

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No : P/ 302 / 2012.

(Present: T.P. Vivekanandan)

Appellant : Sri. K. K. Jayaprakash,  
Vetikalil House, Iringole,  
Perumbavoor. Pin- 683 548.

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

ORDER.

Background of the Case: -

The Appellant is an industrial consumer under Electrical Section, Perumbavoor with Consumer No. 7732 and is running a plywood factory, 'Appus Plywood Industries', Iringole, Perumbavoor. On 7.10.2009, KSEB served a demand notice for Rs.109488/- towards the recovery of revenue lost due to meter not functioning correctly for the periods, 6/2004 to 5/2005, 8/2006 to 12/2007 and 9/08 to 12/08, based on an Audit report of the KSEB. Aggrieved by the bill, the consumer filed objection before the Assistant Engineer, which was submitted to the Executive Engineer, Perumbavoor for decision. After hearing the parties, the petition was disposed of by him, by revising the assessment bill to Rs. 96592/-. Still not satisfied, the party preferred a petition before the CGRF, Ernakulum on 15.6.2012 which was dismissed vide Order No. CGRF-CR/ Comp.34/2012-13 dated 7.8.2012. Being aggrieved by the said order, the appellant has submitted this Appeal Petition.

Arguments of the Appellant: -

(1).On 7.10.2009, KSEB served a demand notice for Rs.109488/- towards arrears of certain months in 2004, 2007 and 2008. The said demand was issued on the basis of Audit report of the Board. But the said demand is not sustainable before law. The amounts payable in respect of consumption of energy for the year 2004-05 has to be collected then and there or at least within the time specified under law. The Board has no authority to claim the charges for energy supplied on a later point of time i.e. after three years period of time. The Section 56 (2) of the Electricity Act, 2003, prohibits such collection of electricity charges. The KSEB cannot issue a demand notice, for consuming electricity, prior to the limitation period.

(2). The CGRF Is a statutory creation for the purpose of redressing the grievance of the consumer. The petitioner has paid all the demands issued by the KSEB during the relevant periods from 6/04

to 5/05, 8/06 to 12/07 and 9/08 to 12/08. The complaint is against the second assessment bills issued by the Board in respect of the above very same periods, that too after several years of the consumption of electricity. The allegation is that the meter was faulty during the above periods. Meter is the property of the KSEBoard. It is the duty of the Board to keep the meter correct. If the meter was faulty at any point of time, the Board is legally bound to inform the consumer that the meter is faulty. In this case the allegation that the meter was faulty in the years 2004, 2006 and 2008 was raised by the Board for the first time only in the year 2009.

(3). The CGRF's finding that "the respondent could not produce any document to substantiate that petitioner was informed by him on the faulty state of meter". This finding is sufficient to exonerate the consumer from all the demands. But after entering such finding, the CGRF headed by a Deputy Chief Engineer has taken pains to somehow justify the demand. The Forum says that the party has not produced any documentary evidence to prove this fact. How can the party produce documents to prove that he was not informed by the Board about the faulty nature of the meter? The Forum ought to have found that it was for the Board to prove that they have informed the petitioner on the faulty nature of the meter. Without knowing about the meter faulty, the petitioner has not raised any dispute regarding the correctness of the meter. Then the Forum has pictured the good conduct of the petitioner in remitting the periodic demands in such a way that the petitioner has no objection in paying the demands. This is not an answer to the basic contention raised by the petitioner that the faulty meter was changed by the Board without informing the petitioner and that the basic evidence in support of the case was destroyed by the Board. This factual situation is answered against the Board in the 'Laffans case' by the Hon Supreme Court. The contention raised by the appellant based on the said Judgment was ignored by the Forum for the purpose of sustaining the illegal demands raised by the Board. It is respectfully submitted that this Forum is not redressing the grievances of the consumer but redressing the grievance of the KSEBoard.

