

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/020/2022

(Present: A. Chandrakumaran Nair)

Dated: 12th July, 2022

Appellant : Sri. Haroon. P.P.,
S/o. Appellant Late: Sri. Abdul Latheef.P.P.
M/s. Prestige Polymers,
Kolathara. P.O., Cheruvannur,
Kozhikode 673 655

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Feroke, Kozhikode Dist.

ORDER

Background of the case:

The appellant is the owner of the Prestige Polymers at Kolathara, Kozhikode. The establishment was under the Electrical Section, Feroke with consumer number 1166319009259 and then it was brought under the Areekkad Electrical Section and the consumer number is 1167899019163. The connected load is 37 kW and the tariff is LT IV. The appellant was regular in remitting the electricity charges and there was no amount pending.

On 08-10-23020, the Sub Engineer and Overseer of Licensee inspected the Prestige Polymer, which is a chappal manufacturing unit. No tampering was observed and all meters were functioning properly. They prepared a site mahazar where it is mentioned that the Multiplication Factor (MF) considered for calculating the energy charges was wrong. The CT used was with CT ratio 200/5, then the MF should be 40. It was considered as follows for calculating the consumption:

3/2018	-	09/2018	1
09/2018	-	10/2020	20

Because of these mistakes, KSEBL billed very much lower than the actual and a short assessment bill for Rs.7,17,602/- was prepared and the appellant was asked to remit the payment. Appellant approached Assistant Engineer, and requested to waive off the same, which was not considered. Subsequently, the appellant approached the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode and the CGRF ordered that the consumer is liable to pay the short assessment bill and allowed 15 monthly instalments for remitting the payment.

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

Arguments of the appellant:

The appellant is running an establishment under the name and style of Prestige Polymers at Kolathara, Kozhikode under the Electrical Section – Feroke. Later the establishment was, brought under the Areekad Electrical Section. The present consumer number of the establishment is 1167899019163. The appellant has been regularly remitting the electricity charges and there was no amount pending to be paid to the Licensee on the basis of the actual assessment done by the Licensee.

On 08/10/2020, the Sub Engineer and Overseer of Feroke Electrical Section inspected the premises of the appellant. It is functioning in building No.7/711A of Kolathara Panchayat. The appellant's establishment is a Chappal manufacturing unit. The electrical connection from KSEB is 111 kW in LT- IV Tariff with connected load 37KW. In the inspection, no tampering was found and the LT Chamber was found in perfectly sealed condition. All the meters were found to be working properly. After inspection, the Sub Engineer prepared a site Mahazar. In the said site Mahazar, it is alleged that from the 3rd month of year 2018 to the 9th month of the same year, instead of using the multiplication factor 40, the multiplication factor was taken as 1 and from 9th month of 2018, instead of taking multiplication factor as 40, the multiplication factor used for electrical bill was 20. It is also alleged that because of the above mentioned alleged mistakes, the KSEB had billed only half the energy used by the appellant.

On the basis of the inspection conducted by the Sub Engineer, Feroke section on 08/10/2020, KSEB had provided a bill to the appellant, directing him to remit Rs.7,17,602/-. The appellant received another notice No. ESF/Short Assessment/2020-21 dated Nil directing the petitioner to remit Rs.7,17,602/- within 14 days of the receipt of the said notice. After receiving the said notice, the petitioner met the Assistant Engineer, Feroke section and told him that the calculation made by the KSEB and the demand on the basis of the inspection by the KSEB - Feroke section on 08/10/2020 to pay Rs.7,17,602/-, was absolutely incorrect and the appellant is not liable to pay any amount as per the said demand notice. But the request made by the appellant was not considered and the Assistant Engineer, KSEB Electrical section - Arekkad, Kozhikode issued a disconnection notice under section 56 of the Indian Electricity Act, 2003 as No. 1B/DC Notice/2021-22/2 dated 07/04/2021, informing the appellant that if the amount of Rs.7,17,602/- is not remitted within fifteen days of receipt of the notice, the electricity supply to the appellant establishment will be disconnected.

