

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/045/2023
(Present A. Chandrakumaran Nair)
Dated: November-22-2023**

Appellant : Sri. Markose Xavier, Kandathil, 63-
Aradhana Nagar, Sanker's Junction,
Kollam (Dist.)- 691001.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kerala State Electricity Board Ltd.,
Kollam (Dist.).

ORDER

Background of the case

The appellant Shri. Markose Xavier is the husband of Juliet Xavier who is the consumer of the licensee (KSEBL) with consumer no. 1145594003761. The consumer was expired and he is the legal heir of the consumer as per the certificate issued by the Revenue Authorities. The power connection is 3 phase with tariff LT IA. The meter reader visited the premises on 02/07/2022 and issued bill for 07/2022 to the consumer. There was no display in the meter, and recorded status as SF (suspected faulty) and the bill prepared based on the average of the previous consumption's. The second bill dated 02/09/2022 also issued based on the average reading and the status is recorded as D/L. The meter is installed outside and hence the door lock condition is not applicable. The bill for 02/11/2022 also issued in the same pattern. The meter was replaced only on 04/11/2022. The licensee is not supposed to raise the bill based on average consumption more than 4 months(two billing cycles) and within this period the licensee has to replace the meter. The allegation of the appellant is that the licensee has raised the third bill illegally. The appellant has filed the petition to the CGRF and CGRF issued order dated 18/08/2023 stating that the petitioner is liable to pay the bills issued by the licensee. Aggrieved with the decision of CGRF, this petition is filed to the Electricity Ombudsman.

Arguments of the Appellant

1. As part of the regular meter reading the meter reader visited the above premises on 02.07.2022 morning, checked the meter and issued the bill for 07/2022 then and there to the consumer. A copy of the bill is attached here and marked as Ex-1. On the bill it is noted the status of meter as SF and no status of the bill is marked whether, regular bill, assessed bill,, Provisional bill etc. Also it is recorded on the consumption column as 422 units. It is particular to note that meter rent levied as Rs. 35.40/- if a meter is found suspected faulty,, the meter shall be inspected as required in section 1(d) of boards circular No. D (D&S)/D2/General-08/2015 dtd 25-02-2016 issued by the secretary KSEBL without performing the above activity the meter reader issued the bill then and there on 02.07.2023 itself to the consumer.

2. The second bill dtd 02.09.2022 pertaining to 09/2022 is issued to the consumer with DL status of meter. It is particular to note that the meter is installed outside the building door of the consumers and the DL lock will not affect the business of the meter reader. And the door lock is the status of the Door and not the status of meter. Here also the meter reader visited the premises, checked the meter and issued the bill, with regular reading on the consumption column. It is surprising that consumption is recorded on the bill with a DL status.

The third bill dt 02.11-22 pertains to 11/22 was also issued as in the same pattern of the second bill with same status of meter as DL.

The consumer complained to both Asst. Engineer and Asst. Executive Engineer regarding the error in metering and billing. The Asst. Ex engineer assured vocally that bill can be revised when changed meter reading is taken.

3. According to the reply the three bills were issued in accordance with section 125 of supply code. But the 125 mentioned in the item 3(b) is limited to issue the bill for two times only. Also it is directed that the meter shall be tested according to section 116(2) of supply code before applying section 125 which is also mentioned in the above circular as item 2(c). This is not done and confirmed that the meter is defective. Also the average calculation is to the intimated to the consumers as per circular item (4)

The licensee is permitted to issue average bill only for two billing cycles and during this period the faulty meter is to be replaced. The licensee contents is that meter was not available for reprisal, this is to be supported with CMR (consolidated material registrar) only.

4. On verifying the AEE's letter it appears that the meter, became facility and replaced on 04.11.2022. He is a higher authority than AE and hence

more reliable ie. the meter became faulty only on 04.11.2022. The AEE says meter is faulty, the AE says the meter is defective, and the meter reader says it is SF and DL, nobody tested the meter in laboratory. So what is truth! truth is still to be revealed after testing the meter.

On the above reasons it is proved beyond doubt that the metering and billing are not done according to supply code 2014, and Boards circular dtd 25.02.2016. So the bills are unsustainable on law.