(4). According to the Audit report and as per the Executive Engineer of KSEB, the basic reason for the impugned short assessment is that the meters were faulty during the relevant periods. The meter is in the exclusive custody of the Board. As per Sec. 55 of the Electricity Act 2003, the KSEB shall supply electricity only through a correct meter. The consumer is ignorant about the working or non working of the meter. There is no evidence in this case that the KSEBoard has informed the consumer about the faulty nature of the meter. There is no communication in any of the bills or in any other manner from the Board to the consumer that the meter was faulty. The statement in the objection of the Assistant Executive Engineer, that the party was remitting all the bills issued to him and that the meter reading register and calculation register reveals the fact that the meter was faulty, are not reasons for not informing the matter regarding the fault of the meter to the consumer. The KSEBoard is expected to act in a transparent manner while dealing with customers.

(5). According to the Board, the light meter became faulty on two occasions and the power meter became faulty once. The consumer became aware of such faults only when he sought the reason for the impugned short assessment demands from the KSEBoard in 2009. The monthly periodical demands were issued and the consumer paid all those demands. There was a statutory and legal

duty on the Board to inform the matters relating to the meter to the consumer. Being miserably failed to do so and after changing all the faulty meters at the risk of the Board, the KSEB cannot after several years of the relevant period, issue short assessment bills.

(6). The Board has issued bills after denying the legitimate claim of the consumer to raise dispute with regard to the correctness of the meter before the umpire. The Hon Apex Court in the decision reported in 2005 KHC 858 (Laffans Case) has held that; *"It has never been the case of the appellant at any stage that meter was not correctly recording the consumption of electricity on account of being nonfunctional due to any fraud committed or device or trick adopted by consumer, Respondent I or that the body seal of the meter was found broken or tampered with. Respondent I was accepting and honoring the demands raised by the appellant and therefore, respondent I can-not be expected to have raised a dispute and sought for a reference for determination by Electrical Inspector. The appellant could not have therefore, revised the demand for such period based on average consumption during the previous year. There is yet another reason why the entitlement of the appellant to recover charges from Respondent I may have to be denied. According to provision appended to sub- section (4) of Section 26, the licensee cannot take of or remove any such meter as to which differences or dispute of the nature described in sub-section (6) has raised until the matter has been determined by Electrical Inspector. The purpose is to preserve the evidence. The dispute shall expeditiously disposed of by the Electrical Inspector by applying scientific method of investigation to find out if the meter was incorrect and if so then what was the extent of error. In the present case, meters said to be incorrect have been removed and replaced by the appellant. Admittedly, no dispute has been raised and referred to the Electrical Inspector. The most material evidence being the meter itself has been lost by the act of the appellant in removing the incorrect meter. The appellant cannot be permitted to take advantage of its own act and omission - the act of removing the meter and the omission to make a reference to the Electrical Inspector"*.

The above Judgment is squarely applicable to all the three issues involved in this case.

(7).The Sec. 55(1) of Electricity Act 2003 mandates the Board to supply electricity to the consumer only through a correct meter. They failed to do so. In such a case, they have to punish their erring staff and not to harass the consumer by imposing additional illegal bills.

(8). Another important legal issue is that the claims raised by the Board in the impugned demands are highly belated and time barred. Admittedly the 1<sup>st</sup> demand pertains to the period 6/04 to 5/05. There is no dispute for the Board that they have not issued periodical demands during the above period and the consumer paid the said demands. If there was any amount due from the consumer in respect of consumption of energy during the above period, the same should have continuously shown in all the subsequent bills issued by the Board. In the absence of such continuous demands, the Board cannot issue a fresh demand in 2009 after four years from the relevant period claiming arrears of electricity charges for 6/04 to 5/05, as if the law of limitation is not applicable to Board. This is the essence of section 56 (2) of the Act and is applicable to the facts of the case.

(9). The Sec. 56 (1) of the Electricity Act 2003 mandates the Board can issue a disconnection notice for electricity charge dues or other sum by suit. If the board files a suit for recovering the sum due

in respect of consumption of energy at this stage the law of limitation squarely applies and the suit will be dismissed. If somebody wants to file a suit for money, the same has to be done within three years of cause of action and the KSEBoard is not exempted from such legal position.

