

THE STATE ELECTRICITY OMBUDSMAN

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Review Petition On Appeal Petition No.P/166/2010.

(Present Sri.T.P.Vivekanandan)

Appellant : Sri. Jose Baby,
UTC Ice Factory, Neendakara, Kollam (DT).

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, Karunagappally.

ORDER.

Background of the case: -

The UTC Ice factory is a consumer of Electrical Section, Chavara, with Con: No.294, under LT IV- industrial tariff and owned by Sri. Crispin Vincent, KalaKartan Ltd, Neendakara. While so, the APTS (Anti Power Theft Squad), Ernakulum, inspected the energy meter installed in the UTC Ice factory on 18.02.2010. The APTS had detected some defects in the tapping of wires from the main Electric supply to the Energy meter and due to this one of the phases given to the meter was recording less voltage than actual, so that the energy recorded in that phase was also correspondingly less than the true energy consumed. A mahazar was prepared and to recover the losses sustained to the Board due to the above anomaly, they assessed the quantum of energy lost in such a case and issued a short assessment bill for Rs.62, 565/-for the same.

The appellant is challenging the demand notice dated 24.02.2010 for Rs.62, 565/= issued by the Assistant Engineer, Electrical Section, Chavara. They filed a Writ Petition WP 6874/2010 before the Hon High Court of Kerala challenging the short assessment bill and the Hon Court disposed of the petition directing the consumer to approach CGRF after depositing Rs.20, 000/- and on satisfying the amount as above, KSEB shall not disconnect the Power. Accordingly the appellant filed a petition before the CGRF, Kottarakkara on 15.03.2010. The CGRF disallowed the prayers in the Petition and confirmed the short assessment bill issued to the consumer vide order No.OP.514/2010 dated 05.06.2010. Immediately after receiving the order of CGRF on 07. 9.2010, a fifteen days notice was issued on 08.9.2010 by the Respondent, requesting the party to remit the disputed bill on or before 23.9.2010. On receiving the notice, the appellant filed another Writ Petition WP(C) 29450/2010 before the Hon High Court of Kerala on 23.9.2010 and obtained a stay against disconnection. Meanwhile, the petitioner submitted an appeal petition dated 13.10.2010 before this Forum during the pendency of the Writ petition before the Court.

The Appeal Petition No: P/166/2010, filed by Sri Jose Baby, before this Forum was dismissed, vide the order dated the 13.04.2012, as it is found not maintainable, for the reason that a Writ Petition filed by Sri Jose Baby, before the Hon High Court of Kerala vide WP(C) 29250/2010, is pending for decision for the same cause of action. Aggrieved by this order he filed another Writ

Petition vide No. 10475/2012 before the Hon High Court of Kerala challenging the orders of this Forum dated 13.4.2012 and the Hon Court accepted the said plea to set aside the order and further directed to reconsider Ext-P7 (petition filed by the appellant before this Forum) and pass fresh orders in accordance with law taking note of all the contentions of the appellant after giving an opportunity of being heard.

Arguments of the Appellant: -

1).The first point raised by the appellant in his Appeal Petition is that he filed WP/6874 of 2010 before the Hon High Court and as per the judgment, the Court has relegated it to the statutory Forum namely CGRF, Kottarakkara and also granted stay of Ex-P2 on condition that petitioner deposits an amount of Rs.20000/- and as such he deposited the sum and filed petition before CGRF. The Forum has not so far communicated any order on the Petition to the petitioner. But the AE has threatened by issuing the demand cum disconnection notice dated 8.9.2010, so as to disconnect the supply unless the entire amount is paid on or before 23.9.2010. Aggrieved by this the petitioner filed another Writ petition number 29450 of 2010 before the High Court and the Court granted stay of disconnection on 24.9.2010 and the case is pending before the High Court. After getting the interim order of the Hon Court, the petitioner went to the office of the AE, KSEB, Chavara and collected a photocopy of the CGRF's order dated 5.6.2010 on 29.9.2010 and the petitioner challenges the said order in this petition.

