THE STATE ELECTRICITY OMBUDSMAN
D.H. Road & Foreshore Road Junction, Near Gandhi Square,
Ernakulam, Kerala-682 016
Ph: 0484 2346488, Mob: 8714356488
www.keralaeo.org Email: ombudsman.electricity@gmail.com

Appeal Petition No. P/008/2023

(Present A. Chandrakumaran Nair)

Dated: May-04-2023

Appellant : Junior Telecom Officer
BSNL Mattanur Telephone Exchange Mattanur,
Kannur (Dt),
PIN- 670702

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEB Limited,
Iritty, Kannur (Dt)

ORDER

Background of the case

The appellant Jr: Telecom officer, BSNL, Mattanur, Kannur is the consumer of the Licensee (KSEBL) under the Mattanur Electrical Section with consumer no: 1166754004927. The power connection was availed on 14/1/1997 with connected 45.368 kw in three phase. The metering arrangement is through CT of ratio 100/5. A telephone exchange and a JTO office are situated in this building. APTS, Kozhikode conducted an inspection on this premises on 21/07/2017 and found that the current reading in the meter was zero in Y phase. The meter was tested with calibrated test meter and noted that the consumption was 46.9% less than the actual. While downloading the meter data, its noted that this fault was existing since 13/11/2012. The short assessment bill for period from 13/11/2012 to 21/07/2017 was raised on 29/07/2021. The reason for the delay in raising the bill was mentioned as due to administrative reasons. This was contented by the appellant and filed petition to the CGRF. The CGRF issued order stating that the petitioner is liable to pay the assessment bill. Aggrieved by the decision of CGRF, the appeal petition is filed to this authority.

Arguments of the appellant

1. The appellant/complainant filed, Appeal for revision of short assessment bill, had been submitted to Assistant Engineer, KSEBL, Mattannur vide letter No. G1/KSEB/JTO MTR/2021- 2022/01 dated at Mattannur the 12/08/202. Reply for this letter was issued by Executive Engineer KSEBL, Iritty Division directing BSNL to "forward the appeal to appropriate authorities or judicial forum for favourable decision".

2. Thereafter, appeal was submitted to Deputy Chief Engineer, KSEBL, Electrical Circle, Sreekandapuram. Vide letter No. 03/KSEB/JTOMTR/2022-23 dated at Mattannur the 12/04/2022. The same was replied by Deputy Chief Engineer, Electrical Circle Sreekandapuram stating that "we opine to submit the grievance for the kind consideration and judgement of Consumer Grievance Redressal Forum (CGRF). Thereafter, Appeal to CGRF was submitted for consideration which was not properly considered the points submitted by the Appellant/Complainant legally and the facts of the case. Hence this Appeal under the following among other grounds:

3. Although the connections to Telephone Exchange, Mattannur, is LT, 3 phase-4 wire system, all the equipment's except 1 No. 2HP domestic water pump are working in single phase supply. Hence the loading on each phase varies as per the usage pattern and time of the day. The 4 A/C units (1.5TR, Hitachi make) rated 2400 watts are connected in R-Y-B phases respectively and switched on cyclically at every 8 hours so that only two numbers of units work at a time. More over AC units are fitted with temperature sensors and the units automatically cut off once the set temperature is reached (24+2C) and cut in take place only at 26C. Thus, the actual working time of AC units depends on the temperature inside the switch room. More over during Monsoon and winter seasons one unit is enough to cool the switch room. Thus, the load from AC units in different phases depends on the temperature conditions, cut off/ cut in time of AC units, cyclic working of units, climatic conditions, and seasonal variations.

4. Although the Mahassar says 2 AC units are working at the time of inspection, it was not clearly given in which phase the 2 No. s of units were working, what is the load current drawn by these units, whether units are giving proper cooling, the climatic condition at the time of testing etc. on which the load pattern of the AC units depends.

The light, Fan, exhaust fan etc. are also single-phase equipment's connected in different phases. one cannot assume that load in different phases due to the above will be uniform throughout the year. The load always varies depending up on the area of usage, time of usage and climatic conditions.