(10). The same is applicable in the case of the second demand for the period from 8/06 to 12/07. For the said period also, the Board has raised demands and the consumer has remitted the bills. The Sec. 56 (2) of the said Act, prohibits the licensee from issuing another demand in respect of the charges for the very same period as if it is a revelation from the Audit report of the Board.

**Nature of relief sought for: -**

- (i). *To set aside the Order dated 07.08.2012 in complaint No.34 of 2012 of the CGRF, Ernakulum.*
- (ii). *To set aside the bill dated 07.10.2009 of the Assistant Engineer, Electric section, Perumbavoor.*
- (iii). *To set aside the order dated 22.05.2012 issued by the Executive Engineer, Perumbavoor.*

**Arguments of the Respondent: -**

1). The billing records in respect of the consumer were audited by RAO, KSEBoard, as part of the routine audit and found out certain short comings in the billing side. As per the audit report dated 17.8.2009, a short assessment bill for Rs.109488/- was served to the consumer reassessing meter faulty period. The consumer had filed objection on the bill before the Asst Engineer and the same was submitted to Executive Engineer, Perumbavoor. After conducting a hearing, the petition was disposed of directing to revise the bill.

(2) The reassessment of the consumer was made on the following counts.

(a). Light Meter Faulty period from 6/2004 to 5/2005.

There existed Unauthorized Additional Load (UAL) in the consumer premise, to the extent of 55 KW over and above the sanctioned load of 34 KW with effect from 6/04. The connected load was regularized to 89 KW with effect from 16.05.2005. The Light meter has not recorded energy consumption from 6/03 onwards and so subsequently it was declared faulty. The light meter was billed for 148 units per month during the period of 6/04 to 5/05. Though, there occurred increase in connected load to 89 KW with effect from 6/04, corresponding increase in light meter energy use was not got recorded. When the meter was replaced in 6/05, this fact was revealed and the average consumption from 6/05 to 11/05 came to 1178 units/month. The consumption was;

06/05 - 1266 units

07/05 - 1112 units

08/05 - 1607 units

09/05 - 1138 units

10/05 - 1129 units

11/05 - 819 units.

Average (6/05 to 11/05) – 1178 units/month

Hence the short assessment made from 6/04 to 5/05, as per audit direction, was as follows.

Short Assessment per month = 1178 – 148 units = 1030 units

“ ” amount for the period 6/04 to 5/05 = 1030 × 12 months × Rs 3.25 (rate) = Rs. 40170.00

Electricity Duty = Rs. 3398.00

Total = Rs. Rs. 40170.00 + Rs. 3398.00 = Rs. 43568.00

(b). Light meter faulty period from 8/06 to 12/07

The UAL to the extent of 29 KW over and above the sanctioned load of 89 KW was detected on 27.06.2006 on inspection by the Assistant Engineer. The light meter was declared as faulty w.e. from 8/06 onwards. For the period, 8/06 to 11/06, an average of 173 units was being charged and from 12/06 to 12/07, at an average of 360 units was charged. The meter was replaced on 16.1.08. As per Reg.33(2) of KSEB Terms & Conditions of Supply 2005, the assessment for the meter faulty period shall be made based on the, average consumption obtained in the succeeding 3 months, after replacement of the meter, if the previous 6 months average is not available. The previous 6 months consumption was not available in this case and hence the succeeding 3 months average was taken for reassessment for the period of 8/06 to 11/06. The Short assessment is bill was;

Period 08/06 to 11/06	= (1095-173) units = 922 units × 4 months × Rs. 3.25 = Rs. 11986.00
Period 12/06 to 12/07	= (1095-360) units = 735 units × 13 months × Rs. 3.25 = Rs. 31053.00
Duty	= Rs. 3641.00
Total	= Rs. <u>46680.00</u>

(c). The Power meter faulty from 9/08 to 12/08: -

The Power meter of the consumer became faulty during 9/08 and the same was replaced on 01.1.2009. During the meter faulty period, an average consumption of 20010 units per month was levied. But as per Reg. 33(2) of KSEB T & C of Supply, 2005, the average consumption of previous six months prior to meter became faulty should be charged, if available. The calculation made is;

8/08 - 937 × 20 units

7/08 - 806 × 20 units

6/08 - 1155 × 20 units

5/08 - 949 × 20 units

4/08 - 1264 × 20 units

3/08 - 1027 × 20 units

Total = 6138 × 20 units and average energy consumption = 6138 x 20/06 = 20460 units/month

Short assessment energy = 20460 - 20010 units = 450 units

Therefore the bill amount = 450 × 4 months × Rs. 3.25 (rate/unit) = Rs. 5850.00

Electricity Duty = Rs. 494.00

Total = Rs. 6344.00

Therefore the total Assessment = Rs. 43568 + Rs. 46680 + Rs. 6344 = Rs.96592.00

The revised bill of Rs.96592/- was issued to the consumer.

(3). The meter fault was known to the consumer during meter faulty period and he has remitted the bills raised for the average consumption. He has not raised any objection in paying the bills of higher consumption obtained after meter replacement. This was due to the awareness on his part that the above was the actual consumption he used in his premises, which was not got recorded in the old meter as it was faulty. Otherwise, he should have objected the electricity bills raised after the meter replacement. Only when the arrears were demanded, he raised a complaint pretending that he was unaware of the faultiness of the meter. The actual fact was that he used additional

loads according to his wish, without the approval of KSEB. The increase in energy use consequent to such unauthorized additional loads was not manifested due to the faultiness of the meter. He enjoyed the benefit of low average consumption levied during the meter faulty period.

(4). The calculations of average consumption were made based on the consumption before the meter faulty period for 6/04 to 5/05 and 8/06 to 12/07. But the consumption recorded before the meter faulty period are not reliable as there existed unauthorized additional loads during the said faulty period. Hence the bills were revised on the consumption obtained after replacing the meter with good meter as per regulations 33 (2) of KSEBoard T & C of Supply, 2005.

(5). As per section 55 of Electricity Act 2003, the KSEB shall supply through a correct meter. But when the installed meter becomes faulty later on, the demand can be raised based on previous average, if it is available. If the previous average is not available, the bill can be raised based on the average consumption obtained after the replacement of the faulty meter.

(6). For the period, 6/04 to 5/05 and 8/06 to 12/07, the Light meter was faulty and the demands were raised based on the previous averages. But there existed UAL in the premises during meter faulty period and the average consumption with UAL was not available. Hence the bill was revised based on the average consumption obtained after replacement of the meter. This was strictly in accordance with the relevant provision 33(2) of KSEBoard Terms & Conditions of supply 2005.

(7). The consumer's argument that he was not aware of the meter fault is not true. If he had any dispute regarding the accuracy of the meter he could have challenged it and the meter should have been got tested as per Reg. 42 of T&C supply 2005. But he has not disputed the meter fault.

(8). The meter reading of the energy meter was mentioned in the demand notices issued to the consumer in every month. It was very clear in the demand notice that the meter was not working and hence the demand was raised for average consumption. The Clause 35 (a) of the Conditions of Supply among other things states that "should the consumer disputes the accuracy of the meter installed by the Board in his premise, he may send a written application to the Asst Engineer/Asst Exe. Engineer and pay the prescribed fee for the test". The consumer has not resorted to the said statutory obligation. Instead he conveniently accepted the low average consumption being levied during the meter faulty period which was beneficial for him.

(9). As the consumer has remitted the bills issued based on average, there was no case of dispute and hence no need to refer the matter to the Electrical Inspector. Also as there was no dispute there was no need for preserving the evidence.

(10). The Board had supplied electricity through good meters. The good meters once provided may get faulty and the billing procedure in such instances are done as per regulations 33 (2) of KSEB T & C of supply, 2005. Thus the KSEBoard has acted only as per rules.