2).The appellant argues that the contentions raised by the Board in their reply petition before the CGRF are totally against law. He questions the contention that the mahazar was prepared on the spot and insists that it was prepared in their office much after the inspection and served on the petitioner along with the short assessment demand. The allegation that the occupier of the premise denied to accept the mahazar is incorrect. The calculation method adopted by the Board is not supported by any of the provisions of law. The Clause 24 of the Electricity Supply Code deals with a situation where a bill is already issued and the consumer raises any objection regarding that bill. When such a dispute is raised, the licensee shall conduct a review of the bill and find out, whether the bill is correct or overcharged or undercharged. The Clause 24(5) of Electricity Supply Code states as to what to do, when it found the consumer was undercharged in such a bill, which is subjected to review and nothing more. That rule cannot be imported by the Board to the factual situation of the present case where there is absolutely no dispute raised by the petitioner against any bill issued by the Board.

3). Another contention is that, in Section 55 of IE Act 2003, the Licensee can supply electricity to a consumer only through a correct meter and bills can be raised only on the basis of reading from a correct meter. Here the consumer is under the bonafide belief that the meter and its installations in his premise are totally correct and he has already paid the demands made by the Board on the basis of readings in the meter. There is no legal justification on the part of the Board in making a revelation through an inspection that the connection to the meter was not correct and there was non-recording of electricity in one phase of the meter. Even assuming (without admitting) that such allegations are correct, it was not due to any fault on the part of the consumer but only due to the fault on the part of the Board to maintain their installations in proper condition and thereby violating Section 55 of the IE Act. The assessment done by the Board, using some modern instrumentis is not transparent and is not acceptable. Law provides

a method to calculate the energy use in such situations and KSEB is bound to go in accordance with that procedure and they cannot adopt a different method not prescribed by law in these matters. In the decision reported in 2008 KHC 676, George Joseph & others Vs KSEB, the Hon High Court of Kerala held that "Any unilateral decision of either of the parties about the correct status of the meter is not to be accepted by the other party if the other party raises objection as to the status of the meter".

4).The Respondent has no case that the consumer has tampered the meter, but only that the meter was not recording the actual consumption, since one phase of the meter was recording less. That essentially means the meter was running slow, which case is squarely covered by the said Hon Supreme Court decision. Since the Board has decided, without referring the dispute to the Electrical Inspector, to raise additional demand, the petitioner is entitled to the reliefs as granted by the Hon Supreme Court to the appellant in Bombay Electricity Supply case (supra) in paragraphs 13 and 14 quoted above and the Division Bench of the Court in Nirmala Metal Industries case (supra). Therefore, the demand for 50% consumption, in Ext- P5 and P6 is unsustainable and has to be set aside.

5).The appellant argues that two members of the Forum passed an order and the 3rd member has passed a dissenting note in the same. The order passed by the 3rd member has considered at least some of the legal aspects raised by the consumer. According to him, the mahazar was found as unsustainable in the eye of law and the method of calculation adopted by KSEB for arriving at the amounts payable by the petitioner, is not permitted by the statutes and hence not legally sustainable. The majority order is a one sided order which has only considered the contentions raised by KSEB and none of the legal contentions raised by the consumer were considered. The Clause 24(5) of Supply Code was wrongly applied by the majority order without considering the facts and circumstances of the case.

The Reliefs sought: -

Set aside (i) the CGRF's order dated 5.6.2010 issued in the OP No. 514 of 2010 of CGRF, (South), Kottarakkara (ii) the additional bill dated 24.2.2010 for Rs.62565/- of Asst Engineer, Chavara and (iii) Refund the amount of Rs. 20,000/- deposited as per Hon High Court Order.

On the Hearing day of 29.1.2013, the appellant stated that the business is going dull and prayed to settle the Case by limiting to the amount already remitted (Rs. 20,000/-) as per Hon Court order. He also submitted an argument note dated 29.1.2013.

Arguments of the Respondent: -

The Respondent has opposed the contentions of the Appellant in the Petition and raises the following arguments in the replies submitted and stated during the Hearings.

1).The APTS inspected the premise of UTC Ice Factory, Neendakara, on 19.2.2010, which is an industrial Unit(consumer No.294), run by Sri. Crispin Vincent, Kalakarton Ltd., Neendakara, and detected some anomalies in the energy Meter installed there.Sri.MG Sreekumar, Sub Engineer of Electrical Section, Chavara and Sri Jose Baby, the occupier of the industrial unit were present during inspection. A detailed mahazar was prepared in the spot itself during inspection and in the presence of Sri. Lalu (Jose Baby). On completing the inspection, a copy of the site mahazar was given to Sri Lalu, after convincing the findings to him but he refused to accept the mahazar and also refused to put his signature on it as witness. No one, who was present at the time of

inspection, was willing to sign as witness. The appellant's allegation, that the mahazar was not prepared at the site is fully baseless and there is reason to believe that it was intentionally done to dispute by not accepting the site mahazar. Hence there is no violation of Regulation 27(A) as alleged.

2). A short assessment bill for Rs.62565/- was issued to the consumer on 24.2.2010 on the basis of the findings in the inspection and after receiving the bill, Sri. Lalu approached the AE for a copy of the mahazar and the same was given to him under acknowledgement.

3). It is the duty of the licensee to maintain a correct meter in the consumer's premise, as per Sec. 55 of the Electricity Act. Here the meter installed was a correct one and the loss of energy recording was not due to fault of the Meter, but only due to corrosion at the connection point of wires. Moreover, the law gives KSEB power to make short assessment bills and realize it.

4).The consumer's intention by raising baseless argument that no site mahazar was prepared at site is to mislead the Court. The short assessment demand issued to the consumer, is prepared in accordance with Clause 24(5) of Electricity Supply Code;

"If the Licensee establishes that it has under charged the consumer either by review or otherwise, the licensee may recover the amount under charged from the consumer by issuing a bill".

As per this Clause, under charged amount can be recovered for other reasons and the licensee has the power to it. The consumer extracted partially this clause for his own convenience.As per the aforesaid clause of Supply Code, a short assessment bill was prepared in the following manner and issued to the consumer. The recorded voltage in the first phase of the meter is very low when compared to the other phase voltages. The Voltage measured in the first phase was 1.2 V, whereas the voltages in the other two phases were 221 V and 217.8 V respectively.

5).The working efficiency of the energy meter was examined by using 'Accuacheck' Test meter, a calibrating instrument. When 10 units of energy were recorded in the meter, 13.81units were recorded in the Accuacheck meter. Hence the power meter is found working with an error of 27.6%. The meter's stored data was then verified by 'down loading through optical port' using CMRI and laptop. From this data it is found that the voltage in the first phase to meter is almost zero. This was found to be due to the corrosion occurred in the connecting point of the wires from the main supply to the power meter. The above fault was detected during inspection in the presence of Sri Lalu. Also found the error of the meter has started from 14.9.2009 onwards.

6).As per the direction of APTS, a short assessment bill for the unrecorded portion of power was issued in the following manner on 24/2/2010 under Section 24 (5) of Supply Code 2005.

Consumption from 14/9/2009 to 6/10/2009 = 5647 units

Consumption during 10/09 = 11580 units

" 11/09 = 9780 units

" 12/09 = 8480 units

" 01/10 = 1130 units

Total Consumption recorded during this period = 46707 units

The short assessed consumption due to one phase = 46707 X 0.38 = 17749 units

Corresponding electricity charge; 17749 X Rs. 3.25 =Rs. 57684/-

Electricity duty = Rs. 4881

Total Bill amount = Rs. 62565/-

7).The respondent contents that immediately after receiving the order of CGRF on 7/9/2010, a fifteen days' notice as envisaged in the Electricity Act 2003 was issued on 8.9.2010 requesting the consumer to pay the balance amount of the bill on or before 23/9/2010. On receiving the notice the consumer filed another Writ petition before the Hon High Court of Kerala, vide WP(C)/ 29450/2010, and obtained a stay against disconnection of his service connection.

6). The Regulation 22 (1)(d) of Supply Code says that " No representation to the Ombudsman shall lie in case where a representation for the same grievances by the complainant is pending at an any proceedings before any court, tribunal or arbitrator or any other authority". Here the writ petition filed by the consumer is under consideration of Hon High Court. Therefore, the consumer's petition before this Authority is unsustainable and the respondent requests to reject the petition forthwith.

Analysis and Findings: -

The hearings of the Case were conducted in my chamber at, Edappally, on 24.07.2012 and on 29.01.2013. Sri. Jose J Matheikel, Learned Advocate had appeared for the appellant on 24th July and Sri. Abdul Salim, AEE, ESD, Karunagappally (South) represented for the respondent's side for the hearing. The case was adjourned for another date as the respondent requested time to study the argument note submitted by the counsel. The appellant Sri Jose Baby and Sri V Abdul Salim, AEE, were present for the 2nd hearing done on 29.1.2013. On examining the Petition of the appellant, the statement of facts filed by the Respondent, the arguments in the hearing and its note and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

Since the main grievance of the petition before this Forum and the Hon High Court were considered to be the same i.e. to set aside the demand notice issued by the Assistant Engineer, this Forum disposed of the petition, as it is not maintainable as per law. The petitioner then filed the Writ Petition before the Hon High Court of Kerala, vide WP@10475/2012, and the Hon court has ordered to reconsider Ext- P7, appeal filed by the appellant before this Forum and pass a fresh orders in accordance with law, taking note of all the contentions of the petitioner after giving an opportunity of hearing.

The first allegation of the appellant is that the CGRF has not communicated any order on the petition filed by the consumer. Ongoing through the records it is found that the CGRF's order is dated 5.6.2010 and the order is seen communicated to the parties concerned on 18.8.2010, vide letter No. CGRF/KTR/OP No.514/2010/360 of the CGRF and the reason for this much delay is not seen explained. And on the basis of this order a demand notice dated 8/9/2010 was seen issued to the consumer. The consumer complaints that he has not received the copy of the said order and one of his plea in the Writ Petition No.29450/2010 was to direct the 3rd respondent (CGRF, Kottarakkara) to communicate the copy of the order. In this regard it is not known what happened to the 'order' sent to consumer by Post.

The appellant raises serious disputes on the preparation of the mahazar. He alleges that the mahazar was not prepared on the spot and a copy was not issued by the inspection team. But according to the respondent, the appellant has refused to accept the copy of the mahazar and also to witness the same. The site mahazar was seen prepared by the Sub Engineer, Electrical Section, Chavara and the two officers of APTS have also signed in it. It is not believable that two

responsible officers of APTS of Ernakulum unit, have put their signatures in the mahazar report prepared at a latter date. In case the consumer/authorized representative/ occupier refuse to affix his signature in the mahazar, the fact shall be recorded in the mahazar and this was not done by the inspection team. But the appellant does not dispute the visit of APTS on that day. The findings about the consumer's Meter are also not seriously disputed by the appellant. The energy consumption of the party during this disputed period is less when compared with that of the previous and subsequent periods. All these suggest me that the mahazar prepared on 18.2.2010 by Sri. M G Sreekumar, SE of Electrical Section, Chavara, is genuine.

A reading of the mahazar shows that the non recording of consumption in one phase of the meter is due to the corrosion occurred at the joints of the wires linking to the meter. There are possibilities that the 'Joints of wires' may get loose or sometimes may corrode, thus preventing from getting a good connection with other wires connected to the Meter. Here, no foul play is suspected on the part of the consumer. Regulation 27(6) of the Supply Code, 2005, reads, " if it appears to the Licensee that the metering equipment provided for supplying electricity to the consumer is defective, the Licensee must test the metering equipment and repair and replace the metering equipment, as the case may be". In this case, one of the phase voltages fed to the Meter for measuring the energy consumed, was detected as only 1.2 Volts instead of 220-230 Volts range, which means that the particular phase is recording negligible consumption. Here the meter is not at fault, but one of the 'inputs' to the Meter was missing, resulting in almost a nil energy recording in the Meter. In such cases, by making the connections perfect, the Meter will work properly. Hence the meter is not Faulty.

The short assessment bill was issued, for the energy consumed by the party, including the lost energy assessed, due to missing of voltage in one phase of the meter (due to corrosion at the connection point). The consumer's contention is that the meter and installations in his premises are totally correct and argues that there is absolutely no legal justification on the part of Board in making a revelation through an inspection that the connection to the meter was not correct and there-fore there was no non recording of electricity in one phase of the meter. The consumer cannot question an inspection conducted by an authorized team of KSEB. The Licensees are authorized by Law to conduct inspection on the premise of the consumers by observing the rules. Hence the argument of the appellant is not maintainable.

The appellant also questions the calculation methods adopted by the Board using some hyper technical instruments like CMRI and laptop as they are not legally acceptable. In this regard, it is pertinent to refer the, the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, which reads; *Regulation 20- Adoption of new Technologies- The Distribution Licensee shall make out a plan for introduction and adoption of new technologies such as pre-paid meter, TOD meter, automatic remote reading system through appropriate communication system*". Moreover, the IT or Microprocessor enabled facilities included in the modern Meters can pin point the cause of fault and the date from which it has started etc. Hence the argument of the appellant against modern equipment is not acceptable. In this case, the meter provided to the consumer was having the feature of 'data download facility' and on verifying the data, the Forum feels that the contention of the respondent, that one phase of Electric

supply is feeding less input (Voltage) to the meter from 14/9/2009 onwards is correct, resulting in recordings of lesser energy consumption in the Meter.