5. There is two numbers 5200w SMPS units used in Mattannur exchange as given in the Mahassar. The SMPS units (2 Nos) connected to float rectifier of Mattannur Exchange which is ITI make and rated 48V, 5600w. Each 5600w module comprises 3 Nos of 35A single phase sub modules connected in RYB phases in parallel. Thus, at any event, the failure of one sub module connected in one of the phases, the other two takes up the load with a reduced capacity. Although 2 Nos 5600 w SMPs units (100A x 2) are connected to the system, the normal exchange DC load is 52V, 51Amps. The load delivered by the units depends on charged condition of the battery, exchange load, working/stand by condition of the electronic switches etc. In this case also the load in each phase varies as per the usage.

6. The version of the respondents dated 26.09.2022 that, "since there was no reading in Y phase current in the meter, the primary and secondary currents of the three CT's were tested by the inspecting team with a standard calibrated equipment as stipulated. The data so obtained to the inspection team during the test conducted on 21.07.2022 are reproduced as Rph 5.9A/0.345A, Yph22.2A/0.00A, Bph 13.8A/0.768A. If the meter had been calibrated as stated above, the reading for a CT rated 100/5 with respect to primary should have been as given below.

   The value for R-phase CT: 5.9A & 0.0.295 A
   The value for Y-phase CT: 21.2A & 0.00 A
   The value for B-phase CT: 13.8A & 0.690 A
   The above shows that the standard calibrated meter used for testing outputs an error of +16.95% in R phase and +11.30% in B phase which is observed to be far above the allowable tolerance limit of +/- 2%. Hence the veracity of test values itself casts apprehensions. It can be inferred that the load pattern in the exchange over a long period of time cannot be reliably and conclusively assessed through a mere 5- or 10- minutes test. Hence the short assessment calculations made by the Assistant Engineer, KSEBL, on the assumption that the load and consumption pattern will be uniform throughout the past five-year period (from 13.11.2012 to 21.07.2021) is baseless and lacks merit.

7. The major duties and responsibilities of meter reader as stipulated by KSEBL reads as, "if any abnormalities noted, enter in abnormality register and inform the concerned official".
   Monthly meter readings were taken by KSEB, noting parameters such as consumption, MD KVA, RMD etc. it is unfortunate that either the meter readers or the billing assistants failed to identify abnormalities in meter reading if any existed during the 5 years period (from 11/2012 to 07/2017).

8. In the instant case neither the CT nor the meter was replaced by KSEBL. On 19.07.2019 the reading was abnormally high without any change in consumption pattern which may be due to the fault in meter which was not replaced by KSEB even after it was known during the inspection and stated in the inspection report that the metering is faulty. Thus, KSEB has willfully done an injustice to BSNL (without changing the faulty meter even after observing in the inspection that meter is faulty) by overcharging BSNL from 21.07.2017 to 19.07.2019 in addition to issuing a reassessment bill for the Period 11/2012 to 21.07.2017. Hence KSEB is liable for refund of excess amount charged to BSNL.

9. The contention of the respondent in their version to CGRF, that, "Though the inspection was on 21st July 2017, due to some administrative reasons, the demand notice was served to the consumer after a lapse of 4 years and 7 days i.e., on 29.07.2021. The delay attributed to administrative reasons is against the principle "ignorance of law is no excuse".
   The Kerala Electricity supply code 2014 shall be applicable to all distribution licensees including deemed licensees and all consumers and users in the state of Kerala. The salient points of the code applicable to the instant case are given below.
   As per Section 113 (2), of Kerala Electricity supply code 2014, the licensee shall conduct periodical or testing or both and calibration of the meters as specified in Central Electricity authority (Installation and operation of meters) regulations 2006 as amended from time to time, as per 113 (6) of the code, the licensee shall conduct periodical inspection or testing or both of the meters for LT 3-phase meters — once in three years & as per 113(7), whenever applicable, current transformer and potential transformer and the wiring shall also be tested along with the meters. Any inaccuracies could have been found out within the last five years prior to the APTS inspection, if the licensee had followed the regulations.

10. In the instant case, the error occurred can be taken as an anomaly attributable to the licensee 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, inaccuracies in metering etc. and which invites the application of regulation 152(3) of Kerala state Electricity supply code 2014, by which the licensee entitled to realize the short assessed charges due to the error in taking meter reading up to a maximum period of 24 months even if the period during which such anomaly persisted is found to be more than twenty four months.

It is also stated in the code that if the period of short collection due to anomalies is not known or cannot be reliably and assessed, the period of assessment of such assessment of short collection of electricity charges shall be limited to twelve months. In the given case the short collection cannot be assessed reliably and conclusively due to the cyclic and variable loading pattern in Telephone exchanges depending upon the various factors narrated in the above paragraphs for the period under contention. Hence the assessment of short collection of electricity charges shall be limited to twelve months.

11. As per 155 (9) of Kerala Electricity supply code 2014, the provisional assessment order describing the reasons and basis of the assessment along with detailed calculation sheet shall be issued to the consumer of the premises soon after the inspection, preferably within two working days from the date of inspection. As per section 157, of Kerala Electricity supply code 2014, the assessing officer shall take a final decision considering all the facts and evidences and shall, within 30 days from the date of provisional order shall issue the final order. In the given case no provisional order was issued by any officer and the final order was issued by Assistant Engineer, Electrical section Mattanur KSEBL on 29.07.2021 after a lapse of 4years and 7 days requesting to remit the bill amount within 30 days from the bill date is illegal and against law.

12. The final order issued by AE KSEB is in contravention to section 157 of Kerala State Electricity supply code 2014 given above and the assessment is observed to be unreliable and lacking merit. Hence the same may quashed.

13. Having regard to the techno-legal facts as well as the settled legal propositions stated above, it is humbly submitted that the statement of facts presented by the respondent before the Hon'ble CGRF is devoid of reliability, conclusiveness, and merit. Hence the order confirming the short assessment bill dated 29.07.2021 issued by the respondent may be dismissed and may allow this appeal with cost to the appellant in the interest of justice.

Arguments of the Respondent

1. It is submitted that an inspection was conducted in the premises of the consumer on 21st July, 2017 and certain anomalies were detected. The metering arrangement was CT-connecting metering (L & T Make; Serial No.05451402) at 16A having CT ratio of **100/5A**, that is with multiplication factor of 20. At the time of inspection, in the meter display, the voltage readings were 231.6V (R- phase), 232.5V(Y-phase) and 241.8 V (B-phase). Whereas the current readings were: 0.345 NR-phase), **0.000A(Y-phase)** and 0.768A ((B- phase).

2. Since there was no reading for the Y-phase current in the meter, the primary and secondary currents of the three CTs were tested by the inspecting team with standard calibrated equipment as stipulated. The data so obtained at the testing is reproduced below:

   The values for R-phase CT: 5.9A & 0345A

   The values for Y-phase CT 21.2A & 0.00A

   The values for B-phase CT I3.8A & 0.768A

   The data revealed that in Y-Phase CT, current was not available in the meter. The electrical installations of consumer had been working properly and consume electricity depending on their working conditions and usage. Though the consumer had been consuming electricity commensurate with his load profile, in the absence of current in **Y-phase**, the quantum of actual consumption commensurate with load as per principles of electricity is not seen properly recorded in the meter.

   It is true that the consumer had been consuming energy during the said period.

3. As envisaged in the Regulations, the inspection team tested the meter using ZERA make standard calibrating test meter. The data of test meter and consumer meter is as follows:
   Test meter 2.26 kWh Consumer meter 1.2 kWh.
   The error is thus 46.9% less than correct reading.

