

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO: P / 260/ 2012.

(Present: T P Vivekanandan)

APPELLANT : 1).The Chairman,
Janatha Tile Works Ltd,
Mooniyar P.O. Malappuram Dt. Pin-676 311.

RESPONDENT : 2).The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Thirurangadi P O, Malappuram Dt. Pin- 676 306.

ORDER.

Background of the Case: -

The Appellant, M/s Janatha Tile Works Ltd, is running an industry of manufacturing earthen tiles at Moonniyur, Malappuram, which is managed and run by the workers themselves. They have availed an electric connection with consumer No. 457 under LT IV-industrial tariff from Electrical Section, Thalappara. Two numbers of energy meters for lighting and power were installed in their premises consequent of the conversion of tariff from HT to LT w.e.f. 26-11-2001. During 12/2008, the appellant noticed that light meter reading is abnormally high when compared to the actual consumption. On the basis of complaint dated 30/12/2008 received from the appellant, the KSEB installed a Test meter on 1/1/2009 and it was found that the energy consumption recorded by the exiting meter during the 13 days of Test, from 1/1/2009 onwards was too high, when compared to the reading recorded by the Test meter. The newly installed meter showed an average monthly consumption of 708 units for the period from 1/2009 to 6/2009. According to the appellant, a total of 70026 units were recorded to be consumed, during the last four years commencing from 1/2005 to 12/2008, whereas the actual consumption for the period comes to 33984 units only, as per the newly installed meter (708X48=33984). Therefore the consumer requested the Assistant Engineer, Electrical Section, Thalappara, to refund the excess amount realized from them by letter dated 25-7-2009 with a copy to the Executive Engineer. The EE after lapse of two years, rejected the request on 13/9/2011. The appellant approached the CGRF against the decision of the EE and filed a petition on 28.9.2011 which was disallowed vide order OP. 36/2011-12 dated 29.12.2011. Aggrieved by the said order, the Appellant has filed the Appeal Petition, before this Authority.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his petition submitted before this Forum.

The decision of the CGRF communicated vide their order dated 29/12/2011 is not maintainable as it is issued after 86 days from the date admission of the complaint. It is clear violation of clause 10 (6) of the KSERC (CGRF and Electricity Ombudsman) Regulations 2005.

The energy meter is owned and got calibrated from competent authority by the consumer. It is done as per the existing rules and in accordance with the undertaking furnished to the Deputy Chief Engineer, Electrical Circle, Manjeri, on 26/11/2001 for conversion from HT to LT. Possessing the ownership of the energy meter does not alienate the legitimate right of the consumer to get refunded the excess amount realized from him.

The appellant challenged the contention of the EE that it is the responsibility of the consumer to check the performance of the meter and accuracy of reading and consumption. To check the accuracy of a meter sealed by the licensee is not at all practicable as far as the consumer is concerned. But KSEB can very well detect the fault as a technically qualified official visits the premises every month for recording the meter readings. It is also the responsibility of the licensee to furnish a notice directing the consumer to replace the faulty meter if it is faulty. In this case no such notice is served. But it is the consumer who brought the faultiness to the attention of KSEB.

Further, the appellant argues that there was procedural mistake on the part of the licensee. When the respondent have confirmed that the existing meter is faulty on comparing with the reading of the parallel meter installed for 13 days, they should have prepared a site mahazar, sealed the faulty meter and directed the consumer to get tested the correctness of the meter from any approved meter testing laboratory or at least the meter should have been returned to the consumer. In this case KSEB had taken the faulty meter owned by the consumer to their store.

The KSEB and the Forum have admitted that the meter was faulty. They have no dispute over the excess amount realized from the consumer. The dispute is in ascertaining the period during which the meter was faulty. This can be ascertained by watching the considerable variations in the monthly consumptions recorded. The finding of the Forum that the consumption recorded, before and after the change of the meter is more or less identical is not correct. The average monthly consumption recorded by the faulty meter for the period from 1/2006 to 12/2008, three years prior to replacement is 1568 units per month, whereas the average consumption after replacement of the meter, for 3 years from 1/2009 to 12/2011, was 1016 units only. From the above it is evident that faulty meter has recorded an average of 552 units in excess per month. This aspect had been brought to notice of the Forum by the rejoinder dated 31/10/2011 and at the time of hearing but they have ignored it.

On 11.5.2011, additional electricity bill for Rs.11117/- was served to the consumer by the KSEB. The reason for additional bill was stated that the power meter installed in our premises was faulty and the consumption recorded in the meter is less when compared to the actual consumption of the previous months. This power meter is also owned by the consumer. The consumer has paid the regular bill and the additional bill in time. From the above it is evident that if the faulty meter records higher than the actual consumption, KSEB can deny the overcharged amount to the consumer whereas if the faulty meter records less than the actual consumption they will recover the undercharged amount from the consumer, which is highly discriminatory and illegal.

Another argument raised by the appellant is that the Forum has observed that it is illogical to consider that the light meter was faulty during the entire period from 1/2006 to 12/2008, only on the basis of low consumption during the immediate period of six months after the change of the meter. But they ought to have considered refund of the excess units charged based on the energy consumption of the whole period after the replacement of the faulty meter as requested for in the rejoinder dated 31/10/2011 and grant relief. Therefore the action of EE and the CGR Forum in rejecting the request to refund the overcharged amount is a clear case of contravention of relevant rules and regulations and highly discriminatory and against natural justice.

Relief sought for: -

1) Declare the decision of the Executive Engineer communicated vide his letter dated 13/10/2011 and the order of CGRF dated 29/12/2011 are illegal.

2) Direct the Executive Engineer, ES, KSEB, Thirurangadi, to refund the excess amount realized from them based on the faulty meter, with interest by assessing the average excess reading recorded during the last 3 years prior to and after the replacement of the faulty meter or based on any other criterion which may decide proper.

3) Pass such other or further reliefs as may deem fit and proper.

As a part of settlement, the appellant is agreeable if the respondent is ready to revise the bills for the last two years prior to 12/2008, as per the average consumption obtained after July, 2009, with the applicable interest for excess payment made to KSEB.

Arguments of the Respondent:-

The respondent has denied all the averments and allegations contained in the petition. Their arguments are as follows;

It cannot be concluded that the consumption for the previous four years were lower because the consumption after change of meter was lower as compared with the previous consumption. Moreover, the meter was tested at TMR Division, Shornur, before the installation, as the same was purchased by them. Consumptions of electricity should invariably be ascertained by a good energy meter and not by assumptions. A tested and calibrated meter if found faulty after four years does not indicate that it was faulty throughout the period. The appellant's request cannot be admitted as it is illogical and have no precedence. If their request is admitted, it will lead to a very bad message that the consumption recorded by every meter which becomes faulty was wrong throughout their life. In fact every meter has the possibility to become faulty in life time.

Another important contention of the respondent is that as per the records produced by the appellant, it can be seen that their energy consumption is less than a 1000 units only during the seven months after changing the meter. The consumption recorded before and after that period is well above 1000 units. According to the respondent the reasons for a reduced consumption are;

(i) there was power restriction with effect from 15/10/2008 to 1/5/2009 as approved by the Hon KSERC. So there is every chance that they have reduced their consumption during that period and

(ii) they have reduced the lighting load by using CFLs and even by tapping from power circuit.

The respondent has admitted that the meter is owned by the appellant and tested by the TMR Division, Shornur, before installing. Thus the meter is correct. As and when the appellant pointed that their doubt about the correctness of the meter, it was changed within two days.

(Complaint received on 30-12-2008 and action taken in 1-1-2009). As the point at which the meter became faulty cannot be ascertained, the appellant's argument is not considered valid.

The respondent denies the allegation of procedural lapse on the part of KSEB in changing the meter. The meter was changed as per the request of the appellant dated 30-12-2008. On 1-1-2009 parallel meter was installed and on 13.1.2009 it was replaced by a good new meter of KSEB. There is no precedence of preparing a site mahazar for a meter change. The old meter was left with them as it belongs to them. This is clear from the fact that they have filed their first complaint in the matter on 25-7-09 after a lapse of 7 months after the meter change. In one place of the petition of the appellant, it is stated that the excess units recorded per month are 708 units and another place it was 552. There is no basis for any of this calculation other than intuition.

Regarding the additional bill served during May 2011, the respondent's version is as follows. During May 2011 while taking the meter reading, one CT connection to the power meter was found open and the consumption recorded was 3040 units while the average consumption was 6220 units. The difference of 3180 units was separately billed. The power meter is not faulty. This is no way related to the present case which happened two and half years ago. Since this incident has no relation with the petition, it cannot be considered as supporting evidence to their case.

According to the respondent, the finding of CGRF is based on law and precedence and hence valid. There is no denial of natural justice in this case. Even the appellant could not figure exactly what amount has been charged in excess.

Analysis and Findings: -

On examining the Petition and argument notes filed by the Appellant, the statement of facts of the Respondent, perusing 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 25.7.2012, in my chamber at Edappally, and Mr. Subramaniyan M, former Technical advisor and Mr. E Subramaniyan, Director, Janatha Tile Works Ltd and Mr. Raveendranathan, Assistant Executive Engineer, Electrical Sub Division, Tirurangadi, have represented the Appellant and Respondent side respectively.

The appellant's light meter was found faulty (recording high than the actual) when tested in 1/2009. The appellant's case is that the meter was faulty during the entire period from 1/2006 to 12/2008 and thereby collected excess amount towards current charges from them during that period. This is based on the fact that the consumption, after change of the faulty meter in 1/2009, was lower as compared with previous consumption. The appellant has made the complaint about the meter fault in 12/2008 only. There is no basis or reasonable justification for his argument that the meter was faulty from 1/2006 onwards. I have gone through the statement of meter reading produced by the appellant which shows that the consumption was not in a consistent pattern during these years. After the replacement of the meter in 1/09, it was below 1000 units up to July 09 and the consumption increased above 1000 units in the subsequent months except a few months. The year wise energy consumption of the consumer is as follows.