The appellant was aggrieved by the bill issued by the KSEB, Feroke Section and also the disconnection notice issued on 07/04/2021 by the electrical section Arekkad. The calculations made by the electrical section in demanding the enhanced bill amount was without any basis. The same was done without considering the relevant Rules and without considering the realities. The contract demand of appellant establishment was 50 KVA and the capacity of the current transformer is 100/5A. Appellant had produced the reply received by the Public Information Officer - Electrical Circle, Kozhikode as No. ECK/PIO/RIA ft /11/2020-21/3046 dated 02/03/2021 to petitioner's application dated 05/02/2021. As per the information received in the reply of Public Information Officer dated 02/03/2021, the calculations made by the Electrical Section, Feroke regarding the energy consumption in the petitioner's establishment and to pay Rs.7,17,602/- was not correct. It was submitted that the current transformer capacity was determined on the basis of the contract demand. The Electrical Section, Feroke has suppressed and not considered all these facts and made a false calculation to put the appellant in difficulty. The appellant is liable for payment of bill only based on calculations

with the relevant multiple factors from the date on which the petitioner signed contract demand agreement.

KSEBL had fitted 200/5A current transformer on the basis of wrong calculations. The CT to be fitted was of 100/5A. But the KSEB had fitted 200/5A CT. They have calculated the energy charges by taking the multiplication factor as 40. It is applicable to CT 200/5A. As per the current consumption details, the transformer to be connected was 100/5A CT and the bill was to be prepared with the multiplication factor 20. It was a serious lapse on the part of the KSEB Officers in preparing an exorbitant bill on the basis of wrong calculations. A reading of the site mahazar dated 08-10-2020 would go to show that the Electrical Section, Feroke had been making the calculations wrongly from the year 2018 onwards, and claiming exorbitant amounts by providing wrong bills. As a result, the appellant was put to serious harassments. He was made to run from pillar to post to rectify the mistakes committed by KSEB Officers. The KSEBL is liable to refund the excess amount charged from the appellant on the basis of wrong bills.

The appellant suspected that the meter reading taken by the respondent was incorrect or having some malpractices involved, which caused issuance of a demand notice to remit a huge amount of Rs.7,17,602/-. As per the version of the son of the appellant, the liability of huge short assessment bill caused the appellant's sudden demise and his family's mental agony. As such, the appellant may not be in a position to remit this huge bill payment.

Because of the flood during 2018, the appellant's company had incurred heavy loss and as such the company was rented out to other party. During September 2018, instead of taking the multiplication factor as 40, the multiplication factor used for electrical bill was 20 by the Licensee. This is to be examined.

The appellant emphasized that taking regular meter readings, calculation of Multiplication Factor (MF) of the energy meter and its billing are the responsibility of the KSEBL officials. Hence, the appellant requested to verify as if any untoward financial involvement is there between the hirer of the company and KSEBL officials.

The appellant has been regularly remitting the monthly electricity charges since inception of the electric connection without fail. As such, no amount is

pending to be paid to the Licensee. Moreover, it is the responsibility of the Licensee to make proper readings and its billings then and there, so as to avoid claiming pending payments later. So, the appellant requested to waive off the short assessment bill.

Arguments of the respondent:

The Section squad of Electrical Section, Feroke conducted an inspection at the premises of the consumer on 08-10-2020 as a part of CT meter inspection and found that the energy meter connected at the premises of the consumer was of L &T make with Sl. No. AOO 87162 with capacity of 240V, 3phase, 4wire, - / 5A. The current transformers (CTs) connected to the TOD Energy meter are with CT1 Sl.No. 2/9286, CT2 Sl. No. 2/9287 and CT3 Sl.No.2/9288. The CT ratio is 200/5A and the OMF is 40.

The details collected as part of the site inspection were verified with the office records and it was found that there had been a mismatch between the CT ratio and the consumption recorded. The present CTs (200/5A) were installed in 4/2018 and the multiplication factor (MF) that should have been taken for assessing consumption from 4/2018 onwards was 40. However, the correct ratio of CT was omitted to be entered in the system (Orumanet and other records) and resultantly bills were issued to the appellant with MF 1 (One) from 4/2018 to 09/2018 and afterwards with MF 20 from 10/2018 to 09/2020. The under recording of MF continued for the period from 4/2018 to 09/2020.

On noticing the above error, the Assistant Engineer, Electrical Section, Feroke issued a short assessment bill to the appellant amounting to Rs.7,17,602/- for the period from 4/2018 to 09/2020 on 02-02-2021 and the appellant was given sufficient time for remitting the short assessment bill amount. As stated above the connection of the appellant was transferred to Electrical Section, Areekkad as part of Section Office bifurcation on 19/02/2021 and since the appellant did not respond properly to the short assessment bill, the Assistant Engineer, Electrical Section, Areekkad under whose jurisdiction the appellant is now using the connection issued a Disconnection Notice to the appellant.

The appellant has been remitting current charges with MF as 40 since 10/2020. This means that the appellant is quite aware that the MF of the CT

attached to his meter is 40 and that he is legally bound to remit the current charges accordingly. Notwithstanding the above awareness on the part of the appellant, this petition has been filed by the appellant on an experimental basis with an aim to extract some undue benefits from KSEBL.

