

THE STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamangalam-Anchumana Temple Road

Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024

www.kerala.org Ph: 0484 2346488, Mob: 91 9567414885 Email:ombudsman.electricity@gmail.com

Appeal Petition No : P/ 250/ 2011.

(Present T.P. Vivekanandan)

Appellant : Sri.Scariya,
Jayanthi Rubbers, Mayithara Industrial Estate,
Cherthala, Alappuzha.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard, S L Puram, Cherthala.

ORDER.

Background of the Case.

M/S Jayanthi Rubbers, Mayithara, is a LT-IV industrial consumer, under Electrical Section, S L Puram, having consumer No.4254. The registered connected load in the premises is 64 KW. The APTS, Thiruvalla unit of KSEB along with the Sub-Engineer of Electrical Section, SL puram, inspected the premises of the consumer on 29.01.10 and found that the Current Transformer (CT) ratio of the metering circuit is 200/5 i.e. the multiplication factor (MF) is 40. On verifying the regular energy bills issued to the consumer, it was found that the CT ratio was wrongly taken as 100/5 (MF=20) instead of 200/5 (MF=40) from 27.01.2006 onwards. Thus the bills to the consumer were raised only for half of the actual energy he has consumed till 12/2009 due to error in MF used for billing. Hence a short assessment bill to recover the loss, amounting to Rs.9,08,905/= was served to the consumer on 09.02.2010. The consumer had lodged a compliant to allow remittance of the amount in 48 monthly equal installments without interest. The KSEB had granted 12 installments with interest @ 18%. The consumer again requested to allow him to remit the amount in 36 installments without interest, but KSEB has declined. Against this, the consumer had filed a complaint before the CGRF on 03.06.2011. This was disposed of by allowing 36 monthly equal installments with 12% interest. Aggrieved by this order, the appellant preferred this appeal before this Authority.

Argument of the Appellant: -

The appellant has alleged that the site mahazer dated 29.01.2010 prepared by the Assistant Engineer is totally wrong and objected in all respects as it can not be accepted as a valid document. The KSEBoard had not checked the CTs and meter for its ratio and accruing energy till 29.01.2010. Further the site mahazar was not prepared and signed by the authorized officer i.e. Assistant Engineer of the Section as per the Indian Electricity Act, 2003. Hence the mahazar should be declared as an illegal document.

Another contention of the appellant is that his firm is small scale industry, manufactures a product and sold the same based on cost worked out considering the actual running cost which includes electricity. After selling a product it is not possible for a SSI unit to realize the payment for the reason that KSEBoard has under charged the consumer. KSEBoard can never transfer the blame of the mistake on their part to the poor consumer and harasses them. It is proper to locate the employee who has done this mistake and recover the losses from the responsible employee.

The appellant has adduced an argument that if KSEBoard have checked the meter and CTs for accuracy and converted the same by way of replacing the defective and non functioning CTs and meter with correct one, the consumer would have found out the actual consumption for a period of 3 months as per clause 33 (2) of KSEBoard Terms and Conditions which states that " If Board is unable to raise a bill on meter reading due to its non recording or malfunctioning, the Board shall issue a bill based on the previous six months average consumption". Hence due to negligence of the Board they have committed a serious mistake of non correction of the metering equipments or replacement of the CT's with which KSEBoard has lost an opportunity to claim for the losses if any, complying with Act or Rules.

Another argument of the appellant is that as per section 56 (2) of Electricity Act, 2003, no sum due from the consumer shall be recoverable after a revision of two years from the date when such sum became first due. Here the KSEBoard have detected some error on 29.01.2010 and even if any claim is there, it can be claimed from 2008 January 29th only.

Argument of the Respondent.

The respondent has filed a written parawise statements denying all the averments in the petition except which are admitted by him.

They argue that the APTS of KSEB inspected the premises of the appellant and measured the actual current flow and compared with that recorded in the meter. The result indicated that the multiplication factor is 40 and on verifying the bill issued to the consumer, it was noticed that for calculating the energy bill the MF was wrongly taken as 20 instead of 40. Thus the consumer had been billed for half of the actual consumption for the past some months. The Sub-Engineer, of the Electrical section, SL puram, who is a competent and authorized person, has prepared site mahazar of the inspection and sri.K.J.Joseph, Supervisor of M/s Jayanthi Rubbers, have signed on the site mahazar as witness. Based on the inspection and site mahazar prepared, a short assessment bill amounting to Rs.9, 08,905/= was served on the consumer on 09.01.2010. It is stated that the site mahazar was prepared by a competent person and is correct and perfect with all details and is witnessed by the staff of the consumer and therefore it is a valid document in all respects.

The respondent has denied the argument of harassment by KSEB as raised by the appellant. The argument of the respondent is that there was no deliberate attempt against the consumer from any employee of the KSEB. As far as their complaint is concerned, it was only a mistake in taking the correct MF that caused the bill. The issue of the bill under dispute is to correct the mistake occurred only and the consumer is liable to pay the charges of the energy consumed by him.

