has read the meter correctly and tried to observe the voltage in the meter, this defect could have been detected during the meter reading dated 01-08-2021 itself and issuing

this short assessment bill would have been avoided and this appellant would have been saved from this litigation. Therefore, this matter may view with serious concern and appropriate orders may be issued to avoid this sort of situation.

The CGRF (Central) without expressing directly the meter was defective but indirectly accepted that, the meter was defective from 03-07-2021 to 14-09-2021. Also, the CGRF has found out and stated that, the reduction in the alleged consumption recorded is not at a uniform rate of 29.70% and making short assessment at a uniform rate 29.70% is incorrect. However, the Forum ordered to reassess the bill for 07/2021 and 08/2021 taking the average of three billing cycles from 10/2021 finding reason that the consumption has increased after the correcting meter defect on 14/09/2021. This findings and the order of the CGRF is inappropriate and incorrect since the proviso to Sub Regulation (1) of Regulation 125 is not applicable here in this instant case since "details pertaining to previous billing cycles are available. Thereby, CGRF should have issue orders to reassess the bill as per the provisions under 125(1) of Supply Code 2014. Moreover, the Forum have never sought evidence from this appellant about conditions of working and occupancy of the concerned premises during the said period under the proviso (2) to 125(1) of Supply Code, 2014 for issuing such an order. Moreover, the CGRF is bound under law to settle the complaint in accordance with the statutes.

Arguments of the respondent:

The assessment was made complying with the provisions in Section 45 of Electricity Act 2003 read with regulation 134 of the Kerala Electricity Supply Code 2014. This supplementary demand has been made for recovering the undercharged amounts by taking recourse to the enabling statutes under the above rules and regulations for the entire period during which such anomaly persisted. Electricity is supplied to the consumers against the price fixed for it as per the tariff notified by the Regulatory Commission. The obligation of the consumer to pay electricity charge arises when a bill is issued by the Licensee upon quantifying the charges that are to be paid. The Electricity Act does not

permit the consumer to make any unlawful gain without paying for the actual energy consumed by the consumer's entity.

The Sub Engineer who is holding the additional Charge of Assistant Engineer, Electrical Section, Cheppad along with Anti Power Theft Squad Team had conducted inspection on 14/09/2021. The premises is equipped with Current Transformer (CT) operated energy meter having Serial No. KSB34112 with make of PGR Powertek with a multiplication factor of 20. On verification of the voltage connection to the meter, it was found that due to weathering patina was formed at the connecting point where the wire assigned to tap voltage from R phase to Meter. On examining voltage recorded at each phase point, it was detected that R, Y and B phases recorded 30.4V, 234 V, 230V respectively. And thus, the actual phase voltage of R phase was checked with a multimeter and found as 232Volts. In order to authenticate the error of recording energy in the meter due to the level of missing voltage, Zera made MT 310 (Sl. No.50043258) duly calibrated from Electrical Inspectorate was employed. Accordingly, it has been detected an error of 29.70% was shown which means meter was recording a consumption of 29.70% less than the actual consumption. The whole inspection process was witnessed by the supervisor Sri. Abdul Shukoor, Vellalil House, Kannamballi Bhagam, kayamkulam and signed the mahazar after perceiving the facts.

For the averment by the appellant that under recording was not recorded during the time at which regular monthly meter reading was taken, it is submitted that checking of internal components, testing and calibration of meter are not feasible during every visit made for taking meter reading. The shortfall in consumption for the period from 07/2021 to 14/09/2021 could not be detected as such and the appellant was availing the advantage of paying disproportionate charges on account of under recorded consumption. Such shortfalls can be determined only with a sophisticated testing analysis. Vide Regulation 134 of Kerala Electricity Supply Code 2014, the Licensee is entitled to assess the shortfall and to make good the loss if it is detected in a later stage.

The notice and connected documents are issued for charges based upon the actual loss sustained by the Licensee. Real time recording of all meter

parameters are made in the internal storage device of the meter and can be downloaded at any point of time. The downloaded data revealed that the remarkable variation of recorded voltage in R phase was detected from 03/07/2021 onwards and thus the period of undercharging has fixed from 07/2021 to the date of inspection on 14-09-2021 as per Regulation 134 of Kerala Electricity Supply code 2014 on the basis of scientific data obtained from the down loaded report of the above meter.

The objection filed by the consumer was duly considered and rejected on account of the fact that under recording of R Phase was established scientifically.

The patina formed at the connecting point of Phase wire with meter may occur in subtle or all of a sudden depending upon the upkeep of the meter cubicle and due to changing atmospheric conditions. The meter is working properly and is not replaced. So, testing of meter is not at all required in an NABL accredited laboratory. During inspection, it was found that meter was recording 29.7% lesser energy than actually was being consumed by the appellant, which is confirmed by testing the appellant's meter with a standard reference meter CERA Make, MT310 (Serial no.500h3258) which is tested and calibrated in an NABL Accredited laboratory of Electrical Inspectorate. The short recording of voltage in R Phase happened due to presence of patina due to weathering in the wires in R phase connecting to voltage terminals of the meter. The appellant submitted a request to the Assistant Engineer, Electrical Section, Cheppad admitting the defect in the voltage tapping point of the R phase due to patina formation and also requested to solve the issue.

