

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/256/2011.

(Present: T.P. Vivekanandan)

Appellant : Sri. Ambalavan Adumannil Chekku Haji,
S/o Moosa Haji (Late), Othukkungal P O,
Kuzhippuram Kavala, (via) Kottakkal,
MALAPPURAM-Dt. –Pin- 676 528

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

ORDER.

Background of the Case: -

The appellant is a consumer under Electrical Section, Othukkungal (formerly Electrical Section, Kottakkal) having consumer No. 4806 under LT IA- domestic tariff. The meter was faulty for quiet some time. Then in 6/2010, KSEB installed a new meter to the consumer replacing the faulty meter. The consumer argues that a test meter was installed in 01/2010 and the consumption recorded for the period from 16/1/2010 to 10/5/2010 was only 203 units, which shows the bimonthly energy use (consumption) as 80 units. But the consumer was being assessed for an average of 280 units per bi-month during the period from April 2005 till the changing of faulty meter in 6/2010. The consumer has raised the complaint that his meter was faulty from the year 2000 onwards and therefore pleads reassessment from that date onwards, at the new average consumption obtained after changing the meter. He approached the CGRF, Kozhikode with a request to assess the actual energy use based on the reading of the new meter installed and to refund the excess amount already paid by him after deducting the actual amount due. The CGRF had dismissed the said Petition in OP No.13/ 2011-12, vide order dated 20/10/2011. Not satisfied by the decision of CGRF, the appellant has submitted the Appeal petition before this Authority.

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 appellant is a domestic consumer (No.4806) under Electrical Section, Othukkungal and pays the electricity charges regularly without any default. Even though the consumption was very meager,

the KSEB used to issue bills with excessive amounts and the consumer used to pay the same. From the year 2000 onwards, the meter remained faulty and the consumer had intimated the same with the lineman and other officials of KSEBoard. Moreover the concerned authorities used to visit the premises once in two months for taking the meter reading and to issue the bills. They also used to record the same reading on the bill and issued bills for an amount according to their whim and fancy. The consumer had produced a copy of the bill no: 10654 which is the available one where the present and the previous meter reading were shown as the same 1170 units. Even then the consumption is shown as 282 units. The bill No.131101 issued after five years of the first bill also shows the meter reading as 1170 units and the consumption billed is 280 units. This reveals that the assessment of the consumption is baseless and the charges collected from him are without any basis.

The Board cannot say that they are unaware about the faulty meter. Their own bill shows that they are aware of it. Moreover, KSEB initiated action against the appellant alleging misuse of connection in the year 2002. The appellant then approached the Hon High Court by filing OP No: 31790/2002 and obtained an order prohibiting the disconnection. The Board had prepared a mahazar regarding the meter in that occasion which will also reveal that they are well aware that the meter was faulty. Later the Hon High Court pleased to pass a final order by judgment dated 13.07.2006 quashing the demand made by KSEB and directing to issue a revised demand by limiting the penalty for fixed charge portion and by adjusting the amount already remitted.

On 16.01.2010 the KSEB installed a new meter along with the old faulty meter. The old meter is also retained there which bears the No. 167688. The meter reading at the time of installation was three units and the present reading as on 10.05.2010 is 205 units. Hence the total consumption from 16.01.2010 to 10.05.2010 (about 5 months) is 203 units. If so, the bimonthly consumption will be around 80 units. Even though the bimonthly consumption will be around 80 units, the consumer was issued the bills, assessing the energy use per bi-month as 280 units.

The appellant submits that Board is acting in a prejudice manner intending to harass him. Sri. A A Kabeer, son of the appellant has availed a new connection under OYEC scheme for his building for which the Board collected cost of an additional electric post. But they issued the connection without installing the additional post. The amount collected is not refunded or adjusted. The same is disclosed to establish the attitude of the board.

The appellant argues that only three members, including the appellant, his wife and son are residing in the said house. Nobody else is there to consume the electric energy. There is no apparatus like air conditioner or other appliances which consume more energy. The same shows that the consumption per month will not exceed 40 units. The same is also not considered by the Board in issuing the bills.

The appellant submits that he had approached the CGRF by filing OP No.27/2010-11 and the same was dismissed on 2nd November, 2010 on the reason that the Asst. Engineer of Othukkungal Section, was not issued any written complaints by the petitioner. Even though a complaint was filed before it, they refused to disclose the same before the Forum. This shows their attitude towards the consumer.

Again the consumer approached the KSEB's CGRF by filing OP No.13/2011-12 and the same was dismissed on the ground that the bi-monthly consumption of the complainant after change of the

faulty meter is not regular since it varies widely during 1/2010 to 9/2011 and hence the Forum finds no logic in reviewing the consumption of the complainant with retrospective effect.

By virtue of the Hon High Court judgment dated 13.07.2006 the KSEB is bound to cancel the earlier demand and pass a revised demand. The judgment is passed in the presence of the counsel for the KSEBoard by the Hon High Court. The KSEB is well aware about the said order. Even though the order is passed by the Court on 13.07.2006, no revised bill is passed by the KSEBoard so far. A complaint regarding the same was filed, but it was not entertained by the KSEB. It is understood that the KSEB is acting with a prejudice to him and is trying to cause further harassment by issuing excessive bills and discarding the complaints. The act of the KSEB is disobedience to the order passed by the Hon High Court and amounts to contempt of court. Even now the KSEBoard is causing undue harassment. The meter was faulty for the last 10 years or so. The consumer had filed a complaint before the respondent on 4/4/2011 which was received by them on 5/4/2011 and no action was initiated by the KSEB so far.

The reliefs sought for:

1. To assess the actual consumption by referring to the new meter installed.
2. To refund the excess amount already paid after deducting the actual amount due.
3. To refund the deposited amount in complying with the order of the Hon. High Court of Kerala.

Arguments of the Respondent.

The respondent has filed the statement of facts opposing the contentions raised by the appellant.

The complainant is a consumer under Electrical section, Othukkungal, with consumer No. 4806. Formerly he was under Electrical section, Kottakkal, till 2007. It is denied that the consumer filed any complaints with the KSEBoard authorities during the above period. In case the meter is faulty it was normal to bill for the average quantity of consumption during those periods. Since the meter was faulty it is most probable that the complainant must have used more energy than the average billed. This is substantiated by the illegal doings of the complainant during 10/2002, when the penal bill was served on him for the unauthorized extension made and additional load availed by him.

It is true that there is an interim stay barring disconnection in respect of consumer Nos. 4806 and 977, pending final disposal of the original petition on the condition that the complainant pay a sum of Rs.10, 000/-. The meter was changed on 22.06.2010 and thereafter billing is done according to the reading on the new meter. The fact that the energy consumption now is less, does not mean it was like that, earlier.

The complaint is not maintainable in law since it is barred by limitation. The cause of action in this case is said to have occurred during the year 2000 when the meter is said to be faulty. And thereafter the consumer admits that he has regularly paid the energy charges without any hesitation or protest. This means he was not having any complaint against those bills. Instead, if he was having the slightest protest against the billing he could have lodged a complainant then itself. Thus the cause of action in this case occurred 11 years back and so the complaint is barred by limitation.

The statement that the Board is acting in a prejudice manner to the complainant is not true. In fact nobody from the Board's part does have an enmity towards him. One of the cases against him was that he has extended electric supply to the construction site of his son's newly built building. The complainant is liable to pay the amount in the above said case.

It is stated by the complainant that there are only three members in his house. He has not made it clear that whether there were more members in his home earlier. The normal consumption of a family cannot be ascertained by the number of members in a family.

It is true that the complainant approached the Hon CGRF, Kozhikode by filing OP.27/10-11 and the Forum was convinced of the fact that he has not filed any complaint with the Assistant Engineer and hence the petition was dismissed.

This is an entirely different issue and the appellant is trying to create ambiguity over the present issue. This was clearly mentioned in the order of the Hon CGRF, Kozhikode in OP NO: 13/ 2011-12. It is up to the complainant to produce documents in that case.

The issue was properly addressed and dismissed by the Hon CGRF, Kozhikode.

Analysis and Findings: -

The Hearing of the Case was done on 30.10.2012 in my chamber at Edappally and Sri Prasad T, the Learned Advocate, represented the appellant's side and Sri. Raveendranadhan K.N, Asst. Executive Engineer, Electrical Sub Division, Kottakkal, appeared for the Respondent's side. On examining the Petition, the counter of the Respondent, perusing the documents attached and the arguments in the hearing and considering all the facts and circumstances of the case, this Forum comes to the following findings and conclusions leading to the decisions, thereof.

The Board has admitted that the meter was faulty at least from 2006 onwards. But the appellant argues that the Meter was faulty from the year 2000 onwards but he could produce the electricity bill of 5/05 only as proof. The contention that the meter was faulty from the year 2000 is doubtful since there was a site inspection of the consumer's premises in 10/2002, and a mahazar was got prepared. The mahazar is a speaking evidence of the working of the meter on that date. It was recorded in the mahazar that electricity was misused by the consumer for pumping water for a new house under construction, adjacent to the premises of consumer No. 4806. Further, the mahazar prepared on 8.10.2002 does not indicate the meter as faulty. In the site mahazar prepared by the Sub Engineer it is noted that the present meter reading as 54 units. Had the meter been faulty at that time, the KSEB would have issued a bill based on an assessment made as per the previous average consumption.

Further, in the reply dated 24.10.2002 of the consumer, to the notice dated 16.10 2002 of the AE with the penal bill to the Party, if the meter was faulty then, the appellant would have shown that matter in his reply to the AE. Hence I come to the conclusion that the Meter was not faulty at least up to 10/2002. The appellant has not produced any bills to prove that the consumer was billed based on average consumption during the period prior to 5/05. Also I do not find any such allegation in the OP No.31790/2002 filed by him before the Hon. High Court of Kerala either. Hence I am of the view that

the meter was not faulty during 2002. But the consumer has produced an invoice of the month 5/2005 which shows the meter was faulty at least by that date.

From the Meter reading register it is seen that the respondent has installed a new meter in 6/2010 only. The argument of the respondent that the consumer resisted installation of the new meter on the strength of an interim order of the Hon. High Court is difficult to believe as they failed to produce any such notice being issued to the consumer for that matter.

In order to substantiate KSEB's argument of how the consumer was billed during the meter faulty period, they cite Regulation 33(2) of KSEB T & C of Supply, 2005, which reads; "If the 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 consumption. In such cases the meter shall be replaced within one month. If average consumption for the previous six months cannot be taken due to meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding three months after replacement of the meter."

The respondent has been asked to produce the past meter reading details and as such filed the details from 2/2006 onwards. The consumer has contended that his meter was faulty from 2000 onwards and he informed the fact to lineman and KSEB authorities. But he has not produced any evidence to prove that he submitted any written complaint to the Board. 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 (1-Phase/3 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."

This Forum has verified the meter reading details of the consumer after installation of the new meter on 22/ 6/2010 and it is seen recorded as follows:

20-07-2010	– 67 units
20-09-2010	– 159 units
22-11-2010	– 145 units
19-01-2011	--124 units
11-03-2011	– 204 units
09-05-2011	– 269 units
08-07-2011	– 286 units.
12-09-2011	-- 215 units

11-11-2011 -- 227 units .
09-01-2012 -- 240 units
08-03-2012 -- 278 units.

The verification of energy use of the consumer for more than a year, say for the period of 03/2011 to 03/2012, indicate that he has an average consumption of say 245 units per bi-month during this period.

The subsequent 3 bi-months meter readings were as follows;

05/2012 -- 272 units.
07/2012 -- 249 units.
09/2012 -- 278 units. The average Consumption of this period = 262 units/bimonth.

The contention of the appellant is that the Test meter installed on 16/1/2010 and the reading up to 10/5/2010 shows 205 units and hence has an average 80 units per bi-month. The new meter was seen installed on 22/6/2010 and the energy consumption for the first few bi-months are listed above. After the initial low consumption for some months, the bimonthly consumption has increased to above 200 units and has become almost steady and lies in between 200 to 280 units per bi-month.

The limited members in a family are not a criteria to assess the true average energy consumption of a consumer. It depends on the energy usage only. However a consumption of 80 units per bimonth i.e. 40 units per month is unrealistic unless it is a one or two room house with minimum lights. The consumer was billed at 280 units based on his previous average and the consumer has remitted the same without any demur at that time. As per rules, if the previous average is available and is correct, the consumer has to be assessed as per that average, during meter 'not working' period. Hence the billing adopted by KSEB during that period is found to be in order. However, the laxity of KSEB in not replacing that faulty meter in time is questionable.

The present average energy consumption, calculated as above, is found as 245 units per bi-month, which is compatible to the earlier assessed consumption of 280 units (average) per bimonth, billed by the respondent and also tallies well with the recent energy use of the consumer, say from 5/2012 onwards. Hence I conclude that the average consumption of the consumer, for the previous period when the meter was not recording or malfunctioning, shall be taken as 245 units per bi-month and the excess amount collected for the previous two years prior to Meter change done in 2010, shall be refunded to him by adjusting in the future bills of the consumer. The reassessment has to be limited to the last two years prior to meter change as per Section 56(2) of the IE Act, 2003.

The cause of the Petition, filed by the consumer before the Hon High Court vide OP No.31790/2002, was the penal bills issued consequent to the inspection conducted in the premises of the consumer Nos. 4806 and 977 by officials of KSEB, Kottakkal. The OP was disposed of by the Hon High Court on 13th July 2006, quashing the impugned demands (penal Bills) and directing to limit the penalty for the fixed charge portion only and to adjust the amounts already remitted by the Party. But the respondent has not issued the revised demand so far, as directed by the Hon Court, nor gone for Appeal against the said order. So the Hon High Court order has become final.

DECISION: -

From the analysis done and the Findings and conclusions arrived at that is detailed as above, I take the following decisions regarding the reliefs sought by the appellant on consumer No 4806 and Con No 977;

Point 1 & 2 : -

To assess the actual consumption by referring to the new meter installed and to refund the excess amount already paid after deducting the actual amount due, if any.

The consumer's meter was not recording the energy use or malfunctioning, at least from 5/2005 onwards, is proved. In case of meter ceases to record, as per Clause 33(2) of T & C of Supply, 2005, the KSEB has to prefer the Electricity bills (during the meter not working period), based on previous six month's average. As such the consumer was being billed at 280 units per bi-month all along the period from 5/2005 to the date of meter changed in 06/2010. The appellant has stated that he has made complaints to the Lineman and other officials of Board to change the meter but was not seen made any written complaint to KSEB. The charge being paid by the consumer during this period was at the rate of 140 units per month (280 units /bi-month) which I think is normal for an average family use. The consumer has paid the bills without any protest, may be, he was satisfied according to his previous average consumption. The respondent also failed miserably to change the non-working meter in time and the argument that the consumer prevented them from changing the meter, is also found non reliable, as they failed to produce any notice issued to the consumer on this behalf, if the consumer has objected the same.

The consumption after changing the meter for the next few months was not steady and after that period the true average consumption of the consumer, for the period under dispute, at least from 5/2005 is assessed as 245 units per bi-month, as per the analysis done above. I feel the limitation of two years under Section 56(2) of the Indian Electricity Act is applicable to both sides, the Licensee as well as the consumer. Hence I decide that the bills of the consumer, for the last two years prior to the meter change done in 6/2010, shall be reassessed at the rate of 245 units per bi-month instead of 280 units and the excess amount paid by him with applicable interest shall be adjusted in his future bills within 60 days of this order.

Point 3 : -

Request to refund the deposited amount in complying with the order of the Hon. High Court.

The respondent has failed to implement the Hon Court order in OP No. 31790 of 2002, by revising the penal bills so far, even after the judgment was pronounced on 13.7.2006. The penal bills are seen issued for consumer No 4806 for Rs. 20520/- and a very similar bill for consumer No.977, both for the irregularity of unauthorized extension of 1 KW load each. The consumer was issued bill penalizing for the previous 6 months prior to inspection. During the period (cause of dispute) of 10/2002, i.e. before the enactment of IE Act, 2003, the "Conditions of Supply of Electrical Energy, 1990" was in vogue and as per clause 42 of the same "Misuse of energy-Misuse of energy will be billed at three times in rate applicable to respective tariff for the previous six months from the date of detection".

Since the misuse of energy, is noted as for construction and for commercial purposes respectively, in the mahazar dated 08.10.2002, the applicable tariff for penal bill is LT VIIA and the load used for misuse of energy is 1KW, each for both connections. As per the Hon High Court order the consumer is liable to pay only the penal charges for the 'fixed charge portion' for each service connection.

Hence the respondent shall revise both the penal bills as stated above, as per the order in vogue at that time, but limiting the penalization to the fixed charges portion only. The consumer is said to have remitted Rs. 10,000/- as per Hon Court order. After adjusting the revised bills prepared as per the Hon High court order, the excess amount collected from the consumer shall be adjusted (as per Hon Court order), with applicable interest, with in 60 days of this order. The appellant shall also be issued a statement of the calculation made and the amount arrived at, for adjustment in future bills of the consumer, as per this order for his information.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer stands allowed to the extent ordered as above and stands disposed of as stated. No order on costs. Dated the 15th of February, 2013,

Electricity Ombudsman.

Ref. No. P/ 256/ 2011/ 1584/ Dated 15.02.2013.

Forwarded to

- 1). Sri. Ambalavan Adumannuil Chekku Haji,
S/o (Late) Moosa Haji, Kuzhippuram Kavala,
Othukkungal P O, (Via) Kottakkaal, Malappuram Dt.
- 2). The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Kottakkal P O, Malappuram Dt.

Copy to: -

- 1) The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
- 2) The Secretary, KSEB,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
- 3) The Chairperson, Consumer Grievance Redressal Forum,
KESB, Power House Building, Ernakulam- 682018.