Here, the Regulation 33(2) of the KSEB Terms and Conditions of Supply, 2005, - has to be referred;

“ Regulation 33(2)- 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 average consumption. In such cases the meter shall be replaced within one month. If the average consumption of 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 three months after replacement of the meter”.

The above Clause enjoins the Licensee, the obligation to replace the faulty electric meter of the consumer and how to assess a consumer during such periods. The respondent has stated that a checking of the power meter using Accuacheck (Check Meter), has confirmed that the consumption recorded in the power meter is less than the actual energy consumed.

The examination of the energy consumption pattern of the consumer for the previous years reveals that it is not consistent (as it is seasonal) and during the Fish Trawling Ban period, it has a low energy use as the business of Ice production here, is closely related to fish preservation use. Hence the energy consumption for July and August is not considered for computing the average energy use as it corresponds to Fish Trawling Ban period. However, the consumption of the consumer from September to February of almost every year except the disputed period is almost uniform and is tabulated below;

Year	2005	2006	2007	2008	2010
September-	19520 units	20360 units	19820 units	13900 units	15725 units
October	20200 “	22480 “	21200 “	13800 “	15930 “
November	14820 “	20800 “	17100 “	10400 “	16104 “
December	13280 “	9140 “	Plant S/D	8320 “	16289 “
January next yr.	11520 “	13340 “	“	9760 “	16640 “
February ”	11306 “	13840 “	9600 “	9000 “	16596 “
Average	15108 “	16660 “	16930 “	10864 “	16180 “

The consumption pattern shows a steady energy use of around 16000 units every year except for the year 2008. But the average consumption during the disputed period of 9/09 to 2/2010 was - $(7700 + 11580 + 9780 + 8400 + 11300 + 7700) = 56460/6 = 9410$ units per month, with the corroded wires with no supply in one phase, connected to the Meter. This confirms that the meter was recording less during the year 2008 and 2009.

As per rules, the respondent has to follow Regulation 33(2) of the KSEB Terms and Conditions of Supply, 2005, in such situations. Hence the lost energy is assessed as follows;

The average consumption for the period prior to and after the disputed period is as follows;
For the period 1/09 to 6/09 = $(8320 + 9760 + 9000 + 11280 + 11080 + 16240) = 65680/6 = 10947$ units per month.

Similarly for the period 4/2010 to 6/2010 = $(8800 + 14140 + 10720) = 33660/3 = 11220$ units per month.

Both average energy consumptions computed are found to be compatible. Hence I assess the true average consumption of the consumer for the disputed period of 9/09 to 2/2010 as; say 11000 units per month. But he was seen billed for an average of 9410 units during this period and hence the short assessed quantum of energy when one phase of the Meter was not recording is determined as $(11000 - 9410) = 1590$ units x 6 months = 9540 units only, instead of 17749 units assessed by the Respondent.

DECISION: -

From the analysis and the conclusions arrived at I take the following decisions.

The CGRF order dated 5.6.2010, in the OP No. 514 of 2010 of CGRF, (South), Kottarakkara is set aside. The short assessment bill (additional bill) dated 24.2.2010 for Rs.62,565/- of the Asst. Engineer, Chavara, is to be revised for 9540 units, instead of 17749 units assessed by the KSEB. The Respondent is directed to revise the bill as stated above and adjust the amount already remitted, as per the Hon Court order and shall issue the bill for the balance amount, with 30 days time given (Due date) for making the payment. The Respondent shall also rectify all the defects in the Wiring or CT's to the Meter urgently, if not already done, with in a month and seal the Meter in the consumer's presence.

Having decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is allowed to the extent it is ordered as above. No order on costs.

Dated the 3rd of May, 2013.

Electricity Ombudsman

Ref No. P/ 166/ 2010/ Review/ 1728/ Dated 03.05.2013.

Forwarded to 1). Sri. Jose Baby,
UTC Ice Factory,
Neendakara, Kollam (DT).

2). The Assistant Executive Engineer
Electrical Sub Division,
Karunagappally South.

Copy to: - (1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
(2). The Secretary, KSEBoard,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
(3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Vydyuthibhavanam, Kottarakkara.