The bill for an amount of Rs.96,147/- was issued for the under billed portion of 29.70% of the recorded portion of the energy for the period from 07/2021 till the date of inspection. There is no dispute regarding the accuracy of the meter. Moreover, CT and the meter installed at the premises of the appellant had been tested with the standard reference meter and found that meter was working properly. Since the meter is not faulty, regulation 125 of the Kerala Electricity Supply Code is not applicable in the instant case.

There exist no defects on the meter and there existed only the issue of under recording of R phase voltage in the meter due to the patina formation at the tapping point of R phase. The same was rectified with replacement of phase wires. The appellant avers that after proper fixing of connecting terminals, the meter is working perfectly and the entire metering system is in order. The fact that the appellant had consumed electricity supplied by the respondent is not in dispute. In cases where the consumer is undercharged, the Licensee is entitled to recover the undercharged amounts after issuing appropriate bill to the consumer. Once the Licensee establishes either by review or otherwise, that it has undercharged the consumer, the Licensee can recover the amounts so undercharged from the consumer by issuing a bill. Accordingly, the Regulatory Commission has provided Regulation 134 for effectively working out Sec.45 of the Electricity Act 2003. The said regulation has been incorporated under Chapter VII of the Supply Code 2014 which enumerates the billing and mode of payment. Further Regulation 136 under the said chapter in clear terms gives power to the Licensee to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for the belated payments from the date of which such payments became due. Therefore, the applicable law with regard to the case at hand is Sec.45 of the Electricity Act r/w the Provisions enumerated under Chapter VII of the Kerala Electricity Supply Code 2014.

The tamper data conclusively state that there existed proportionate under recording of energy in the meter. At the time of inspection, R phase had recorded a voltage of 30.4V and at the same time, multi-meter test showed voltage of 232 Volt. This difference was further proved by conducting accuracy test with a calibrated Zera Meter. Thereafter the tamper data was downloaded for further examination. All these processes were witnessed and perceived by the appellant's representative. The printout of the tamper data was taken at Electrical Section office and the same corroborated with inspection results.

Due to elapse of time, any naked metal components may be prone to rapid disintegration which may catalyzed due to the potency of external factors prevailing in the coexisted premises. In the instant case, deterioration of the

wiring component at terminal connecting point occurred due to formation of patina and is an isolated incidence. While taking monthly meter reading of numerous CT meters, checking of internal components, testing and calibration of meter are not feasible during every premises visit. The shortfall in consumption for the period from 07/2021 to 14/09/2021 could not be detected as such which is not intentional. However, the defect was detected at the earliest possible stage and the shortfall was determined and assessed for a very shorter span.

Analysis and findings:

The hearing of the case was conducted on 14-06-2022 at 11-00 AM in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri. Abubackar, husband of the appellant was attended the hearing for the appellant and Sri.Gopakumar Achary. B., Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kayamkulam of Licensee was attended the hearing from the respondent's side. On examining the appeal petition, 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 findings and conclusions leading to the decision thereof.

Kerala Electricity Supply Code 2014 Regulation 113 (6) clearly spelt about the field inspection and testing of meters as follow: -

(6) The licensee shall conduct periodical inspection or testing or both of the meters as per the following schedule:-

single phase meters	once in every five
LT 3-phase meters	once in every three
HT or EHT meters including maximum demand indicator (MDI)	once in every year

The above regulation of Supply Code is not seen to be complied by the Licensee. The officials of Licensee are taking monthly readings to raise the bills

to the consumers. In these type of ToD meters, by scrolling of the reading in the meters, the voltage and current is readable. This is not done by the officials. When the meter is defective, the method of billing is done as per the provision of Regulation 125 (1) of Kerala Electricity Supply Code 2014.

As per the Regulation 125 (1), "Procedure for billing in the case of defective or damaged meter" states, "In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective:

Provided that, the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available:

Provided further that any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average".

As per Regulation 134(1) of Kerala Electricity Supply Code 2014, the Licensee is given the power to recover the undercharged amount from the consumer by issuing a bill.

"134. Under charged bills and over charged bills: -

(1) If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill."

After the inspection of the APTS and the wires are properly connected, high consumption was recorded by the same meter, which proves that the meter was recording less.

As per the regulations noted above, the Licensee have to recover the energy charges under paid when it is establishes that it has undercharged the consumer.

Decision: -

From the analysis of the arguments and the hearing, following decision is hereby taken:

- (1) The appellant is liable to pay the bill as per short assessment arrived as per the decision of Consumer Grievance Redressal Forum (Central Region), Ernakulam vide OP No. 53/2021-22 dated 03-03-2022.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/021/2022/ _____ dated _____.

Delivered to:

1. Smt. Thahira, Vellalil Enterprises, Evoor (South), Keerikkadu P.O., Kayamkulam Alappuzha Dist.
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kayamkulam, Alappuzha 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.