The main contention of the appellant is that since his contract demand is 50kVA, the CT installed should have been with ratio 100/5A and further considers that the reason for the short assessment bill is the installation of 200/5A CT and the resultant wrong application MF. This is only a baseless allegation on the part of the appellant. Even though the contract demand is 50kVA, the appellant's registered connected load is 111kW. So, the appellant is at liberty to enhance his contract demand at any time. Moreover, when the old CT was replaced, 100/5A CTs were not available. Hence, considering the registered load of the appellant and the availability of the CTs, 200/5A were installed at the premises of the appellant. It is a given fact that whether it is 100/5A CT or 200/5A CT only the actual consumption of a consumer is recorded and billed. Mere installation of a higher CT doesn't artificially enhance the recoding of the consumption of energy. Besides the above, the appellant has been remitting current charges with MF as 40 since 10/2020 without any complaint which shows that the appellant is in agreement with the fact that the actual MF is 40.

The short assessment bill was prepared as per provisions contained in regulation 134(1) Kerala Electricity Supply Code, 2014 which clearly says that "if the licensee establishes either by review or otherwise that it has under charged the consumer, the licensee may recover the amount so under charged from the consumer by issuing a bill". In the instant case the bill issued to the appellant is for the amount short assessed due to wrong application of multiplication factor from 04/2018 to 09/2020 and no interest or penalty is charged. Hence, the bill issued to the appellant is just and fair and the appellant is legally liable to pay the amount within the stipulated period.

The short assessment bill served on the appellant cannot be considered to be a penalty inflicted on him. On the other hand, it was actually current charge for the energy consumed by the appellant which the licensee happened to omit to collect from him in time. The short-assessed bill was served without any surcharge also.

An omission happened to be occurred on the part of the licensee that when the CTs were changed, a corresponding change was omitted to be effected in Oruma Net and that omission resulted in the short collection of current charge from the appellant. A consumer cannot be allowed to exploit an omission on the part of the licensee in collecting current charge from him in time.

In a similar case the Hon'ble High Court of Kerala in its judgment in WP © No.28669/2013 unequivocally held that the licensee can recover the loss sustained from unrecorded energy. In the above WPC the meter showed a reduction of 60% in reading. The meter in question was installed in the year 2006 and it was changed in the year 2012 only. However, the Hon'ble High Court found that KSEB was in a position to estimate the period during which there was a short assessment and the Court further observed that the period need not be limited to 12 months. In the above case the action of KSEB in raising the short assessment bill for the escaped energy was upheld by the Hon'ble High Court and the consumer was granted installments to clear the dues.

During the hearing before the CGRF, the appellant had made a request to the effect that the meter and CT be got tested by an agency other than an agency under the control of KSEBL. As a result, the Forum directed the respondent to test the meter and the CT by an NABL accredited lab not under the control of KSEBL. The respondent took follow up actions accordingly and the meter and the CT were tested at Electrical Inspectorate, Thiruvananthapuram. As per the test results, the meter and the CT are functioning in good condition and they are within the admissible limit of error. It shows that the action of KSEBL in issuing a short assessment bill on the basis of OMF as 40 was an act in the right direction because it is the current charges due to KSEBL.

The appellant in this petition states that he has sustained loss on account of disbursement of bonus and other emoluments to his employees. This is a frivolous and baseless statement. The flip side of the matter is that the appellant has been with him an amount of Rs.7,17,602/- that belonged to KSEBL with which the appellant has reaped benefit by using it in his interest for a long period. Hence, in this matter KSEBL has sustained loss and the appellant gained at the expense of KSEBL. This is particularly so because the short assessment bill issued to the appellant is only

for the current charges and it doesn't include any surcharge or penalty. It is public money that the appellant is hell-bent on denying to KSEBL. KSEBL is purchasing a very major part of the power that the consumers are consuming from outside sources for which a major chunk of its revenue is earmarked. In such a scenario if the consumers like the petitioner take a stand that they won't pay for the electricity that they consumed it is only not in the interest of KSEBL but it is not in the interest of state of Kerala also. The short assessment bill issued to the appellant is a bona fide bill and hence as a consumer of KSEBL the appellant should honour it.

