

THE STATE ELECTRICITY OMBUDSMAN

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REVIEW PETITION No. R.P/006/2022

IN APPEAL PETITION No: P-045/2022

(Present: A. Chandrakumaran Nair)

Dated: 14th November, 2022

Review Appellant : Sri. Shareef Abdul,
Marakkayil House,
Karuvanthuruthy P.O.,
Feroke,
Kozhikode Dist. 673 631

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

ORDER**Background of the case:**

The review appellant is a consumer of the Licensee under the Electrical Section, Areekad. The consumer No. 1167895003678 and the tariff applicable is LT IVA. The review appellant is having an industry named as 'S.S. Business Corporation' at Nallalam Industrial Estate. The connected load is 88.7 kW and contract demand is 50 kVA. APTS conducted an inspection at the firm on 16-04-2021 and found that one CT coil ('B' phase) is in open condition, this is because of the connection wire from CT to meter was burned. The reading recorded by the consumer's meter was 28.28% lower than that of the actual consumption. Since the exact date of CT open condition has not been able to assess, the short assessment was calculated for 12 months as per Regulation 152(3) of Kerala Electricity Supply Code 2014 for an amount of Rs.1,13,606/-. The review appellant filed petition to Consumer Grievance Redressal Forum (Northern Region) and CGRF(N) issued order to make the short assessment bill for 6 months

preceding the date of inspection. The appeal has been filed to this Authority and order has been issued dated 15-09-2022 agreeing the order of CGRF.

Arguments of the review appellant:

As part of the field inspection of the KSEBL, Kozhikode TS Unit inspected the establishment S.S. Business Corporation, at Nallalam Industrial Estate, Kozhikode on 16-04-2021. After their inspection on that day itself, the CT chamber was sealed with seal number 1043620 in a state as it was before as reported in the Mahassar (Remaining out of order of the CT coil). A few days later after the said inspection, a demand cum disconnection notice along with calculation statement of Rs.1,13,606/- assessed, by the Assistant Engineer, KSEBL, Electrical Section, Areekkad, Kozhikode was also served me on 27-04-2022 directing to pay the said amounts. Upon receipt of the demand notice, the appellant had approached to the Assistant Engineer, KSEBL, Electrical Section, Areekkad, Kozhikode to enquire about the huge bill amount. As per their direction, appellant had submitted a request for downloading logged data from the meter mentioned above.

Accordingly, the meter connected to the CT coil which was reported as out of order in the said Mahassar report was dismantled by the official concerned on 08-07-2021 for sending the meter to the testing unit, Kannur. No other activities are made on the CT Coil of the meter by the officers of the KSEB till the date 08.07.2022.

Unfortunately, the meter testing unit has failed to recover the data as expected by them. The data recovered is only for the period starting from 29-05-2021 to 08-07-2021, on which day the meter was dismantled. The meter testing unit, Kannur also informed that no anomalies were observed from the data retrieved. No report regarding overwritten of the data in the meter has not mentioned in their report as the Assistant Engineer, KSEBL, Electrical Section, Areekkad, Kozhikode concluded.

Based on the report of the Assistant Engineer, meter testing unit, Kannur, it can be understood that no irregularities could be found despite existing CT Coil was being used in the state as it was before, it means the period from date of inspection, 16.04.2021 to date of meter dismantled, 08-07-2021.

It is not right to make a decision based on the consumption pattern of the industry because the period mainly coverage COVID-19 crisis. Due to the outbreak of the corona virus, activities of the establishment have negatively impacted in the manufacturing as well as in the employment of the labors. Moreover, the government tightened containment of measures, including closure of public places for gathering and imposed countrywide lockdown in late March 2020, which was subsequently extended twice. During the period, the company employees have been reduced 50% as the restriction imposed by the government. The pandemic and containment measures (such as border closure) introduced at onset of the pandemic has also disrupted the activities of the establishment also.

In the above circumstances, appellant requested that the order maintaining short assessment bill issued for 6 months preceding the date of inspection as judged by the Consumer Grievance Redressal Forum (NR) may be dismissed considering the facts since the licensee failed to establish their arguments that there were financial losses to KSEBL in the form of electricity charges and other items due to this out of order of the said CT Coil. Hence the necessary orders may favorably be issued by repealing the Orders No. OP No.47/2021-22 of the CGRF (NR).

Arguments of the review respondent:

As per section 114 Order 47 Rule 1 of Code of Civil procedure, 1908 one who from the discovery of new important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

In the matter at hand this review petitioner could not bring forward any new important matter or evidence that was omitted by him during the trial stage or he could not point put any mistakes or error apparent on the face of the record or any other sufficient reason that justifies review of the order already passed by this

Hon'ble Ombudsman. Besides the above, as per Art. 124 of the Limitation Act, 1963 the period of limitation for a review of the order is thirty days from the date of the order. Here the Order in OP 45/2022-23 was passed on 05.09.2022 and the review petition is filed on 13.10.2022 i.e after a period of 13 days.

In view of the above, this Hon'ble Ombudsman may be pleased to not to entertain this Review Petition and dismiss it in limine.

On 16.04.2021, APTS conducted inspection at the said firm and detected one CT coil B phase open condition. It was found that the wire to the CT connection portion was found burned which resulted in improper current carrying to the meter there by causing 28.28% less recorded consumption. The CT inspection was done in the presence of supervisor of SS Business Corporation and Mr Sheriff Abdul himself is convinced of the matter.

