

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/063/2023
(Present A. Chandrakumaran Nair)
Dated: February-23-2024**

Appellant : Sri. Dr. Sreekumar, Managing Director,
M/s Kerala Feeds Ltd.,
Thiruvangur, Kozhikode (Dist.)- 673304

Respondent : The Special Officer Revenue,
Vydyuthi Bhavanam,
KSE Board Limited,
Pattom, Thiruvananthapuram (Dist.).

The Deputy Chief Engineer,
Electrical Circle,
KSE Board Limited,
Vadakara, Kozhikode (Dist.).

The Asst. Executive Engineer,
Electrical Sub Division,
KSE Board Limited,
Koyilandy North, Kozhikode (Dist.).

ORDER

Background of the case

The appellant is the managing director of Kerala Feeds Ltd which is a Government of Kerala undertaking with registered office at Kallettumkara, Trissur and one of the factory at Thiruvangoor, Kozhikode. M/s Kerala Feeds Ltd, Thiruvangoor, Kozhikode is a High Tension Consumer of Licensee (KSEBL) under the jurisdiction of Electrical Circle, Vadakara. HT meter testing unit of TMR, Kozhikode conducted an inspection on 06/05/2023 and directed to change the meter as the meter showed magnetic tamper indication. On 08/05/2023 APTS of Kozhikode inspected and downloaded the data from the meter which revealed B phase current was not recorded from 07/11/2020 to 06/05 2023. The short assessment bill dated 08/06/2023 for Rs. 1,04,47,395/- was prepared for a period from

07/11/2020 to 06/05/2023 and served. This demand was later revised to Rs. 90,57,182/- on 16/10/2023. The appellant filed the petition to CGRF questioning the method of calculation of short assessment and forum vide order dated 17/11/2023 decided that the appellant is liable to pay the short assessment as per the revised demand notice. Aggrieved by the decision of CGRF this appeal petition was filed to this authority.

Arguments of the Appellant

We, Kerala Feeds Ltd., is a Public Sector Manufacturing unit, producing cattle feeds, and the Energy Meter of our Thiruvangoor unit at Kozhikode, which is an HT Consumer with No. LCN 31/8087, became faulty, which was detected in the test by KSEBL on 06-05-23, and replaced by KSEBL on 12-06-2023. Subsequently, a Provisional bill as per Regulation 125(1) was received for the meter faulty period based on average value during 'meter good period', for 29 months, for Rs. 1,04,47,395, on 08-06-2023. However, this provisional bill was found prepared without considering the use pattern as per second proviso to Regulation 125(1). Hence an objection has been filed with KSEBL, on 04-07-2023, to revise the bill accordingly.

However, as there was no response from KSEBL to the objection filed on 4-7-2023, we filed appeal before the CGRF on 24-07-2023. Subsequently KSEBL issued revised bill on 16-10-2023, for Rs. 90,57,182, to comply the second proviso to Regulation 125 (ie, to consider use pattern), but it so happened that, this time the bill became totally unacceptable, as it was not prepared as per Regulation 125(1), but based on some strange calculations. As the Meter was not recording the actual energy (as alleged by KSEBL), the Meter is not GOOD Meter. In other words the Meter was FAULTY. The Meter test report also proposes to replace the Meter. Subsequently the Meter was replaced by KSEBL itself, without any request by the Consumer. These facts reinforce the fact that the Meter was FAULTY. It was in this situation that the original bill was prepared as per Regulation 125(1) by KSEBL, even though they missed to incorporate the second proviso contained in Regulation 125(1).

In this situation, to comply the second proviso as above, the bill was revised after our appeal to CGRF, but it is unacceptable due to the following.

- While there exists an express provision in the Regulation (Regulation 125), it was not prepared as per this Regulation this time, but some computations not supported in any relevant Act or Regulations, is used to prepare the bill.
- The basic data for such computations were obtained from a faulty Meter, which itself make such computations irrelevant.
- As the load is not balanced, (which is clear from the Meter data) such computation, assuming balanced load, is wrong.

Hence, the bill is to be prepared strictly as per Regulations, without resorting to such arbitrary and erroneous computations. At the same time, due consideration as per second proviso to Regulation 125(1) can be effected by modifying the billing value for each month by linking the average energy value to actual quantity of monthly production, instead of using a constant average energy value.