The respondent argues that during inspection, the meter and CTs were found working properly and only the multiplication factor (MF) taken for calculating the actual energy consumption was found wrong. It is only a clerical or computing mistake and the present bill under dispute is meant to correct this calculation mistake incurred due to wrong MF adopted. The clause 33(2) of KSEBoard Terms and Conditions is applicable for defective and faulty meters. Here the meter is neither faulty nor defective. The KSEB has every right to issue the bill against the actual energy consumed and the consumer is bound to pay it.

Another contention of the respondent is that KSEBoard has not detected any error with the energy meter on the premises of the consumer. The error detected was that the multiplication factor taken for computing the monthly energy bills was only 20 instead of the actual 40. Further they challenge the contention regarding the application of section 56(2) of Electricity Act 2003. The respondent says that section 56(2) of Electricity Act 2003 is not applicable in this case as the demand was generated only on 09.02.2010.

Analysis and Findings.

Hearing of the Appeal Petition was conducted on 12.01.2012 in my chamber at Edappally, Kochi. Smt. Indu J.Kurup manager, Jayanthi Rubbers, represented the appellant's side and Sri. Madhulal T, Assistant Executive Engineer, and V.B.Sajan, Senior Superintendent of Electrical Sub Division, SL Puram, represented the respondent's side. On examining the petition, the statement of facts filed by the respondent, considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The first argument of the appellant is that the Sub Engineer is not the competent authority to prepare the site mahazar, as per rules. He has not quoted relevant provisions of the said rules in support of his argument. The Section 126 of the Electricity Act 2003 deals with 'Assessment' of the quantum of unauthorized use of electricity committed by the consumer. The definition of the assessing officer given in this section is an officer of a state Govt or Board or licensee as the case may be designated as such by the State Govt. The order issued by the Govt says that the Assessing Officer shall be the Assistant Engineer of the KSEB's Distribution Section Office. The Sub Engineer duly authorized and in- charge of Electrical Section, in the absence of AE, will also have to be considered as legal assessing officer.

The second argument of the appellant is that the consumer is penalized for the mistake of the KSEB authorities. Though it was a fault on the part of the KSEB, it can not be ignored that the party has actually consumed the energy and he is liable to pay for it. He is required to pay the charges only and not any penal amount. But the consumer can be allowed to remit the amount in monthly equal installments eligible for him.

Regarding the contentions of the appellant in the 3rd and 4th para above, it poses no weightage, since there is no defective or malfunctioning in the CTs or in the Meter as alleged by the appellant. There occurs a mistake in the billing (calculation) due to wrong application of MF or may be due to some oversight. Amounts of short payments became due only after realization of mistake. Amounts

of the short assessment bill were never demanded earlier and the same can not be said to be due at any earlier time. In short the word 'due' in section 56(2) means the amount due and payable after a valid bill has been served on the consumer. In this case the short assessment bill was issued on 09.02.2010 and hence the amount of the impugned bill can not be said to be unrecoverable and barred under section 56(2) of the said Act.

Decisions: -

During the Hearing of the case, the appellant was ready to pay the short assessment bill, but requested 'interest free 48 installments' to remit the amount. The Respondent was agreeable to 48 installments but with 12% interest only.

The consumer does not dispute the error in the Multiplication Factor (MF) occurred to KSEB in raising his monthly bills nor its period of assessment. The consumer is bound to pay the charges for the electricity he has consumed. As per clause 24(5) of Electricity Supply code, 2005, if the Licensee establishes that it has under charged the consumer, by review or otherwise, it is open to the Licensee to recover the amount so undercharged from the consumer by issuing a bill. In this case case, the respondent has only done that and so it is found that the consumer is liable to honor the bill dated 9.2.2010 for RS 9, 08, 905/-, issued to him. The appellant shall be allowed to pay the full amount, without any interest up to 30th day of this order, if he prefers so.

It is also decided that the consumer shall be allowed to pay the disputed bill, stated above, in 48 installments and the 1st installment shall be paid with in 30 days of the issue of this order and the respondent shall intimate the 'installment due dates' with in 10 days of the receipt of this order. No interest is payable by the consumer, till the 30th day of this order, to any sum or the 1st installment remitted by the consumer. But the installments or balance bill amount shall carry interest @ 12% per annum, after that date (30th day of this order) to the day of remittance of the amount. Having concluded and decided as above, it is ordered accordingly. No order on costs.

Dated the 8th of May, 2012.

ELECTRICITY OMBUDSMAN.

No.P/250/2011/ **Dated 08.05.2012.**

Forwarded to: (1). Sri.Scariya.K.J,

Jayanthi Rubbers, Mayithara Industrial Estate, Cherthala, Alapuzha (DT).

(2) The Assistant Executive Engineer,

Electrical Sub Division, KSEBoard, S.L.Puram

Copy to: (1). The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam
Vellayambalam, Thiruvananthapuram-10.

(2). The Secretary, KSEBoard, Vydyuthibhavanam, Pattom, Thiruvananthapuram-4

(3). The Chairperson, Consumer Grievance Redressal Forum, KESBoard,
Power House, Ernakulam-18.