4. The inspection team downloaded the data from the consumer meter and found that the Y-phase current was not available from 13.11.2012 6.39 a.m. Regarding the veracity of the test meter, the consumer has wrongly interpreted the results of the test. It is submitted that the test meter is accurate a far as the respective current reading are concerned. The primary to secondary ratio error is altogether different matter 'which ties to CT properties. Therefore, the error of 16.95% and 11.3% attributed to the test meter by the consumer is wrong. It is further submitted that the short assessment calculation is based on the factor of 46.9% applied to the readings (kWh) of the energy meter which recorded the units using two phases only (the correct phases R and B). There is no assumption of uniform consumption pattern in the calculation. Asper regulation 14. of the Kerala Electricity Supply Code, 2014, all consumers except single phase consumers shall balance their load, in such a way that the difference in loading between phases does not exceed five percent of the average loading of the phases. As such, contention of the consumer that the load of each phase varies as per the usage pattern and time of days is not legally sustainable. It is the bounden duty of the consumer to make sure that the load is balanced one.

5. Though the inspection was on 21st July, 2017, due to some administrative reasons, the short assessment for Rs. **20,00,338/-** being the charges towards escaped energy covering the period from 13.11.2012 to 21.07.2017 was served to the consumer on 29.07.2021 with short assessment bill, detailed calculation sheet and meter reading data. The short assessment was raised to recoup the escaped energy in view of the non-working of **Y-phase**. As Per principles of electrical energy, the energy is consumed by the consumer, there upon BSNI, is liable to pay the said current charges demanded in the notice.

6. While raising the short assessment demand, electricity tariff issued by the competent Authority from time to time, applicable electricity duty as envisaged in the Kerala Electricity Duty Act and amendments thereto has been taken into consideration. The consumption. the computed consumption based on percentage error, assessed amount is summarized below:

Period	Consumption as per meter reading (kWh)	Computed consumption (kWh) applying error percentage (46.9%)	Short assessment units (kWh)	Tariff (LT)	Rate (Rs.)	Short assessed amount (Rs.)
	(a)	(b) = (a)/0.531	(c)	(d)	(e)	(d) x (e)
13.01.2012 to 30.04.2013	20912	39382	18470	VIIA	8.5	1,56,995/-
01.05.2013 to 15.08.2014	71419	134499	63080	VIIA	9.1	5,74,028/-
16.08.2014 to 05.11.2014	10005	18842	8837	VIIA	9.3	82,184/-
06.11.2014 to 21.07.2017	126464	238162	111698	VI F	9.0	10,05,282/-
total			**202085**			18,18,489/-
Duty 10%						1,81,849/-
Grand total						**20,00,338/-**

7. As per rules and regulations the load must be balanced one. It is the responsibility of the consumer to maintain his equipment in such a way that the load is balanced one. As per rules in force the load of the SMPS are not taken into consideration in the computation of connected load, as it is stand by one.
   It may be noted that as a general industry practice the consumers maintain the log- book regarding energy usage and related electrical parameters. As far as the BSNL is concerned, the maintenance and upkeep of log-book become necessary, as working area is strategically importance and have of national security, in case of dispute, there are instances wherein the readings and parameters of log-book give fair idea in computing the average consumption. Moreover, the log- book reflects and points to any snag in the electrical installation pointing to rectification if necessary.

8. The relationship between the consumer and distribution licensee is governed by an agreement and distribution licences supply electricity on the rates and levies fixed by the Electricity Regulatory Commission from time to time. The Electricity Act, 2003 is a special Act and as per the scheme of the Act, there is a grievance redressal mechanism namely, Consumer Grievance Redressal Forum, and on appeal Electricity

Ombudsman. As such the BSNL exercised the statutory remedy available, by filing present petition.
As such in the regulatory regime governing electricity sector reference to the High-Power Committee does not arise.

9. Various courts have clarified the position of issuance of short assessment bills on limitation period. The limitation runs from the date of issuance of demand notice, as evidenced by the decisions of High Court of Kerala in P Sunderdas vs. KSEB, and High Court of Jharkhand in M/s Shea Shakthi Cement Industries v. Jharkhand Urjavikas Nigam Limited. The demand was raised invoking Regulation 134 of the Kerala Electricity Code 2014.
Regulation 155 to regulation 157 of Kerala Electricity Supply Code 2014 refer to provisional and final assessments as per Section 126 of the Indian Electricity Act which deals with unauthorized use of electricity and hence are not applicable in this case.