Unfortunately, the CGRF didn't consider such grave mistakes by the Licensee, in preparing a bill directly against the Regulations. The period of billing is also to be limited as per Regulation 125(2). But our request to comply this Regulation was also denied by the CGRF. In this situation, our humble request before the Hon'ble Ombudsman is to quash the above bill, and direct the Licensee to issue meter faulty back assessment bill as per Regulation 125, with due consideration to our monthly production quantity.

Arguments of the Special Officer Revenue

M/s. Kerala Feeds Ltd, Tiruvangur, Kozhikode is a High Tension consumer bearing LCN No.31/8087 with Contract Demand 600 KVA, under the jurisdiction of Electrical Circle, Vatakara. In accordance with the direction of Deputy Chief Engineer, Electrical Circle, Vatakara, TMR, HTMT Unit, Kozhikode conducted an inspection on 06.05.2023 at the premises of the petitioner. TMR, HTMT Unit, Kozhikode directed him to change the meter as the meter showed magnetic tamper indication. Later on 08.05.2023 APTS (RU) Kozhikode inspected the premises to examine the meter tamper indication. The detailed inspection of the APTS and the downloaded data from the meter revealed that B-Phase current was not recorded from 07.11.2020 to 06.05.2023. Hence, short assessment bill dated 08.06.2023 for Rs.1,04,47,395/- for the period 07.11.2020 to 06.05.2023 was issued. However, based on the remarks of the Executive Engineer, TMR Division Kannur the demand earlier issued has been recalculated and revised demand for Rs.90,57,182/- has been issued to the petitioner on 16.10.2023.

The Hon'ble CGRF (Northern Region), Kozhikode conducted a hearing of both parties on 08.11.2023. The respected Forum found that the licensee had been facing revenue loss due to the missing of B-phase current. Hence, the forum ordered that the short assessment bill issued by the licensee for the actual energy consumed is in order. Hence, the Forum directed the petitioner to remit the short assessment bill of Rs.90,57,182/-. The action of the Licensee is in order as it is in accordance with the relevant provisions of Regulation 134(1) of Kerala Electricity Supply Code 2014.

During the monthly reading of M/s. Kerala Feeds Ltd., Assistant Engineer, Electrical Section, Koyilandy South observed the non-availability of current in one phase of M/s. Kerala Feeds Ltd. The matter was informed to the Deputy Chief Engineer, Electrical Circle, Vatakara. As directed by the

Deputy Chief Engineer, Electrical Circle, Vatakara TMR, HTMT Unit, Kozhikode conducted an inspection on 06.05.2023 at the premises of the petitioner and found magnetic tamper indication in the meter, hence directed the consumer to change the meter. Later on 08.05.2023 APTS (RU) Kozhikode inspected the premises to examine the meter tamper indication. The detailed inspection of the APTS and the downloaded data from the meter revealed that B-Phase current was not recorded from 07.11.2020 to 06.05.2023. Since KSEBL suffered heavy revenue loss on account of the meter fault Assistant Executive Engineer, Electrical Sub Division, Koyilandy vide letter dated 09.05.2023 requested the 1st respondent to prepare and issue short assessment bill for the period from 07.11.2020 to 06.05.2023. As such, short assessment bill dated 08.06.2023 for Rs.1,04,47,395/- was issued.

The prevailing statute permit the Licensee to demand the under charged bill. It has been clearly mentioned in the report of APTS that the downloaded memory data of the meter showed that B-phase current was recorded as zero (0) from 07.11.2020 to 06.05.2023. In a balanced three phase system of load the energy due to single phase load will be 1/3rd of the total energy recorded in the meter. Since there was usual production in the firm the recorded energy will be 2/3rd of the actual consumption and hence the Licensee suffered heavy loss.

As per Section 56(2) of the Indian Electricity Act 2003 "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under the Section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of electricity". This section may be read along with the judgment dated 18.02.2020 of the Hon'ble Supreme Court of India.

In **Civil Appeal No.1672/2020 (SLP(C) No.5190/2019)**, which has observed the following.

"Section 56(2) did not preclude the licensee Company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of mistake or bonafide error".

"As per Section 17(1)(c) of the Limitation Act 1963, in case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time".

