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REPRESENTATION No:28/08

Appellant : Sri P.G.Mathew ,Padavuparackal House ,Edathua,
Alappuzha District

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Subdivision
Edathua

ORDER

Sri P.G.Mathew ,Padavuparackal House ,Edathua,Alappuzha District submitted a representation on 3.10.2008 seeking to set aside the order No CGRF/CR/Comp17/2008-09 dated 28.8.2008 of CGRF Ernakulam and to cancel the Invoice no:051842 for Rs 18210/- issued from Electrical Section Edathua. Counter statement of respondent was obtained and a hearing of the concerned parties conducted on 10.12.2008 . The Appellant submitted an argument note on 23.12.2008. The Appellant is an LT Domestic consumer under Electrical Section Edathua with consumer number 1988. The energy meter of the consumer was reported to be faulty from 7/03 to 5/07. The meter was replaced with a good meter on 11/5/07. During the period when the meter was faulty the respondents billed the consumer taking an average consumption of 300 units per bi month for spot billing. But the average consumption after changing the meter in 5/07 was found to be 474 units per bi-month and the respondents issued the adjustment invoice for this consumption for the period of meter being faulty. The CGRF upheld the action of the Respondents.

- I. The contentions/arguments/points raised by the Appellant in the representation argument note and during the hearing are summarized below
1. The Respondents have not 'established' that the consumer was 'under charged' as per Regulation 24(5) of the Kerala State Electricity Supply Code 2005 from 2003 onwards. The only aspect they are relying upon is the consumption recorded after the meter was changed in 2007.The difference

in consumption during a time span of 4 years can be due to various reasons Assuming that the consumption in 2003 will be the same as in 2007 is not justifiable.

2. Regulation 19(2) of the Supply Code stipulates the adjustment invoice has to be based upon previous six months average consumption. This provision does not provide for an assessment on the basis of subsequent consumption. More over by delaying the replacement of the meter the Respondent have evaded the mandate entrusted upon them by the Supply Code.
3. The period under review is from 7/03 to 7/07. The Supply code which came into effect on 23.03.2005 and the Terms and Conditions which came into effect on 1.02.2006 can not be applied in this case.
4. The demand raised by the respondent is also hit by Section 56(2) of the Electricity Act 2003 and the period of limitation as per the clause starts from the dates mentioned in the original bills issued during the period 7/03 to 7/07 as the cause of action for demanding the charges started from the said dates onwards.
5. The Appellant had been a public servant and was out of station for the periods from 1.01.2002 to 31.10.2004 with family. So the assessment based upon 2007 consumption is unreasonable.

II. The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below

1. The energy meter of the consumer could not be replaced with good meter in time due to scarcity of good meter.
2. The average consumption before the meter becoming faulty was 398 but the billing average was fixed at 300 per bi-month due to an error. The average consumption after changing the meter is 474 units per bi-month. From the above it is clear that the consumer was under charged during the period under review. Hence the KSEB has the right to recover the under charged amount as per statutes.
3. The limitation under Section 56(2) is not applicable in the instant case since the demand has been raised only on 24/5/08.

III. Discussion and Findings

The issues to be decided in this case are:

- (A) whether the under charging is 'established' and
- (B) if yes, which is the period to be reckoned for arriving at the average bi-monthly consumption for recovery of the under charged amount.

1. During the period under review the consumer was billed for a bi-month consumption of 300 units. The meter readings submitted by the Respondent show that the average bi-monthly consumption is 398 units before the meter becoming faulty. The same after installing new meter is found to be 474 units. Even if the

- report of the Appellant that he had been away from home from 01.01.2002 is accepted one can see that the consumption during the periods prior to 7/03 was around 398 units per bi-month even for the periods when the Appellant was out of station. Hence the fact that there had been under charging during the period under review is beyond dispute.
2. Hence the period to be reckoned for arriving at the average bi-month consumption for recovery of the under charged amount is to be decided. The Appellant has argued that neither the Kerala State Electricity Supply Code 2005 nor the Terms and Conditions of Supply 2005 can be made applicable for review of the period from 7/03 to 5/07 since those Regulations have come into effect in 3/2005 and 2/2006 respectively. If this argument is accepted the previous regulations Conditions of Supply of Electrical Energy issued under Electricity (Supply) Act 1948 will have to be followed. As per the clause 31(C) of the CSEE Regulations 1989 the consumption for the previous three months are to be reckoned for assessment.
 3. As per the Supply Code 2005 the previous Six months are to be reckoned for assessment. As per the Terms and Conditions 2005 again the same methodology is to be followed. But the Terms and Conditions 2005 also allows the KSEB to do assessment based upon succeeding three months average if the average for the previous six months 'cannot be taken due to the meter ceasing to record the consumption or any other reason'. In the instant case it is clear that there is no sufficient reason not to take the average of the previous period. Hence the action of the Respondent in taking the average of the succeeding months for assessment is not in order.
 4. Even though the period of review is spread over the periods where both the old regulations and new regulations were in force I feel it would be appropriate to rely upon the new regulations as the Electricity Act 2003 had already come into effect in 2003. More over the average would be more realistic if the period is longer. Hence the assessment has to be revised based upon previous six months average as stipulated in the Supply Code and Terms and Conditions of Supply.
 5. The arguments raised by the Appellant on the limitations imposed by Section 56(2) of Electricity Act 2003 can not be accepted since the interpretation that the period of limitation starts from the dates mentioned in the original bills issued during the period 7/03 to 7/07 is not correct. The Appellate Tribunal for Electricity has already ascertained that the any sum become first due only after a demand is raised or an Invoice is issued to the Consumer. (*APTEL* order dated 14th November, 2006 on Appeal Nos. 202 & 203 of 2006). The argument that the period of limitation starts from the dates mentioned in the original monthly bills issued is true for that particular bill only. The Section 56(2) do not bar the licensee from reviewing the demand already raised.

IV. Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. The order No CGRF/CR/Comp17/2008-09 dated 28.8.2008 of CGRF Ernakulam and the Invoice no: 051842 for Rs 18210/- issued from Electrical Section Edathua are set aside.
2. The Respondent shall issue an Invoice for the period under review taking the average of *the six months prior* to the Meter becoming faulty along with a calculation statement and make arrangements for realizing the same in accordance with the statutes.
3. No order on costs.

Dated this the 30th day of December 2008,

P.PARAMESWARAN
Electricity Ombudsman

No P 28 / 08/ _____ / dated 01.01.2009

- Forwarded to:
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 2. Assistant Executive Engineer
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Copy (by e-mail) to :

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- 2.The Chairman
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Copy to: The Secretary ,KSE Board,
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