2005 = 13590 units,

2006 = 17081 units,

2007 = 19171 units,

2008 = 20184 units,

2009 = 10363 units,

2010 = 12561 units,

2011 = 13654 units,

The dispute is in ascertaining the period during which the meter was faulty. According to the appellant, this can be ascertained by watching the considerable variations in the monthly energy use recorded. Referring the year wise consumption, listed above the yearly average consumption varies in every year. On a monthly basis, it was 1133 units in 2005, 1423 units in 2006, 1597 units in 2007, 1682 units in 2008, 863 units in 2009, 1046 units in 2010, and 1130 units in 2011. Hence the argument of the appellant that the average consumption was 708 units per month is not correct. The contention of the respondent for the reason of reduced consumption in 2009, was that there was Power restriction in Kerala, with effect from 15/10/2008 to 1/5/2009. So there is sure chance that the consumer's consumption might reduce in the year 2009.

In this case, it is relevant to point out the correct procedure to be followed regarding complaint of meter faultiness, as specified in Regulation 42 (3) of KSEB Terms and Conditions of Supply 2005. It reads; "The consumer may report any complaint regarding meter to the concerned Electrical Section. The inspection of the meter will be carried out using the standard reference meter (Single Phase/Three Phase) available in the section office which is tested, calibrated and sealed by the Electrical Inspectorate. If meter is found faulty such meters shall be replaced immediately at the expense of the Board. If the existing meter after having replaced with a new one the consumption recorded during the period in which the meter was faulty shall be reassessed based on the average consumption for the previous six months prior to replacement of meter. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding six months after replacement of meter and excess claimed if any, shall be adjusted in the future current charge bills." The respondent has challenged taking six months average after changing the meter because of the reason of 'power cut' mentioned above.

Here the dispute is on the point, for which period, the meter was faulty. The appellant has failed to produce any sufficient evidence to prove his claim of meter faultiness from the year 2006 onwards. His only argument is that the low consumption after change of meter and the difficulty to check the accuracy of a meter, sealed by the licensee, as it is not at all practicable as far as the consumer is concerned. The consumer cannot check the meter or is not supposed to do so. But there is the possibility that he can bring to the attention of the respondent any abnormal energy consumption or any unusual meter reading noticed then and there. But the complaint was made only in 12/2008. The increase in the meter reading is not all exorbitant to be noted by a meter reader and there is also the chance that it might be due to higher power requirement. It is more the liability of the consumer to watch any such excessive reading than the normal usage and report KSEB to take further action. The consumer himself failed to notice the disproportionate reading, as claimed by him, weakens his case that the meter was faulty from 2006 onwards.

DECISION: -

The Clauses 24 (5) and (6) of the Electricity Supply Code, 2005, allows the Licensee to recover the amount undercharged from the consumer and also to refund the overcharged amount to the consumer. The perusal of the meter reading register and the year wise consumption pattern, does not reflect a consistent energy use. The Power cut imposed in 2008-09 also might have paved the way for a lower consumption in the year 2009. But it is confirmed that the Light meter was faulty and recording a higher consumption than the actual, while tested with a Test meter in 1/2009, and therefore the consumer is eligible for refund to the period he has paid in excess.

But it is difficult to fix the correct period of meter faultiness in this case. The energy consumption for the calendar year 2006, 2007 and 2008 seems to be on the higher side, compared with that of 2005, 2009, 2010 and 2011. Since there was power cut imposed on consumers during 2009, the consumption of that year will not give a true average consumption. The consumption during the next year i.e. in 2010 was 12561 units (for a year). Hence I reasonably assess the true average consumption per calendar year of the consumer as 12561 units. The total consumption of the consumer prior to and after the dispute i.e. in 2005 and 2011 are almost the same i.e. 13590 units and 13654 units respectively, which tallies well with the assessment made at 12561 units per year.

The appellant has agreed for a revision of the bills for the last two years prior to 12/2008 as per the average and I am of the view that it is reasonable, since the consumption recorded for these two years is comparatively higher than the other years. Hence I decide that the consumer's light meter bill for the period of 01/2007 to 12/2008 (two years) shall be revised @ $12561/12 = 1050$ (rounded) units per month. The excess amount remitted, found by way of revision of 24 months bill, shall be adjusted in his future bills issued, with in 60 days of the receipt of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer stands disposed of to the extent it allowed and ordered. The order in the OP No.36/2011-12 of CGRF, Kozhikode, dated 29.12.2011 and the order of the Exe. Engineer, Thirurangadi, dated 13.10.2011, are set aside. No order on costs. Dated the 15th of January, 2013.

Electricity Ombudsman.

Ref. No. P/ 260/ 2012/ 1533/ Dated 15.01.2013.

Forwarded to : 1). The Chairman, Janatha Tile Works Ltd,
Mooniyar P.O., Malappuram Dt. Pin- 676311.
2). The Assistant Executive Engineer, Electrical Sub Division,
KSEB, Thirurangadi P O, Malappuram Dt. Pin- 676306.

Copy to : (1). The Secretary, Kerala state Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
(2). The Secretary, KSEBoard,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4
(3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Vudiyuthi bhavanam, Gandhi Road, Kozhikode.