In the light of the above, the Ombudsman may be pleased to dismiss the appeal petition with a direction to the appellant to remit the short-assessed amount of Rs. 7,17,602/-

Analysis and findings:

The hearing of the case was conducted on 13-06-2022 in the office of the State Electricity Ombudsman, Ernakulam. The appellant Sri. Abdul Latheef was expired on 27-05-2022 and the death certificate has been produced. Appellant's son Sri. Muhammad Haroon and a relative Sri. Mueenudheen were attended the hearing. On the respondent side, Sri. Reghunath, Assistant Executive Engineer, Electrical Sub Division, Feroke of Licensee was attended the hearing. The appellant sought time to submit their views and granted time till 30-06-2022 to submit their points. Accordingly, they submitted their points in writing on 28-06-2022. 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.

On 08-10-23020, the Section Squad of Electrical Section, Feroke inspected the site and found that the CT connected with the meter is with ratio 200/5 and hence MF is 40. They were wrongly applied the MF as '1' from 04/2018 to 09/2018 and '20' from 10/2018 to 09/2020 and thus, the under-recording of consumption for a period from 04/2018 to 09/2020.

As per Section 110 of Kerala Electricity Supply Code 2014, the meter reading is to be taken by the Licensee regularly once in every billing cycle and the meter reading shall be recorded only by an employee of the Licensee.

As per Section 113 of Kerala Electricity Supply Code 2014 : “(1) It shall be the responsibility of the licensee to satisfy itself regarding the accuracy of the meter before it is installed and the licensee shall test them or get them tested in an accredited laboratory or in an approved laboratory”.

“(2) The licensee shall also conduct periodical inspection or testing or both and calibration of the meters, as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.”

As per Regulation 134(1) of Kerala Electricity Supply Code 2014 states, “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.”

As per Regulation 152. Anomalies attributable to the licensee which are detected at the premises of the consumer:-

- (1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.
- (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.
- (3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub-regulation (8) of regulation 155 shall be considered:

Provided also that realization of electricity charges short collected shall be limited for a maximum period of twenty-four months, even if the period during which such anomaly persisted is found to be more than twenty-four months.

As per Regulation 109 - Supply and installation of meters and circuit breakers:-

“(10) Initial installation as well as replacement of the meter shall be done by a qualified employee of the licensee duly authorized for this purpose, in the presence of the consumer or his representative.”

“(11) The licensee shall adopt a format of meter particulars sheet for recording the particulars of the meter at the time of initial installation or replacement.”

It is the responsibility of the officials of the Licensee to install a proper meter with its accessories such as CT etc. and keep the records properly and the same is to be considered while calculating the energy consumption and then the energy charges. In this case, the officials of the Licensee were not performed their duty properly and thus, the huge liability come to the appellant.

The appellant claimed that the factory was given on rent from 01/2018 to 12/2020 and the electricity charges are the liability of the tenants. The inspection was carried out during 10/2020 and no documents provided to show that it was on rent. However, as per the regulation, the consumer only liable.

It is pertinent to refer the order of the Hon'ble Supreme Court of India in Civil Appeal No. 7235 of 2009 in the matter of M/s. Prem Cottex Vs. Hariyana Bijli Vitaran Nigam Ltd & Others. The scope and ambit of Section 56 of Indian Electricity Act was interpreted by the Apex Court in the aforesaid decisions and in the later it was conclusively held that what is covered by Section 56(1) is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the Licensee. Para 11 & 12 of the said order clearly spelt out that the electricity charges could become “first due” only after the bill is issued, even though the liability would have arise on consumption. Then the period of limitation of two years would commence from the date on which the electricity charges become first due under Section 56(2).

The Hon'ble Apex Court also held that Section 56(2) does not preclude the Licensee from rising an additional or supplementary demand after the expiry of the period of limitations in the case of a mistake or bona fide error.

Section 136 (1) of the Kerala Electricity Supply Code 2014, clearly state that the Licensee shall be entitled to recover the arrears of charges or any other amount due from the consumer.

Decision: -

From the analysis of the arguments and the hearing, following decisions are hereby taken:

- (1) The appellant is liable to pay the short assessment bill amount.
- (2) The respondent shall grant 30 numbers of monthly instalments without interest to pay the short assessment bill by the appellant to the Licensee.
- (3) The order of CGRF, Northern Region in OP No.04/2021-22 dated 19-01-2022 is modified to this extent.
- (4) The Licensee has to device a proper system that the concerned officials of the Licensee should be accountable and responsible for such errors/mistake/oversight and also to avoid such burden to the consumers.

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

ELECTRICITY OMBUDSMAN

P/020/2022/ _____ dated _____.

Delivered to:

1. Sri. Abdul Latheef. P.P., M/s. Prestige Polymers, Kolathara. P.O., Cheruvannur, Kozhikode 673 655
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Feroke, Kozhikode 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, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode