

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/215/2011.

(Present Sri.T.P.Vivekanandan)

Appellant : Smt. Rosy Thomas,
M/s. Popular Modern Rice Mill, OkkalP.O,
Perumbavoor, Ernakulum (DT).

Respondent : The Assistant Executive Engineer
Electrical Sub Division, KSEBoard,
Perumbavoor.

ORDER.

Background of the Case: -

The appellant has an industrial electrical connection having consumer No. 17081, availed for his Firm named 'Popular Modern Rice Mill', from Electrical Section, Perumbavoor. The service connection was effected on 30/9/1983. The Audit wing of KSEB detected that the light meter consumption of the consumer was not being assessed based on light meter reading for a period from 10/2006 to 8/2008 by omission, by considering as sub meter to the power meter i.e. the power meter reading includes the light meter consumption. Based on the report, the respondent issued a short assessment bill for Rs. 41,222/- for the recovery of revenue loss. Aggrieved by the bill, the appellant filed Petition before the Executive Engineer, Electrical Division, Perumbavoor on 26/10/2009, which was dismissed vide order dated 29/10/2010. Being not satisfied on the decision on the impugned bill, the petitioner filed a complaint before the CGRF on 10/11/2010. The CGRF also dismissed the Petition on the ground that the bill issued by the respondent is in order and the petition is devoid of any merits. Aggrieved by the decision of CGRF, the appellant has submitted the Appeal petition before this Forum on 25.04.2011.

Argument of the Appellant: -

The arguments advanced by the appellant in his petition are the following.

1).The appellant is the partner and consumer of a small scale Industrial unit using electric energy for operating a modern rice mill. A demand was made by KSEB for additional payment, allegedly by way of arrears of Electricity charges, on the ground that the audit wing of KSEB has noticed discrepancies in the previous bills of light meter consumption. As per the show cause notice, it is alleged that there is short assessment in light meter connection for the period, 10/06 to 8/08. The reason cited for short assessment, is that an "incorrect method of billing was adopted on the assumption that the incoming

of the light meter was tapped from one phase, after the CT meant for power meter". The amount of the short assessment bill is Rs.41, 222/- .

The appellant submitted petition dated 26.10.2009 to the Executive Engineer disputing the claim in the said Demand notice. Thereupon, the Executive Engineer issued notice to the complainant and hearing was conducted on 18.02.2010. Thereafter, as per proceeding No: GB/RAO/PBVR/10-11/1584, PBVR dated 29.10.2010, of the Executive Engineer, Perumbavoor, an order was passed upholding the short assessment made on the consumer. But none of the materials relied upon by the Executive Engineer was furnished to the complainant.

The order and findings of KSEB authorities are against law and facts. The documentary evidence produced by the consumer, the law as well as facts of the case were not considered by the authorities in the right perspective, resulted in the issue of short assessment bill to the complainant.

The basis for the short assessment during the period 10/06 to 08/08 is that while billing, incorrect methodology was adopted on the assumption that the incoming of light meter, was tapped from one phase after CT. As come out from the statement of the respondent before CGRF, right from the time when connection was given to the consumer in 1983 the light meter connection was tapped from the point before the CT installation. No documentary evidence was adduced by the Licensee to prove the same. The Licensee has no case that prior to 10/06 and after 08/08, no such incorrect method was in vogue. Why such a particular period 10/06 to 08/08 was reckoned for the short assessment bill is not made out from any of the orders passed. There is nothing to suggest that prior to or after the afore-said period, correct method of billing was adopted. The inspection of the meter was conducted only on 17.10.2009 for ascertaining the stand taken by the Licensee, ignoring the fact that the period short assessed, is from 10/06 to 08/08. Based on an inspection conducted on 17.10.2009, the Licensee can not assume that the billing was done during the material period on the wrong assumption that the incoming to light meter was tapped, from one phase after the CT. The Licensee cannot charge the consumer with exorbitant amounts merely on the basis of assumptions.

Based on the contentions of the Licensee in the statement filed before CGRF, the complainant filed a detailed application at the time of hearing on 05.02.2011 before the CGRF calling upon the Licensee to produce before the CGRF several documents which would throw light on the disputed facts. The licensee has not produced any of the records before the CGRF and that apart, there is not even a whisper as to the filing of such an application by the appellant, anywhere in the order passed by the CGRF. The CGRF ought to have insisted on production of the said documents for which the Forum has got ample powers and in case of non-production, it ought to have drawn adverse inference against the Licensee.

As per the records furnished to the complainant by the Licensee under Right to Information Act, from 2/2000 to 10/2005 (69 months), the complainant was assessed for 1400 units per month for light meter connection, on the ground that the light meter is faulty and for 69 long months, no steps were taken to change the defective meter. After fixing a new meter, no adjustment bills were issued. The Licensee, who is so keen and particular in issuing assessment bills for the short assessment solely based on assumptions, never took into consideration an actual fact that is clearly borne out from the

records. Assume for argument sake that the petitioner is liable to pay any amount, by way of short assessment, the Licensee is bound to take into consideration the aforesaid excess assessment and give credit to the consumer. Taking into consideration the anxiety of the Licensee in issuing the short assessment bills to the complainant highlighting the financial loss of the Licensee, the Licensee is also bound to reckon the financial loss to the consumer on account of the gross latches and negligence in the matter of discharging the duties and responsibilities of the Licensee. Despite pointing out the aforesaid aspect at the time of hearing before the CGRF and despite filing an application calling up on the Licensee to produce document to substantiate the said aspect, the same matter did not figure out anywhere in the impugned order of CGRF.

The energy recorded in the light meter for the period 10/06 to 08/08 is 11,993 units. Going by the records furnished to the complainant by the Licensee under RTI Act, the unit of light consumption is 12357. This anomaly was never noticed by the CGRF. Going by the details furnished 173 is the units of energy consumed for the light meter for 12/2007 whereas, as per the meter reading register, it is 425 units. It is based on such erroneous computation that the short assessment bills were issued. Thus, it is evident from documents already on record that there is mistake in the so called calculation for short assessment. The CGRF never took into consideration all these aspects.

In the very same Electrical division, KSEB, it is realized that there were instances where the Light meter was tapped from one phase after CT and assessment of energy was based solely on the basis of units consumed as per the Power Meter readings. Order passed by the Executive Engineer in a similar Case was produced and specifically pointed out. The same was completely ignored by the CGRF with out any proper reasoning.

The complainant has been put to dark as to ever so many material aspects. The respondent is relying on the audit by the RAO for issuing revised bill. The details of the audit are never furnished to the complainant. The said audit report is highly essential for the adjudication of the issues in the case.

There has been change of tariff of electricity with effect from 01.12.2007. Assume for argument sake the complainant is liable for short assessment, the change in tariff was never reckoned while computing the short assessed amount.

The consistent case of the respondent is that, the power meter and light meter were connected in the same manner in which it exists now, from the date of connection. If that be so, the bills for the energy consumed ought to have been recorded in the same manner till 10/2006, from the date of connection and after 8/2008, the light meter consumption and power meter consumption separately. No such details are forthcoming from the side of the respondent who is in possession of documentary evidence relating to the same. The CGRF ought to have drawn adverse inference regarding the same.

The order of the Executive Engineer was passed allegedly based on a calculation statement relating to impugned bill. The Executive Engineer has relied on the billing records for passing the impugned order. Copy of the same was never served on the complainant and hence there is violation of the principles of natural justice while rendering of assessment orders against the complainant.

The amount now demanded as per the impugned proceedings does not have validity or can be legally claimed or demanded. It is also not stated, as to how the figure Rs.41, 222/- was arrived at by the Licensee and the consumption based on which, such an assessment was made. The appellant is not liable to pay the additional amount of Rs.41, 222/- as per the impugned order.

The authorities below ought to have considered the contentions made by the complainant in a proper and just manner and quashed the bill issued by the Licensee.

Argument of the Respondent: -

The respondent has filed the statement of facts against the averments raised in the Appeal petition. The main contentions of the respondent are the following.

The billing records in respect of consumer No: 17081, was audited by the Regional Audit Officer, of KSEB, Perumbavoor, on 17.08.2009 and it had observed that the light meter consumption for the period from 10/2006 to 8/2008 was not properly billed, resulting in revenue loss to the KSEBoard. It was directed to short assess the consumer on that account. Accordingly, a short assessment bill for a sum of Rs.41222/-, with the calculation details, was served up on the consumer.

Aggrieved by the bill, the consumer filed Petition before the Assistant Engineer, Electrical Section, Perumbavoor. Afterwards the same petition was submitted before the Executive Engineer, Electrical Division, Perumbavoor, for consideration and disposal. A hearing of the petitioner was conducted by the Exe. Engineer, on 18.02.2010 and the case was disposed of by him, by dismissing the petition vide order no: GB/RAO/PBVR/10-11/1584 dated 29.10.2010. The findings in the order were as follows:- 'The total light consumption was 11993 units for the period from 10/06 to 8/08. But on perusal of the billing records, it was revealed that, during that period, only 3017 units of light consumption was got billed. Also, the billing procedure was not correct for the same period. The said anomaly was found to be occurred due to the incorrect methodology adopted, in the assumption that, the incoming of light meter was tapped after the CT. In such a connection, light load consumption was being recorded in the power meter, and thereby needed no separate billing with in permissible limits.

This defect of Light meter billing was later corrected in 9/08. But, the short assessment for the period from 10/06 to 8/08 was not made good. The fact was detected during audit by the RAO, and hence proposed for the short assessment. For ascertaining the nature of the light meter connection, the Assistant Engineer, Electrical Section Perumbavoor, has inspected the premises on 17.10.2009, and his findings was recorded as shown below:

'Inspected the premises on 17.10.2009, and found that, the incoming light connection is seen tapped from the phase before CT. Hence the consumption is the sum of power and light meter readings'. Therefore the short assessment made stands proved absolutely. Moreover, in the present case, there was no question of demanding any fresh current charges from the consumer, but only the short assessed current charges relating to the period from 10/06 to 8/08, otherwise he was liable to remit then and there itself. Apart from this the KSEBoard is not at all levying any surcharge or penal charge on the short assessed energy charges, but purely the missed current charges only. The consumer is bound to remit the same.

Details of the short assessment were as under:

Power consumption from 10/06 to 8/08	= 218320 units
Eligible units for concessional rate of tariff i.e. 5%	= 10916 units.
Light consumption assessed for the period	= 11993 units.
Applicable consumption for higher rate	= 11993- 10916 = 1077 units
Billing Amount (1) 10916 units × Rs 3.25	= Rs. 35, 477/-
(2) 1077 units × Rs. 3.75	= Rs. <u>4, 039/-</u>
Total for 11993 units	= Rs. 39, 516/-
Less: paid for 3017 units @ 50 paise (-)	= Rs. <u>1509/-</u>
Total	= Rs. 38, 007/-
Duty	= Rs. <u>3215/-</u>
Grand Total	= Rs. <u>41, 222/-</u>

25% of the amount was remitted by the consumer as per the directions of the Hon'ble CGR Forum:
i.e. Remitted vide Receipt No:336270 dated 19.11.2010 = Rs. 10306/-
Balance to be paid = Rs. (41222-10306)
= Rs. 30916/-.

The power meter and light meter were connected in the same manner in which it is existing now, from the date of connection, as reported by the Assistant Engineer, Electrical Section, Perumbavoor. The light meter was connected as additional meter to the power meter, so that the light consumption was not recording in the power meter. The Assistant Engineer has reported that there was no change in the mode of connection of Light meter till date. Hence the 'lights circuits' energy consumption can be measured only from the 'light meter'. There is no question of demanding any fresh current charge from the consumer, but only the short assessed current charges relating to the period from 10/06 to 8/08 was demanded, which otherwise, he was liable to remit then and there itself. Apart from this, the KSEB has not levied any surcharge or interest on the short assessment charges on 'light meter' consumption, but purely the electricity charges only. The consumer is bound to remit the same.

The complainant could have asked for the documents, quoted by the petitioner in his complaint, before the CGRF, for proving his contentions. Being the Assistant Executive Engineer, the respondent submitted the relevant documents to prove his arguments, before the Hon CGRF. There is no direct relevance to the functioning of rice mill, in the case of light meter consumption. It was proved that, the light meter was connected as additional meter, from the date of connection, and there was no charge in the mode of connection of meters, till date. It is clear that, if the light meter was connected as additional meter, total consumption will be the sum of the power and light consumptions. Hence, the short assessment done was correct and as per rules.

The statement that the light meter consumption was only 173 units in 12/2007 was correct as it was billed only for 173 units. The consumption recorded in the MR register as 425 units was a clerical mistake. It was actually 502 units (16274-15772). It was clear in the register itself. No correction was

made in the meter readings. But the consumption for billing was worked out after making necessary deductions as per rules, as 173 units, hence, it is correct.

The case of Sri. C. P Varghese, another consumer, referred by the appellant, was not similar in nature. It was inspected by the Assistant Engineer and found that, it was a sub meter. The purpose of field inspection by Assistant Engineer is to confirm the findings of the Audit team, and to determine the actual status of the connection. In the case of C.P. Varghese, it was found that the audit-finding was not correct. But, in the present case, on inspection it was confirmed that, the audit assessment was correct. There is no relevance to interconnect an entirely different case to this one. The situation of both the case is different. The licensee did not discriminate between the consumers in the matter of assessment.

The relevant details of the RAO audit was handed over to the Hon CGRF, and the details about the assessment was also given to the petitioner earlier. Only for a period from 10/2006 to 08/2008, the light consumption was short billed. The billing mistake was occurred only for that period, due to the wrong calculation by the person concerned. The billing records were handed over to the Hon CGRF in the presence of the representative for the complainant and the same was checked by him.

The billing defect was later corrected from 9/08 onwards. But, the short assessment for the period from 10/06 to 8/08 was not made good. The fact was detected by the RAO, and hence proposed for the short assessment. Due to above reason, the short assessment made for Rs.41, 222/- was just and reasonable and as per rules. The consumer is bound to remit the same. Otherwise it will be resulting in revenue loss to the KSEBoard.

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 and 14.3.2012 in my chamber at Edappally, and Mr. G. Rajagopal, learned Advocate for the appellant and Sri. John Varghese, Assistant Exe. Engineer, Electrical Sub Division, Perumbavoor, represented the Appellant and Respondent side respectively.

During the first day of hearing the case, the respondent was asked to file the calculation statement of the monthly Bills of the Consumer for the period from 1/04 to 7/06 and a copy of audit inspection report before this Forum and also to give copies of the same to the appellant. The same documents were issued to the appellant and the next hearing was arranged. The Counsel for the appellant has presented the case very systematically and logically.

Previously in KSEB, the LT industrial consumers were provided with two Meters, one for measuring the energy used for Power circuits of the Industry and another for measuring the energy used for Lighting Circuits of the whole premises. This is because, KSEB gave the benefit of industrial tariff, for the light consumption also, provided the consumer limit the light energy, to 5% of the Power energy used. If it exceeds 5%, the consumer is bound to pay more for the excess 'Light' energy consumed. Therefore, it is certain that industrial consumers required two meters, to measure and account properly the energy used by both Power and Light circuits.

The Light meter is usually connected before the installation of CT's (device used for feeding the Electric Current input to the Power Meter) and hence the Light energy consumption has to be added to the Power Meter consumption to get the total energy usage of the consumer. If the Supply to Light meter is taken after the CT installed point, then the Power meter reading will give the combined energy usage or the total energy consumption of the consumer.

In this case, it is reported that the light meter was connected as additional meter to the power meter, i.e. tapped before the CT's of the Power meter. Consequently, the light Meter consumption was not recording in the power meter. Further, an examination of the KSEB records i.e. calculation sheet of the Bills (produced as document), reveals that KSEB had taken the light meter as additional meter and included it for billing up to 9/2006. But the billing done after that month i.e. from 10/06 onwards shows that the Light meter consumption had been omitted without any specific reason. This correspond to treat the Light meter having connected as a sub meter i.e. the incoming to the light meter was tapped from a point after the CT's installation. The KSEB argues that it was a mistake or an omission only. The inspection done by the AE subsequently also revealed that the existing Light Meter was connected as an additional Meter. This confirms that wrong preparation of monthly Bills has occurred since 10/2006. The Regional Audit Officer, KSEBoard, Perumbavoor, who audited the billing records on 17.08.2009, detected this defect in bills i.e. the Light meter consumption was left out from the Bills, from 10/2006 to 8/2008. From the findings I feel that it is reasonable and justifiable to raise the short assessment bill for the period 10/06 to 8/08.

A verification of records shows that the light consumption of the consumer No. 17081 during the period from 10/06 to 8/08 was 11993 units, but the consumer was charged only for 3017 units of light consumption during the same period. Hence the consumer is bound to pay the actual energy he has consumed. The Clause 24(5) of the Electricity Supply code states that 'if the Licensee establishes that it has undercharged the consumer by review or otherwise, the Licensee may recover the amount undercharged from the consumer by issuing a bill'.

DECISION: -

From the analysis done detailed above and findings and conclusions arrived at I take the following decisions.

The scrutiny of the copies of old billing records (documents filed by the respondent) reveal that the Light meter energy consumption was added to the Power meter consumption, while raising the monthly Bills of the consumer, from 12/2003 to 9/2006 and discontinued for the period 10/2006 to 8/2008 and thereafter again included in the billing from 9/2008 onwards. The KSEB's meter reading register or records did not reveal any modification being done in the Light Meter connection at the consumer premises during this interim period, for effecting such a change in the billing. The appellant also has not a case that the respondent has changed the electric connections to the Light Meter at that point of time. Thus, it is fact that there was a shortfall in billing, by omitting the Light energy consumption, for the interim period of 10/2006 to 8/2008 and the respondent argue that it was a case of omission only, which appears to be as correct. Moreover, the inspection done by the AE of the Electrical Section, after the dispute has arisen, has confirmed that the existing Light Meter was

tapped from a point before the CT's (installed to the Power Meter), which means the Light meter energy is also to be added to get the actual consumption of the Consumer. Hence I am of the view that the finding of the AE corroborates the decision of KSEB to issue a short assessment Bill for the disputed period.

The consumer is bound to pay the electricity charges for the true energy he has consumed. Even if there is an omission or mistake in the billing of the consumer, it needs to be set it right, if the same comes to light and is bonafide. There are provisions in the Electricity Supply Code, clause 24(5) and in KSEB Terms and Conditions of Supply, 2005, Clause 37(5), to recover the shortages of electricity Bill, if the undercharging of the consumer is established by review or otherwise. In this case I am of the view that the Bill raised is reasonable and justifiable. Hence I decide that the consumer is liable to pay the disputed Bill and directs the respondent to issue suitable installments (up to 15), if requested by the consumer, to remit the balance amount. The Petitioner need not pay any interest for the balance amount of the bill, during the Petition pending period before the CGRF and this Forum and up to 30th day of this order. The appellant may remit the balance amount in full or may request for suitable installments and pay the 1st installment with in 30 days of this order. But the installments will bear interest, from 30th day of this order to the day of remittance, at the ruling rate.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellants stands disposed of as it lacks merits. No order on costs.

Dated the 19th of December, 2012.

Electricity Ombudsman.

Ref No. P/ 215/ 2011/ 1500/Dated 19.12.2012.

Forwarded to 1). Smt.Rosy Thomas.
 M/S. Popular Modern Rice Mill,
 Okkal P.O, Perumbavoor, Ernakulum (DT).

2).The Assistant Executive Engineer
 Electrical Sub Division, KSEBoard,
 Perumbavoor.

Copy to: - 1). The Secretary, Kerala State Electricity Regulatory Commission,
 KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
 2). The Secretary, KSEB, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram - 4.
 3). The Chairperson, CGRF,
 KSEB, Power House Buildings, Ernakulum, Cochin -18.