5. Since the consumer did not get justice from the respondents, the consumer approached the redressal forum at Kottarakara on 03.03.2023. After processing the complaint the forum issued the verdict on 18-08-2023. The above order reads that "the regular bills for the billing months of 07/22, 09/22 and 11/22 were computed and issued by the licensee in accordance with regulation 125 of supply code 2014, the petitioner application to revise the bills in not sustainable".
6. From the above it is clear that regular bills are issued with irregular meter status. This is highly contradictory. Regulation 125 is applicable to defective meters, confirmed through testing and that too is strictly limited to two billing cycles, and also replacing the defective mater.

The billing also shall be strictly as per the boards circular referred above. The forum is strictly bound to obey boards circular and supply code 2014. Also it is clear from the decision of the forum that they did not even verified the disputed three bills, on which it is mentioned the status on meter as DL and SF and no test confirmed meter as defective by which regulation 125 can be applied. The forum asks the consumer to remit the three disputed bill, but the truth is that the consumer already remitted all the three bills in time. The forum is acted against the supply code 2014 and board circular referred earlier and did not examine and ascertain the violations mentioned earlier. The respondents are splitting the regulation and the circular two or three parts and accepting what is favourable to them. This is a serious situation.

"THE VIOLATION OF LAW IS CORRUPTION"

During the course of the judging process, the forum arrived to an opinion stage and immediately they changed to decision stage without examining strong evidences against the licensee and hence also the decision is unsustainable on law. The consumer approached the forum for justice, but the consumer got high in justice order from them.

On the fore going reasons and so may often reasons which will be raised during hearing itself is in prayed as follows.

7. **Reliefs**

It is prayed that the Hon'ble Ombudsman may be please passed orders.

- I. To cancel the order of the forum and declare it as void and null.
- II. To declare the disputed 3 bills of 7/22, 9/22 and 11/22 as illegal.
- III. To pass an order directing the respondents (not KSEBL) to pay an amount equal to 100 times the amount of 3 illegal bills to the petitioner as the meter was running fast before it is replaced for along time and so defect is attributable to the licensee. After the meter is replaced the reading came to just half .
- IV. To grant other relief as desired by the Hon'ble Commission.

Arguments of the Respondent

1. The petitioner is a consumer under the jurisdiction of Assistant Engineer, Electrical section, Kadappakada with consumer number 1145594003761 in the name of Mr. Markose Xavier, Kandathil, 63 Aradhana Nagar under LT IA tariff with connected load of 5795 watts. All averments of the petitioner in the petition are denied except those which are specifically admitted here under. His argument against average billing is baseless and that may be denied. The billing was done as per the procedure mentioned in Regulation 125(1) of Kerala Electricity Supply Code, 2014.
2. *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.
3. It is most respectfully submitted that,as part of bimonthly meter reading,the meter reader visited said premises on 02/07/2022 and found that meter showing no display and became suspected faulty.Hence bimonthly bill for billing cycle 07/2022 was generated for 422 units based on previous average consumption.As there was no display, meter was declared faulty as per Regulation 116 of Supply Code. Regular bill for the month was computed on the basis of average consumption for past three billing cycles prior to the billing month of

July 2022. Billing was done as per the procedure mentioned in Regulation 125(1) of Kerala State Electricity Supply code 2014. Since the meter showing no display, there is no necessity to test the meter in laboratory to confirm it as faulty. The petitioner never raised any objection against the consumption recorded nor submitted any application to test the meter and no testing fees remitted in this regard. If he submitted any application to this office for testing meter, all arrangement would have been made for that. Even in the application submitted by petitioner regarding regularizing bill on 18-01-2023, testing of meter was not demanded. So the claim mentioned by the Petitioner is baseless and may be denied.

4. It is most respectfully submitted that, as the meter showing no display and no availability of meter reading during billing periods 09/22 & 11/22, the bimonthly bills were generated for 422 units as per previous average consumption. Billing was done as per the procedure mentioned in Regulation 125(1) of Kerala State Electricity Supply code 2014. But in the bill issued to petitioner during 9/2022, status of reading was shown as DL, since the meter reader erroneously entered the status of meter as DL instead of SF. During 11/2022 the main gate of the petitioner was locked while gone for reading, unable to enter the premises and entered the status of reading as 'DL'. On viewing the billing pattern in Orumanet billing software, it was clearly entered the status of meter as 'SF' during bi-months 07/2022, 09/22 & 11/22. Status of the meter entered at the time of reading didn't affect the bill amount. Billing was done as per the procedure mentioned in Regulation 125(1) of Kerala State Electricity Supply code 2014 and the faulty meter was replaced with new meter on 04.11.2022. No doubt or dispute has been raised by the petitioner regarding the status of meter as 'DL' in the application submitted by petitioner.
5. It is further submitted that in reply to the application submitted by the Petitioner it was clearly mentioned that the billing was done as per the procedure mentioned in Regulation 125(1) of Kerala State Electricity Supply code 2014. It is submitted that as per Regulation 125(1) of The Kerala Electricity Supply Code, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the meter being found or reported defective. In the instant case, since the required details pertaining to previous billing cycles are available, there is no need to compute the average from the three billing cycles after the meter is replaced. Also the consumer didn't give any evidence about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption.
6. It is most respectfully submitted that Consumers Grievance Redressal Forum (South) Kottarakkara has dismissed the complaint filed by the

petitioner against the bill issued under Regulation 125(1) of Kerala State Electricity Supply code 2014. Petitioner's application to revise the bill is not sustainable.

Based on the facts explained, it is evident that the opposite party has acted by the law and there was no deficiency on its part in discharging the duties. Hence, it is prayed that for these reasons and others to be urged at the time of hearing, the Hon'ble Ombudsman may please to dismiss the writ petition with cost to the opposite parties.

Counter arguments of the Appellant

1. The statement of Facts produced by respondents are nothing but like an imposition writing by school Children on regulation 125 (1) of Supply Code. Out of 2½ pages report, more than half is utilized for writing 125 (i) in Seven locations. Now the respondents admitted that the three bills were issued by meter reader against a status of meter as SF & DL. No article of regulation 2014 permits the licensee to issue bills against the above status of meter. The only permitted status are OK/DEFECTIVE/NOT AVAILABLE (Regulation 123). Besides the status of bill is not furnished in the bill. On the basis of the above truth it is requested that the bills may be declared as illegal.
2. Since the respondents have not replied against the points raised in appeal petition and suppressing many points, a case may be registered with IG vigilance and anti-corruption of Board to investigate and find-out the truth as the respondents are working not in accordance with the rules and regulation of KSEBL.

All the reliefs and commands requested in the original petitions holds good.

On the foregoing reasons and further during personal hearing, it is prayed that the decision of forum Kottarakara at the three bills may be declared as illegal and void.

Analysis and findings

The hearing of the case was conducted on 17/11/2023 at 10:30 a.m. in the office of the Executive Engineer, Electrical Division, KSE Board Ltd., Attingal, Thiruvananthapuram (Dist.). The hearing was attended by the appellant Sri. Markose Xavier and the respondent Smt. Reji S. Nair, AEE, Electrical Sub Division, Kollam.

The appellant is not the consumer and his wife was the consumer.

The wife of the complainant has expired and as per the legal heirs certificate issued by the Revenue department, he is the one of the legal heirs. The Section 2(e) of the KSERC (CGRF & Electricity Ombudsman) Regulation 2005 defines complainant.

Section 2(e) “Complainant means-

- (i) Any consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) A voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;
- (iii) The Central Government or State Government- who or which makes the complaint;
- (iv) In case of death of a consumer, his legal heirs or representatives”.

Here in this case, he is the legal heir and hence he can be the complainant and then the appellant. The statements of respondent states that the appellant is the consumer which is a wrong statements. The bills are issued still in the name of his wife Juliat Xavier. The appellant states that he has submitted the application for the change of the ownership and the respondents version is that the application for the change in ownership is not submitted. However, the change is to be done without much delay and necessary application if any is to be submitted by the appellant.

The main allegation in this case is that the licensee has charged the consumer three billing cycles based on the average of the previous consumption when the meter was faulty. The meter is not replaced in time.

The Section 55 of the Electricity Act 2003, describes about the use of meters by the distribution licensee.

55(1) “No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter:

Provided further that the State Commission may, by notification, extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.”

55(2) “For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.”

55(3) “If a person makes default in complying with the provisions contained in this section or the regulations made under sub section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default”.

The above Section is very clearly tells about the use of meter and the action to be taken against the officers who default this act.

The Section 104 of the Kerala Electricity Supply Code 2014 spoke about the requirement of meter.

Section 104(1) “The licensee shall not supply electricity except through a correct meter installed in accordance with the provisions of the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time”.

104(2) “The meter shall be tested and installed by the licensee and it shall conform to the requirements as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time”.

The Section 116 of the Supply Code describes about the replacement of defective meters and Section 118 about the damaged meter.

116(1) “The licensee shall periodically inspect and check the meter and associated apparatus”.

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

116(3) “The consumer shall provide the licensee necessary assistance for conducting the inspection and the test”.

118(1) “If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid future damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee”.

118(2) “The consumption during such period in which the supply was restored as per the above sub-regulation, shall be computed based on the average consumption during the previous billing cycle”.

118(3) “The bypassing shall be removed by replacement with a correct meter within the least possible time, at any rate within three working days for LT meters and within fifteen days for HT meters”.

118(4) “If the meter is damaged due to causes attributable to the licensee, the licensee shall replace the damaged meter with a correct meter within three working days of receiving the complaint in the case of LT meter and within fifteen days in case of HT meter”.

These Sections are very clear about the time limit by which the defective meters are to be replaced. As this is the LT meter the time allowed is 3 working days for the replacement of the meter. As the meter is found defective, the meter would have been tested as per Section 116(2) above and the same is not been complied with. The Section 125 of the Supply Code spelt about the procedure for billing in the case of defective or damaged meter.

Section 125(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 report 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.”

Section 125(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 correct meter”.

If the meter is defective, the billing based on the average of the previous meter readings are to be done only for two billings cycles and during which time the defective or damaged meter is to be replaced with correct meter. Here the licensee has clearly violated the regulations. No action has been taken to test the meter and no action to replace the meter within the time frame as per the regulation.

It is very pertinent to note that the Regulations formulated and published by KSEERC are to be strictly followed by the licensees as per the Electricity Act 2003. Here the officials violated the different Sections of the regulations which are to be viewed seriously.

Another contention of the appellant is that the licensee has charged rent for the meter, when the meter was not working and not replaced. This argument is sustainable and charging rent for defective meter is not justifiable.

The argument of AEE is that the meter was not available in stock and hence the delay in replacement of meter. This is not an acceptable explanation. The licensee is bound to make available the necessary resources to meet the regulation and standard of performance.

The appellant is claiming the compensation 100 times the total bill amount of 07/2022, 09/2022, 11/2022, which is not at all justified and no loss incurred due to this and hence this authority is not at all permitting any such compensation.

The officials of the licensee has totally failed to meet the standard of performance as per the KSEERC (Standard for Performance of Distribution Licensee) Regulation 2015.

As per the regulation Section 4(15), “Every distribution licensee shall replace defective LT meter owned by the licensee within seven working days from the date of detection of the defect:

Provided that the meter which is suspected to be defective shall also be regarded as defective meter for this purpose

If this standard of performance is not met the consumer is eligible for the compensation as per schedule I of the above regulation; which states as “Failure to replace the LT meter within the time schedule as per 4(15) the eligible compensation is Rs. 25/- per each day of default.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. If the damaged meter is available the licensee shall test and download the consumption data for 07/2022, 09/2022 and 11/2022 and the bills raised based on the average of the readings are to be revised based on the data.
2. If the data is not available or not retrievable, the bill for the month of 11/2022 shall be revised based on the average consumption after the meter is replaced.
3. The meter rent charged by the licensee during the meter defective period is to be refunded.
4. The ownership of the service connection is to be changed and the appellant has to submit necessary documents for the same.
5. The licensee may assess the delay in providing the service (replacement of meter) and pay necessary compensation as applicable as per the Schedule I of KSEERC (Standard for Performance of Distribution Licensee) Regulation 2015.
6. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/045/2023/_____ dated: 22/11/2023

Delivered to:

1. Sri. Markose Xavier, Kandathil, 63-Aradhana Nagar, Sanker's Junction, Kollam (Dist.)- 691001.
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd., Kollam (Dist.).

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, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.