

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-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

APPEAL PETITION No. P/196/2011.

(Present: T.P. Vivekanandan)

APPELLANT : Mr. C.P. Varghees
M/s St. George Rice Mill, Karikode, Okkal P O,
Perumbvvoor

RESPONDENT: The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Perumbavoor.

ORDER.

BACKGROUND OF THE CASE: -

The appellant is running a rice mill named "St. George Rice Mill" with consumer No.17688- (LT IV-industrial tariff) under Electrical Section, Perumbavoor. The KSEB issued a demand cum disconnection notice dated 1-10-09 for Rs.2, 18,433/-, being the short assessment made on the consumer. The bill comprises of two parts, 1). To recover the shortfall in the Light meter energy consumption, as it was found working as an additional meter instead as a sub meter to the Power Meter, for the period from 3/05 to 8/08, for Rs.78,560/- and 2) The charges for the revised average consumption for 3 months of 9/05 to 11/05 when the meter was malfunctioning, amounting to Rs.1,39,873/-.The appellant being aggrieved, submitted a representation before the Executive Engineer(EE) concerned on 19.10.2009, challenging the said notice and the bill. The EE conducted two hearings in the case and issued orders quashing the first portion of the impugned bill of Rs.78,560/- and upholding the other portion of Rs.1,39,873/-. Still aggrieved by this, he had filed a complaint before the CGRF to set aside the order of the EE, Perumbavoor. The CGRF had disposed of the complaint by directing the respondent to issue a revised bill taking 18780 units as the short assessed consumption. The appellant raised some doubts with respect to the operative portion of the order and the subsequent revised demand he received from the respondent. Hence a clarification order was issued on 7-2-11 and was ordered to issue the revised bill for the period from 9/05 to 11/05 taking a monthly average of 47820 units (95640/2) deducting the actually billed consumption during 9/05.This appeal is filed against the order passed by the CGRF, Ernakulam.

Arguments of the Appellant: -

The arguments of the appellant are based on the brief facts and circumstances which are narrated above. Further, the appellant has adduced the following arguments.

The meter recording the energy consumption was installed after the Licensee has certified the same to be recording the reading correctly, in the place and manner suggested by the Licensee. The licensee has sealed the meter in the premises of the complainant to avoid any sort of tampering and

the seal is intact. No inspection of the meter has been done with notice to the consumer during the period which the short assessment is allegedly noticed or detected any defect. None of the metering equipment pertaining to the supply to the premises of the complainant was noted to be defective, tested by the licensee or referred to the Electrical Inspector for adjudication. Prior to or subsequent to the period during which short assessment is alleged, no defect in the meter is pointed out.

Another contention is that in the decision of the honorable High Court of Kerala reported in 2008 (4) KLT610, the question as to whether the licensee could claim additional charges from consumer on the ground that, one phase of the meter is not working correctly, without referring the matter to the Electrical Inspector as mandated in Section 26 (6) of Indian Electricity Act, 1910, was considered. It has been held therein that when the licensee alleges that the meter is recording less than what it ought to have and the consumer disputes the same, the licensee should refer the dispute to Electrical Inspector. The liability to refer the dispute primarily rests with the licensee who alleges that meter is not recording correctly. The licensee in the instant case has unilaterally concluded that one phase of the meter was not recording consumption, purported to have corrected the same without first referring the matter to the Electrical Inspector and raised demand for additional electricity charges from the consumer on that ground. The appellant argues, on the said ground itself, the entire proceedings resulting in the above appeal are liable to be quashed.

Another argument is that the KSEB authorities had proceeded on the basis that one phase of the meter is faulty and adopted a factor to be multiplied to the units already recorded for computing the actual units consumed. Prior to applying the multiplication factor, the licensee has to ascertain as to whether there is balanced load in the other phases which are working, with due notice to consumer, which in the instant case has not been done. In the rules relating to Conditions of Supply of Electrical Energy, 1990 and in the Tariff order 2001 which governs the supply of energy to consumer at the material time, it is not prescribed that the licensee could assess the energy consumed by using the multiplying factor of 1.5 in cases wherein one CT is faulty and 3 in cases where two phases are faulty.