The letter dated 14.07.2023 furnished by the petitioner was thoroughly examined and the Deputy Chief Engineer, Electrical Circle, Vatakara was requested for remarks on the grievances of the Petitioner. Deputy Chief Engineer, Electrical Circle, Vatakara vide letter dated 21.07.2023 directed

the 1st respondent to revise the bill in consultation with the Executive Engineer, TMR Division, Kannur. In the specific remark dated 12.09.2023, the Executive Engineer, TMR Division, Kannur opined the following:

"In a balanced three phase system of load the energy due to single phase load will be 1/3rd of the total energy recorded in the meter. As per the data downloaded from the meter (old & new) of the consumer, from the load survey is learned that the average load current recorded is almost balanced. Hence, due to missing of one phase current the total energy recorded in the meter will be 2/3rd of the actual consumption during the current missing period. Hence, for obtaining the total 3 phase energy consumption, total energy recorded in the meter shall be multiplied by 3/2."

Therefore, the demand raised in accordance with Regulation 125(1) for Rs.1,04,47,395/- issued to the consumer has been revised and issued revised short assessment bill dated 16.10.2023 for Rs.90,57,182/- . Hence, the bill raised for the period from 07.11.2020 to 06.05.2023, on the strength of Section 45 and Section 56(2) of the Electricity Act of 2003) & Regulation 134 of Kerala Electricity Supply Code 2014 is in order. Considering the contentions of the petitioner challenging regulations of Kerala Electricity Supply Code 2014 and the Electricity Act 2003, the Representation No.P.63/2023 filed by M/s. Kerala Feeds Ltd. (LCN 31/8087) cannot be challenged before the Hon'ble Forum and hence it may be dismissed with cost.

Arguments of the Asst. Executive Engineer

The meter recorded only 2/3rd of the actual energy due to missing of B phase current in the meter. while inspecting the TMR team on 6.5.2023, it was observed that the control cables and TTBS were in damaged and rusted condition. The damaged wires and TTBS were replaced on the same day itself and readings were taken after rectification. Then the meter was working properly. Due to the magnetic tamper indication, the consumer was intimated to replace the meter. Then they purchased a new meter which was tested and calibrated at TMR unit, Kannur. The old meter is in the custody of the Consumer. The consumer submitted request for testing and calibration of new meter purchased.. The first and revised bills were issued as per Regulation 134 (1) of Kerala Electricity Supply code 2014.

The bill issued on 8.6.23 was revised to correct the calculation. The revised bill issued by calculating the actual energy consumed in each month by multiplying the recorded consumption to 3/2. If one phase current missing in a TOD meter, the recorded consumption is only 2/3 of the actual energy used. Regulation 125 (1) is applicable only if the meter is faulty, In this case, the old meter was not faulty. In order to realise the unrecorded portion of energy, short assessment bill as per Regulation 134(1) was issued on 16.10.2023. On verifying the consumption pattern before and after the

current missing period, it is clear that the recorded consumptions for the short assessment period are much less than the healthy period. Bill for July 20 Aug 20, Sep 20, July 23, Aug 23, Sept 23

If the Consumer notices any defect in the meter installed in his premises, he shall immediately report the matter to the nearest office of the licensee. As per the Kerala Electricity Supply code 2014 and HT agreement condition, the consumer can apply for testing the meter. No such request was made by the Consumer till now. The meter down loaded data is submitted herewith as Exbt R7. From the down loaded data, it is very clear that the load is almost balanced. Here no assumptions were made while computing the short assessment bill. It is technically correct. In a TOD meter, if the current in one phase is missing, then the meter could not record the consumption in that phase. In a three phase connection, the total energy consumption is the sum of consumption in three phases. If one phase current is zero, then the meter could record only 2/3 of the actual consumption.

The bill is prepared as per Regulation 134 of Kerala Electricity Supply Code 2014 and Section 45 of Electricity Act 2003. As the bill is prepared for the realisation of under charged amount, Regulation 125(2) is not applicable. Considering the facts reported and the documents submitted before the Honourable CGRF forum, the forum ordered to pay the short assessment bill of Rs.9057182/-. Considering the above, the Honourable forum may please to dismiss the appeal petition as it lacks merits and directs the Petitioner to remit the short assessment bill issued on 16.10.2023 for Rs.9057182/-.

Counter Arguments of the Appellant

It is stated that "*Provisional bill as per Regulation 125(1) was not issued to the petitioner.*" But very first para of the demand notice dated 08-06-2023, which is the provisional bill, states as, "*Hence as per Regulation 125 of Kerala Electricity Supply Code 2014 bill from 11/2020 to 03/2023 were revised with average consumption of three months before faulty period in July 2020, August 2020 and September 2020.*" Para 2 of SOF again states as "*...Here the meter is in working condition...*" But the above demand note specifically states some period as faulty period. Such contradictory statements clearly prove the supplier's intention to bury the truth. It was the supplier who alleged that the meter was not recording the actual energy, which necessitated the very issue of bill revision. If the meter is not recording the actual energy with sufficient accuracy, the meter is faulty. If the meter was in working condition, as stated in the statement of facts, then there is no question of this bill itself.

It may kindly be noted that Regulation 134 is for under**charged** bill, and not for 'under**metered**' or erroneously metered bill. This Regulation is for demanding the undercharged amount due to billing errors such as

misappropriation of tariff, error in posting meter data, clerical error etc., and not for billing in the case of meter faulty period. This fact was well known to, and well accepted by, the supplier, and the provisional bill was issued as per Regulation 125 itself, for average billing during meter faulty period. But when requested to make corrections in this bill as per second proviso to Regulation 125(1), to consider the variation in actual energy consumption based on production rate, KSEBL totally ignored the Regulations and resorted to some calculations based on data obtained from the **faulty** meter, which procedure being not supported by any law, rules or Regulations. It is stated that *"...The revised bill was prepared based on the remarks of TMR Division, Kannur."* Kindly note that the bill should have been prepared as per prevailing Rules and Regulations, and not based on such remarks of some officials, discarding such clear and categorical Rules and Regulations.

It is stated that *.." Then the meter was working properly."* This is after rectification of the fault at site by the licensee. Which means the meter was faulty till then. And it continues in the very next sentence that *.."Due to magnetic tamper indication, the consumer was intimated to replace the meter."* If the meter turned good after site rectification, the reason for such direction to replace this **good** meter is known to KSEBL only.

There is change in consumption pattern during meter faulty period, and we fully accept proper average billing, as issued initially under Regulation 125, but with due consideration to our actual use of energy, supported by evidence, strictly as per Regulation 125. It is true that we didn't notice any defect in meter, and it is the supplier who noticed the defect and caused to replace the meter. It is not mandatory for the consumer to test the meter and found its defect, as per Regulations. But it is for the supplier to test and verify the correctness of the meter, as per Regulation 116, which is reproduced below.

"116. Replacement of defective meters.- (1) *The licensee shall periodically inspect and check the meter and associated apparatus.*

(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.*

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

(4) *A consumer may request the licensee to inspect and test the meter installed in his premises if he doubts its accuracy, by applying to the licensee in the format given in Annexure - 15 to the Code, along with the requisite testing fee."*

It states as *"...From the downloaded data it is very clear that the load is almost balanced."* But the fact is that the downloaded data shows that the load is unbalanced. Hence the computations are technically wrong, besides

the fact that no rule or Regulation proposes such erroneous computations in case of meter faulty situation; but there exists specific Regulation to follow in the case of billing during meter faulty period.

It may kindly be noted that all Regulations are supplementary legislation's, and it is not proper on the part of a Distribution Licensee to declare that a specific sub Regulation is not applicable to them. Considering the above genuine facts and grounds, we humbly request to direct the licensee to issue average bill for the meter faulty period, as per Regulation 125, with due consideration to our monthly production during the meter faulty period, which is extremely transparent and verifiable, as we are a Government entity.

Analysis and findings

The hearing of the case was conducted on 06/02/2024 at 11:30 a.m. in the office of the State Electricity Ombudsman, D.H. Road & Foreshore Road Jn., near Gandhi Square/BTH, Ernakulam South. The hearing was attended by the appellant's Sri. Sathosh K.C (Unit Head, Kerala Feeds Ltd.) and Sri. Shaji (counsil, Kerala Feeds ltd.) and the respondents Sri. Asokan S and Vijayakumar V., O/o Special Officer Revenue, KSEBL, Vyduthi bhavanam, TVPM, Smt. Kalavathy T R, AEE, Koyilandi North and Adv. Sri. Jaison Joseph Council for RITRS.

The Kerala Feeds Ltd., is a State Government undertaking which is producing and supplying various cattle feed. The Kerala Feeds is an HT consumer of the licensee under Koyilandy Electrical Section. The connected load is 1464.95 kw contract demand 600 kVA and CT 140/5. While the meter reading was taken by the Asst. Engineer, Koyilandy Section on 2/05/2023 noticed that the current in one phase is missing. Then HT meter testing unit of TMR has conducted inspection on 06/05/2023 found that B phase current was missing. This reveals that the TOD meter was recording the reading with two phase current. This fault was occurred on 07/11/2020 and continued up to 06/05/2023 i.e., up to date of inspection by TMR unit.

It is very pertinent to note that the meter reading of this consumer was taken by AE, as this is an HT connection. Why this fault is not noticed for almost 30 months? Who is responsible for the prolonged fault condition of the meter?

The APTS unit has downloaded the data on 08/05/2023 and confirmed that the meter was faulty. This workout to Rs. 1,04,47,395/-. This bill is prepared as per the clause 125 of the Supply Code.

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.”

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”.*

125(3) *“In case, the maximum demand indicator (MDI) of the meter at the installation of the consumer is found to be faulty or not recording at all, the demand charges shall be calculated based on maximum demand during corresponding months or billing cycle of the previous year, when the meter was functional and recording correctly”.*

125(4) *“In case the recorded maximum demand (MD) of corresponding month or billing cycle of past year is also not available, the average maximum demand as available for lesser period shall be considered:*

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

This Section very explicitly explains that the billing for the period when the meter was not working could be done based on the average of the preceding months and it also states that such billing could be done only for two billing cycles.

Then the bill raised has been revised to Rs. 90,57,182/- based on the down loaded data of the meter. The actual consumption was arrived by multiplying the monthly reading by 3/2. The ration 3/2 is a theoretical value which is not having any factual justification. The meter is not tested with the calibrated meter to assess the error in the meter neither the TMR unit nor the APTS unit. Then arriving a theoretical value and multiplying with that value to the reading recorded by the meter is not reasonable or justifiable.

The Section 152 of the Supply Code describes about the in accuracies in metering.

152(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.”

152(2) *“In such cases the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.”*

152(3) *“The amount of electricity charges short collected for the entire period during which such anomalies persisted, maybe realised 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 realisation of electricity charges short collected shall be limited for a maximum period of 24 months, even if the period during which such anomaly persisted is found to be more than 24 months.”

152(4) *“The consumer may be given instalment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of installment”.*

This tells that the licensee can charge only the amount as per the tariff and no interest is applicable on this short collected amount. Then it also limit the short collection to 24 months if the period of occurrence is reliably accessible. But the limitation period of two months starts from the date of raising the claim when detect the fault.

There it seems major lapses from the licensee and they are

1. The meter has not been periodically inspected. As per the clause 113 of the Supply Code, the HT meter would have been tested once in a year which has not been completed. If this would have been followed the meter fault would have been detected very early and this issue would have been not arised.
2. The meter reading was taken by the AE, and he had never checked condition of the meter which would have avoided the situation.
3. The meter has not been tested with the calibrated meter either by TMR unit or APTS to arrive the percentage of error.

Here in this case, the appellatant is ready to make the payment, only on calculating the short assessment based on the production of their factory.

This they are claiming as per clause 125(1) of the Supply Code 2014. This is seen to be reasonable. The following method could be adopted.

$$\begin{array}{l} \text{The average consumption prior} \\ \text{to the fault per Ton} \end{array} = \frac{\text{Average unit consumed per month}}{\text{Total production in metric Ton per month}}$$

The consumption for the month = Average consumption per ton × Production tonnage

The production tonnage is to be taken from the audited financial statement which are to be produced by the appellant.

Decision

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

1. The appellant is liable to pay the short assessment for a period from 07/11/2020 to 06/05/2023 according to the calculation as per 2. below.
2. The short assessment is to be revised based on the calculation mentioned above considering the production tonnage.
3. The licensee shall grant 12 monthly instalments if the appellant request for the same.
4. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/063/2023/ dated: 23/02/2024.

Delivered to:

1. Sri. Dr. Sreekumar, Managing Director, M/s Kerala Feeds Ltd., Thiruvangur, Kozhikode (Dist.)- 673304.
2. The Special Officer Revenue, Vidyuthi Bhavanam, KSE Board Limited, Pattom, Thiruvananthapuram (Dist.).

3. The Deputy Chief Engineer, Electrical Circle, KSE Board Limited, Vadakara, Kozhikode (Dist.).
4. The Asst. Executive Engineer, Electrical Sub Division, KSE Board Limited, Koyilandy North, Kozhikode (Dist.).

Copy to:

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