Since the exact date of CT open condition was not known, as per regulation 152(3) of supply code regulation 2014, a short assessment bill was served to the consumer amounting to Rs 1,13,606/- taking 12 months period. However, the consumer did not remit the short assessment amount instead on 06.07.2021, consumer requested for downloading the logged data from the concerned energy meter so as to ascertain the correct date on which the original CT coil got opened so as to revise the assessment period. On 07.07.2021, the energy meter was dismantled and send to Meter testing unit at Kannur to download the logged data. The downloaded data tested on 08.07.2021 (tamper data and load survey details) was submitted for perusal in the hearing conducted against OP 45/22-23. The meter installed at the consumer premises was SECURE meter make and as per Meter testing Unit it is learnt that in the SECURE meter, downloaded data could be retrieved for a limited period for 29.05.2021 to 08.07.2021. Downloaded data also contained data from 2018,2019 also.

At the time of hearing, the downloaded data reports were interpreted which showed current missing case as well as neutral disturbance cases. It may be noted that the CT was replaced on 11.08.2021, until that time current missing case was recorded in the downloaded data from 5/2021 and hence it is evident that current missing case persisted in the consumer meter much earlier itself. All

such data were retrieved from the downloaded data only. Neutral disturbances were also seen which substantiate for low current recordings in the meter from 2018 onwards.

Since the exact date of occurrence of CT open condition could not be ascertained from the downloaded data and as per regulation 152, short assessment for 12 months was served.

Also, the consumption pattern of the industry was studied to ascertain variations in recording of consumption pattern during such period and found that average consumption for the period from 2019, 2020, 2021 and 2022 are 4936 units, 343 units, 3742 units and 4691 units respectively. It is noted that the consumption recorded during 2019 and 2022 are higher. After replacement of the CT by the consumer in 8/2021, the consumption recorded is higher when compared to CT defect period before 8/2021 and during 2020. The recorded average consumption from 1/2021 to 7/2021 is 3308 units while recorded average consumption after CT replacement from 8/2021 to 12/2021 is 4348 units while average consumption from 1/2022 to 6/2022 is 4691 units which shows that the recorded consumption pattern has gone up after the CT replacement.

The petitioner had first approached the Hon'ble Consumer Grievance Redressal Forum, Kozhikode. The Hon'ble Forum directed the petitioner to pay the short-assessed bill calculated limiting to 6 months period. Aggrieved by the order of the Hon'ble Forum the petitioner filed an appeal before this Hon'ble Ombudsman and this Hon'ble Ombudsman also vide Order dt. 05.09.2022 directed the petitioner to remit the short-assessed amount limiting the period to 6 months. The amount short assessed is nothing but the charges for the energy used by the petitioner and the petitioner is now taking a stand that he will not remit the current charges due to the respondent. Such a stand is against the law of the land.

In view of the above it is submitted that there is no ground for reviewing the order passed by this Hon'ble Ombudsman and hence this Hon'ble Ombudsman may be pleased to dismiss this review petition.

Analysis and findings:

The hearing of the review petition was conducted on 10-11-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The review appellant Sri. Abdul Shareef was attended the hearing and Smt. Sreevijaya. P.V., Assistant Executive Engineer, Electrical Sub Division, KSEBL, Kallai attended the hearing from the review respondent's side. On examining the review 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.

The review appellant filed the appeal petition and accepted as P045/2022. The order has been issued by this Authority after meeting the process and procedures and also after the hearing, which was conducted on 02-09-2022.

The Section 27A of KSERC (CGRF & Electricity Ombudsman) Regulations 2005 clearly states that the review petition is to be filed as follow:

Section 27 (A) (1) The Electricity Ombudsman may, either on its own motion or an application of any person aggrieved by an order, review its order on the following grounds, namely: -

- (i) On the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not with his knowledge or could not be produced by him.
- (ii) Mistake or error apparent on the face of the record.

Section 27 (2) An application under clause (1) shall be filed within period of fifteen days from the date of receipt of the order.

Provided that the Electricity Ombudsman may entertain an application after the expiry of the said period of fifteen days, if it is satisfied that the applicant had sufficient cause for not preferring the review within such period.

Section 27(3) If on a preliminary examination of the application, if the Electricity Ombudsman found that there is no sufficient ground for review, it shall reject the application after affording an opportunity of being heard to the applicant.

The review petition has been filed on 13-10-2022 and the order of this Authority on P045/2022 was issued on 05-09-2022. If we consider postal delay for 10 days, this would have been received on 15-09-2022 and then the review petition would have filed within 15 days from 15-09-2022.

As per Section 27 (A), the review could have been accepted if any new matter or evidence have been produced which could not have been done at the time of the process of the review petition. The arguments were all the same as that of the appeal petition. The review appellant has failed to produce any evidence or proof to support his claim.

Section 152 (3) of Kerala Electricity Supply Code 2014 states on “Anomalies attributable to the licensee which are detected at the premises of the consumer” as follows:-

Section 152 (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.

This Section is very clear that if the exact date of occurrence and anomaly has not been able to assess, the short assessment is to be changed for 12 months preceding the inspection. However, the CGRF has been revised the short assessment to 6 months and quashed the short assessment bill of 12 months. This is seen to be a consumer-friendly approach.

During the hearing, the review respondent was mentioning that some data downloaded for the meter shows that neutral current disturbance was observed

since 2018. The breakage of CT wire of one phase would have been one of the reasons for such disturbances.

As there is no fresh issues matter or evidences, which have not been considered during the process of appeal petition, the review petition is not having any merit to consider.

Decision: -

The review petition is not maintainable and hence, dismissed.

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

ELECTRICITY OMBUDSMAN

RP/006/2022/ _____ dated _____.

Delivered to:

1. Sri. Shareef Abdul, Marakkayil House, Karuvanthuruthy P.O., Feroke, Kozhikode Dist. 673 631
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kallai, 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