Another contention of the appellant is that the CGRF proceeded on a wrong assumption that AE/Billing/RAO Audit party misinterpreted the meter reading register on 01/10/2005 as $484 \times 40 \times 1.5$ for one phase which is not working. According to CGRF, it ought to have noted as 'two phase not working' and not $3/2$. After such assumption, the consumption was assessed as $484 \times 40 \times 3$. For arriving at such a conclusion, CGRF never verified the writings in the meter reading register by summoning the meter reader at the material time that was instrumental behind such writing. CGRF did not take into consideration, the other similar entries in the meter reading register recorded on 01/10/2004. Based on such entry, bills were raised on the ground that one CT is faulty. In page no. 30 of the meter reading register pertaining to the complaint, history of CT fault is recorded. Therein it is specifically stated that on 09/05 also, only one CT was faulty. All these material aspects were completely ignored by the CGRF.

A perusal of the billing register prior to short assessment bills in 2009 would reveal that for the period 09/05 to 11/05, the complainant has been assessed in two different modes. As per the order of the CGRF, another mode of assessment is made. Alleging mistake, it is unjust and illegal to assess a consumer in three different modes that too after issuing bills long back and receiving payments for it. The said conduct of the licensee amounts to putting the consumer to untold miseries and hardship and making the process of raising bill, a never-ending one. The consumer is not expected series of bills one after another alleging mistakes in the earlier one.

Another point is that the licensee never had a case that the revised billing already done is below than what is actually due from the complainant. After consideration of the matter by the CGRF, the

demand already rose in the bill that is impugned in the proceedings increased; many fold without even a challenge by the licensee.

Further, after challenging a revised bill before the EE, the Assistant Engineer issued a revised bill for Rs. 1, 14,930/-. As per the said bill, an amount of Rs.24, 943/- is seen deducted from the total amount due as arrears. The reason stated is that the said amount represents the excess charged in light meter consumption between 9/08 and 8/09. The reason behind deducting the excess amount for the period of 9/08 to 9/09 alone is nowhere revealed. Since commencement of connection to the premises of the consumer, the same manner of connection existed and the consumer was charged for light meter consumption even though the said unit energy was already recorded in the power meter. The period prior to 09/08 wherein excess is seen charged for light meter connection is not seen computed for deducting the same from the amounts allegedly due from the complainant. The licensee do not have anything even to suggest that prior to 9/08, the light meter was not tapped from the phase after CT. The licensee ought to have adjusted the entire amount charged in light consumption right from the time when connection was granted to the consumer from the subsequent dues from him. The KSEB or authorities cannot adopt double standard during assessment or discriminate between the revenue loss of the licensee and that of the consumer. The authorities are more concerned about the alleged revenue loss of the licensee with no concern about the actual monetary loss of the consumer.

Another contention is that the average consumption arrived by the CGRF is 47820 units. Going by the meter reading register, it is crystal clear that prior to or subsequent to the disputed period, the complainant has never consumed that much energy at any point of time which points out the falsity and illegality in the assessment made by CGRF.

The appellant argues, the work of the complainant is seasonal and there is no occasion wherein the actual monthly consumption of the consumer reached 47820 units. He alleges that the authorities never took into consideration this aspect while mulcting the consumer with exorbitant assessment without any reasoning. Hence the appellant appeals to quash the revised bill issued by the licensee.

During the Hearing done on 20.12.2011, the learned counsel for the petitioner, finally concluded that, if at all anything is to be assessed, it should be assessed as per Clause 31(C) of the Conditions of Supply, 1990, only since the cause of action of the present dispute occurred in 9/2005 and therefore the new Terms and Conditions of Supply, 2005, notified later will not hold good.

Arguments of the Respondent: -

The contentions of the respondent are as follows;

The service connection bearing consumer no.17688 was given for running an industrial unit and effected on 5/3/1990. The audit wing of KSE Board had inspected the Electrical Sub Division office of Perumbavoor and verified all the records of the consumers including the appellant and found certain discrepancies in the billing of the appellant.

1. For the period from 3/05 to 8/08, the total consumption was billed by considering the light meter being connected as sub meter to the power meter. But it should have been billed separately by taking the light meter as additional meter (connected before CT). The same was assessed for Rs.78, 560/-.
2. For a period of three months from 1/9/05 to 30/11/05, the CT was faulty. In 9/05, one phase of CT was found faulty and in 10/05 and 11/05 two phases of the CT were faulty. But the billing was done taking average for previous months, since the meter reading in 10/05 was not able to be recorded in the meter reading register, due to obstruction, which was assessed as Rs. 1, 39,873/-. The total amount assessed for the two cases stated above, as per the report of audit wing, was Rs.2, 18,433/-.

Aggrieved by the bill and the notice dated 1/10/09, the appellant had submitted a representation before the EE, Electrical Division, Perumbavoor on 19/10/09. Hearing was conducted on 17/11/09

and 14/12/2009. The EE decided that there is no need to bill the consumer for light consumption separately for the period in question. This was the reason behind to quash the first part of the short assessment bill.

Another contention of the respondent is that one phase of the CT of the power meter installed at consumer's premises was found faulty on 1/10/05, as revealed from the meter reading register. But the consumption recorded was correct for the balanced two phases, as there was no fault in the meter. For calculating the total consumption, the recorded consumption multiplied by 3/2 (1.5). It is a mathematically correct procedure and not an assumption. During 10/05, the meter reading could not be recorded due to some obstructions. Hence an average consumption of 35040 units was charged for 10/05. As on 1/12/05, the meter reading was 23143 and actual consumption was fixed as follows, (23143-22346=797) i.e. $797 \times 40 \times 3 = 95640$ units (as two phases of CT not working). Hence the balance units of energy to be billed come to 60600 units i.e. $95640 - 35040$ units. The respondent argues that as there was provision to assess the consumption as 3 times (since 2 phases were faulty) in 1/12/05, the assessment for 60600 units was calculated as per rules. But originally the bill was raised taking the average consumption as 28333 units i.e. total of 84999 units for 3 months from 9/05 to 11/05 by revision done in 12/05. This billing was wrong, as the method of taking the previous average could be followed only in meter faulty cases. The meter installed at the premises of consumer was not faulty, but only the CT was faulty. Hence the consumption recorded for the working phases were correct and actual. The short assessment amounting to Rs.139873/- was done as per the correct tabulation. It was aimed to make good the said revenue loss caused to KSEB and does not contain any penal charges or surcharge. He submits that the short assessment amounting to Rs. 1,39, 873/- included in the impugned bill for non-working of the CT of the meter is in order.

Further the respondent agrees that the lighting load and power load at the premises shall be segregated and metered by separate meters and also that the excess light meter consumption collected shall be refunded as per the EE's order.

Analysis and Findings: -

On examining the Petition and argument notes filed by the Appellant, the statement of facts of the Respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof. The Hearing of the Case was conducted on 20.12.2011, in my chamber at Edappally, and Mr. G. Rajagopal, learned Advocate for the appellant and Sri. John Varghese, Assistant Executive Engineer, Electrical Sub Division, Perumbavoor, have represented the Appellant and Respondent side respectively.

The disputed bill issued by the respondent was originally consisted of two parts, out of which the first part relating to, light meter energy consumption short assessment, was already quashed by the Executive Engineer. Now the remaining part relate to the short assessment done towards the 3 months bill of 9/2005 to 11/2005, where one phase (out of 3 phases) of the CT (Current Transformer) that feeds 'current' to the Metering equipment for measuring the true energy consumed, is reported as missing for the month of 9/05 and as 2 phases missing for the next 2 months of 10 and 11/2005. The bill was seen prepared by the KSEB as 1.5 times the Meter reading for 9/05 and 3 times for the other 2 months of 10 and 11/05. This type of assessment is technically correct provided the consumer always uses balance load i.e. equal load in all the 3-phases of Electric Supply at all times which is rare. Further the connected load details of the consumer are not made available to verify the single phase loads. Usually there are chances that the 'Rice Mill' premises are having 1-phase motor loads and other Lighting loads. Moreover, the assessment of 3 times the meter recorded consumption for the months of 10 and 11/2005 will yield an energy usage pattern of 47820 units per month, which is

found not tallying with the energy consumption records in the Meter reading register, of the consumer for the period from 11/2004 to 03/2009, which was produced as document. I feel the said approach of assessment is not reasonable or justifiable and hence I am not inclined to accept the same.

The Counsel for the appellant argues that the assessment, if any, should be based on the clause 31(C) of the Conditions of Supply, 1990, only as the present KSEB Terms and Conditions of Supply, 2005, was notified at a later date to the cause of action of the disputed bill, originated in 12/2005. This argument appears to me as reasonable and the said clause 31(C) of 1990 reads as follows;

'in the event of any meter being found incorrect (which includes meter ceasing to record, running fast or slow, creeping or running in reverse direction) and where the actual errors on reading cannot be ascertained, the meter will be declared faulty and the correct quantity of energy shall be determined by the taking the average consumption of the previous 3 months, due regard being paid to the condition of working, occupancy etc. If the average consumption for the previous 3 months cannot be taken due to the meter ceasing to record the consumption or any other reason, the correct consumption will be determined based on the average consumption for the succeeding 3 months.

I am convinced that the energy consumption during the disputed period was low compared to other periods and the KSEB has a strong point that it was due to the faulty CT's in two phases of Electric supply. Further, before the faulty period and after the rectification of defects of CTs, the energy consumption was relatively high compared to the disputed period of 9/05 to 11/05, which suggest me that the allegation of CT as faulty is likely to be true. The appellant has also not posed a serious objection of the Meter malfunctioning during this period but affirms that he has never have an abnormal consumption as alleged by the respondent, all along the period. Therefore the consumer is liable for reassessment for the disputed period of 3 months based only on average consumption.

Based on the clause of 31(C) stated above, the energy consumption recorded for the 3 months prior to meter becoming faulty is reproduced below. The energy consumption of the just previous month of 8/2005, prior to meter declaring faulty in 9/05, is not taken for the true average calculation. This is because, as the meter was supposed to be missing the 'electric current' input to the Energy meter from one phase of the Current Transformer (CT), which was seen confirmed in 9/05 only, but there is more chance that the error might have crept in from the previous month onwards. In such a case the previous month's reading may not be a dependable one and hence that month's energy use was not taken care of in the average calculation. Now the average consumption is calculated as;

<u>Case 1.</u>	<u>Month</u>	<u>energy consumption</u>	
	5/2005	28960 units	
	6/2005	27360 units	
	7/2005	<u>35040 units</u>	Total for 3 months = <u>91360 units.</u>

Therefore, the true average energy consumption of the consumer, prior to meter became faulty is = $91360/3 = 30453$ units per month.

Case 2. The energy consumption after changing the defective CT's to the meter, are as follows;

2/2006	37320 units	
3/2006	28040 units	
4/2006	<u>29720 units</u>	Total for 3 months = <u>95080 units.</u>

Therefore, the true average energy consumption of the consumer, after changing the defective CT's to the meter and making it a good meter is = $95080/3 = 31693$ units per month.

The energy consumption pattern of the consumer in both cases, that is prior to meter becoming faulty and after rectifying the defects, tallies well and therefore I conclude that the true average energy consumption of the consumer during the disputed period of 9/2005 to 11/2005 (3 months), shall be 30453 units per month only.

Decision: -

From the foregoing analysis done above and the Findings and Conclusions arrived at, I decide as follows.

It is noted that the consumer was already been billed for 84999 units for the disputed 3 months of 9/2005 to 11/2005, when the meter was malfunctioning due to some error in the CT (Current Transformer) that feeds the 'current' input to the Energy meter for the measurement of electrical energy used by the consumer. It is reasonably concluded and estimated that the true average energy consumption of the consumer, for the disputed period (9/2005 to 11/2005) shall be 30453 units per month X 3 months = 91360 units only and therefore the balance quantum of energy that needs to be billed against him shall be (91360-84999) = 6361 units only, instead of 39681 units assessed by the respondent. Hence the respondent is ordered to revise the disputed bill as decided above. Consequently the CGRF's order No. CGRF-CR/Comp.33/2010-11 dated 27.11.2010 stands quashed.

It is noted that the consumer is eligible for the refund of excess Light Meter energy consumption charges collected from him, during the period of 9/2008 to 9/2009, amounting to Rs 24943/-, as per the decision of the Executive Engineer.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant Sri. C P Varghese, St. George Rice Mill, Okkal, is allowed to the extent ordered as above and hence stands disposed of.

No order on costs. Dated the 8th of August of 2012.

Electricity Ombudsman.

Ref No: P/ 196/ 2011/ 1342/ Dated 08.08.2012.

Forwarded to

- 1). Mr. C.P. Varghees
M/s St. George Rice Mill, Karikode, Okkal P O,
Perumbvoor.
- 2). The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Perumbavoor.

Copy to: -

- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB,
Vydhuthi bhavanam, Pattom, Thiruvananthapuram-4
- 3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Power House Building, Cemetery mukku, Ernakulam-682018.