10. Having regard to the afore stated factual as well as the settled legal propositions, it is humbly submitted that the petition is devoid of any merit and hence the same may be dismissed.

Counter Arguments of the appellant

1. It is stated by the respondent in their statement of facts at sl.No.3, that, certain anomalies were detected during the inspection on 21sJuly 2017. The anomaly was stated as current reading of zero in Y phase of the meter.

   It is submitted that, at sl. No 4 it was stated by the respondent that, Y phase current was not available in the meter. lt is also stated that in the absence of current in Y phase, the quantum of actual consumption as per principle of electricity is not seen properly recorded in the meter. It may be noted that the reasons for the above shall be either a fault in CT or a fault in the electricity meter itself.

2. 1f there was a disconnection fault in the secondary of the CT, the CT should have burned and would have gone faulty. Since the CT was not replaced, it is presumed that the CT was intact. Since the CT was intact and if there existed a fault, it may be due to a fault in the electricity meter (The electricity meter also was not replaced). The details given below shows that there existed an over reading fault in the meter, and KSEB have Knowingly over charged BSNL in addition to issuing an unethical whooping bill for Rs 20 lakhs based on the readings in faulty electricity meter and unreliable assumptions.

3. 1n the instant case, neither the CT nor the electricity meter was replaced after the inspection. More over nowhere it is stated that, what were the actual reasons for the said fault if any existed, and the remedial action taken by the authority for rectification of the same.

It is submitted that, Meter readings, six months prior to disputed period (05/2012 to 10/2012), Meter reading six months during the disputed period after the inspection (11/2017 to 03/2018) and the Meter readings six month after replacement of faulty meter on 19/07/2019, respectively are given below:

Meter readings, six months prior to disputed period		Meter readings, six months during disputed period (Just after the inspection)		Meter readings, six months after replacement of meter on 19.07.2019	
Month	Units(kWh)	Month	Units{kWh)	Month	Units(kWh)
05/2012	4852	08/2017	5986	08/2019	4640
06/2012	4497	09/2017	6478	09/2019	3820
07/2012	4936	10/2017	6066	10/2019	3840
08/2012	4803	11/2017	6546	11/2019	3820
09/2012	4322	12/2017	6958	12/2019	2760
10/2012	5982	01/2018	4966	01/2020	3100

4. From the table given above, it can be seen that, the unit consumption prior to the disputed period up to the date of inspection and that after the replacement of meter on 19.07.2019 **(Meter replaced by KSEB on their own on 19.07.2019, i.e., after almost** 2years from the date of inspection.) are almost uniform, whereas the consumption recorded during the disputed period is 1.5 times more than the normal reading.

5. Thus, KSEBL have over charged BSNL from 08/2017 to 19/07/2019 without changing the faulty meter **(The faulty meter was changed only on 19.07.2019)** In addition to this, a short assessment bill for Rs 20 lakhs was issued to BSNL based on the assumptions made from the readings in faulty meter.

The statement of facts submitted along with the original petition by the petitioner may be read in conjunction with these remarks on the statement of facts submitted by the respondent.

Having regard to the techno-legal facts as well as the settled legal propositions stated in the original petition and this remarks against the statement of facts submitted by the respondent, it is humbly

submitted that the statement of facts presented by the respondent is devoid of reliability, conclusiveness, and merit. Hence the order confirming the short assessment bill dated 29.07.2021 issued by the respondent may be dismissed and may allow this appeal with cost to the appellant in the interest of justice.

Analysis and findings

The power for the telephone exchange of BSNL Mattanur was connected on 14/01/1997 with the connected load 45.368kw. The metering of the power consumption is through CT arrangement of ratio 100/5 and hence the CT ratio is 20. There was no record of inspection of the premises till 21/07/2017. APTS, Kozhikode unit has conducted an inspection on 21/07/2017 and the mahassar was prepared. The current reading in the meter for Y phase is zero. When the test meter connected it shows current in Yphase. The power consumption was compared with that of test meter and it shows the meter reading in 46.9% less than the actual reading. Though the mistake in the metering was noticed on 21/07/2017. The short assessment bill was raised only on 29/07/2021 which is after a lapse of 4 years. The meter data was down loaded and found this fault was occured on 13/11/2012. The short assessment of Rs. 20,00,338/- was issued for a period from 13/11/2012 to 21/07/2017.

The appellant has disputed the short assessment bill. The details of electrical gadgets connected are tube lights, fans, exhaust fans, one induction cooker, A/C units 4 Nos and SMPS 2 Nos. The appellant has complained to Assistant Engineer, KSEB, and DY, CE for revising the bills and no. action is taken. Then filed petition to CGRF.

The power supply connection was affected on 14/01/1997and the meter defect developed on 13/11/2012 and this error was found out only on 21/07/2017. There was no inspection carried out for 10 years after the service connection.

The section 113(6) of Kerala Electricity supply code 2014 states *"The licensee shall conduct periodical inspection or testing or both of the meters for LT 3-phase meters – once in three years"* and as per 113(7), *"whenever applicable, current transformer and potential transformer and the wiring shall also be tested along with the meters".*

The licensee should have conducted periodical inspection every three years and same is not been adhered here in this case.

The Kerala Electricity Supply code 2014 Section 2(57) defines the meter as *"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 meter is inclusive of CT and CT is not properly connected / break in the circuit, the meter is considered as defective. Hence the CT terminal connected to the meter is loose and hence there was no current reading.

The Section 125 of supply code describes about the billing when the meter defective. 125(i) *"if the meter is defective the bills are to be raised based on average consumption of the three billing cycles preceding to the fault in the meter"*.

When the meter is defective the consumer is to be billed on the basis of the average consumption of the past three billing cycles immediately precede the date of defect. Hence that means the average consumption preceding 13/11/2012.The short assessment bill raised on the result of testing of meter on 21/07/2017 and the testing would have done only for a short duration and then the test meter recorded a reading 2.26 kwh and that of consumer meter recorded 1.2 kwh and then the error arrived as 46.9% less.

Can it be a correct method for short assessment? No. The testing for short duration cannot be a method to arrive the short assessment. The testing is done only for a short duration, the load pattern may change depends upon the time and nature of the load. The load of a telephone exchange is depend on the switching operation happening at given time and also load vary seasonally such as the load of Air conditioners etc. Section 136 detailed about the recovery of arrears and time limitation.

136(1) *"The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due".*
136(2) *"The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due date indicated in the demand notice"*

136(3) *"No such sum due from any customer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied".*

This is very clear that the short assessment should not be applicable for more than two years.

The very peculiar case is that the billing was done only after 4 years of detection of the mistake. The bill would have raised immediately after the detection of defect. The official who is responsible is to be identified and disciplinary action is to be taken for this revenue loss suffered by the licensee. The default is happened from the licensee in detecting the defect in time and raising the bills and hence surcharge should not be charged to the consumer.

Decision

1. The short assessment bill issued is quashed herewith.

2. The short assessment is to be revised based on the average consumption of the past three billing cycles immediately preceding 13/11/2012 as per section 125 of the Electricity Supply Code 2014.

3. The short assessment bill should be for a period two tears as per section 136 of the Electricity Supply Code 2014.

4. No surcharge is to be levied till 30 days from the receipt of this order.

5. The official responsible for delay in billing after the detection of defect is to be identified and necessary action is to be taken by the licensee

ELECTRICITY OMBUDSMAN

No. P/008/2023/ dated

Delivered to:

1. Junior Telecom Officer,BSNL Mattanur Telephone Exchange, Mattanur, Kannur (Dt),PIN- 670702
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Limited, Iritty, Kannur (Dt)

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Gandhi Road Kozhikode-673011.