(11). The KSEBoard has acted as per Regulations 37 (5) of KSEB T & C of supply 2005, in issuing the short assessment bill to the consumer. The demand becomes due only when it is raised. In this case the short assessment demand was raised in 07.10.2009 and has first become due in 10/2009. As per the objection of the consumer filed to the Asst Engineer the bills were revised and issued on 23.05.2012. This demand has been continuously shown in subsequent bills. The sum becomes

due and payable only with the raising of bill and not earlier. The word 'due' in this context means due and payable after a valid bill has been sent to party. This legal position has been upheld in "BrihatMumbai Municipal Corporation Vs Yatish Sharma and others 2007-KHC-3784(3) (Bom). Hence KSEB has not violated Sec. 56 (1) of the Electricity Act. The demand raised is as per rules.

**Analysis and Findings: -**

The Hearing of the case was conducted in my chamber at Edappally, Kochi on 19.03.2013 and 13.06.2013. The learned Advocate, Sri. Jose J. Matheikal, represented the appellant's side and Sri. P K. John Varghese, AEE, KSEB, Perumbvoor, appeared for the respondent's side. On perusing the Petition, the counter statement of the Respondent, the documents submitted and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The appellant has raised the following main issues.

- 1) As per Sec. 56(2) of Electricity Act, 2003, the short assessment bill issued will not sustain.
- 2) The respondent had never informed the consumer that his meters were faulty during the periods in question and as such he lost opportunity to contest the findings of KSEB.
- 3) The faulty meters were changed by Board and thereby the basic evidence in support of the case was also destroyed and hence liable to set aside the short assessment bill.

**Point No. 1: -**

The main contention of the Appellant is based on the Limitation of the bills, under Sec. 56(2) of Electricity Act, 2003, which reads "The licensee shall not recover any arrears after a period of two years from the date when such sum become first 'due' unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied". This 'due date' is an important date for both consumer and KSEB (Licensee). This is because after a period of two years from the 'due date', the arrear bills are time barred and the consumer is not liable to pay the sum even if it is a legitimate claim otherwise. Therefore it is a boon to the consumer and a loss to the Licensee. For an upright and bonafide consumer, he need not worry of 'Bills' of long pending dues after a period of 2 years, if it is not shown continuously in the regular bills of the consumer. On the other hand, in the case of Licensee he should be more vigilant and smart in preferring the bills in time, otherwise he has to suffer the loss for the laxities and omissions occurred on his part.

Since this issue has been dealt with, analyzed and given a firm opinion by the Upper Courts of Law/Jurists, we may follow the same. As such, I have before me the Judgment in the Petition filed, before the Hon: High Court, Bombay, vide No: 3784/2007, which has dealt the 'due date' issue in detail and pronounced its considered opinion. In this, it was spelt by Hon: Judge as follows;

*'In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1)& (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the*

service of a bill. Thus for the purpose of sub section (1) & (2) of section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him'.

Thus the period of two years as mentioned in Sec. 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. In the same Case it was further clarified by Hon: High Court that;

*"Amount of charges would become due and payable only with the submission of the bill and not earlier. Word 'due' in this context must mean due and payable after a valid bill has been sent to the consumer", (Brihatmumbai Municipal Corporation Vs Yatish Sharma etc-2007 KHC 3784:2007.*

In this case, the bill is seen raised in 10/2009 and has become due thereafter and time period of two years start from 10/2009 only and hence the appellant's argument is not maintainable under the bar of limitation. Further, it is the electricity charge, for the unrecorded portions of the energy actually used by the consumer when the meter was faulty and the consumer was being billed at an arbitrary value of previous average. As per the Agreement executed by the consumer with KSEB, the consumer is bound to pay the charges for the true electricity he has consumed. The appellant's argument that as, 'the judgment of the Bombay High Court in Brihat Mumbai Municipality 2007 KHC 3784 is not applicable to the facts of this case, because even the High Court of Kerala is not accepting on other state's High court judgments as binding precedents', is seen stated without citing any specific Case orders and hence cannot be relied upon as the statement is not supported. As the bill was issued in 10/2009 only, I am of the view that Sec 56(2) is not attracted in this case.

**Point No. 2 & 3:**

The KSEB has reassessed the consumer, during meter faulty period, as per the provision of Regulation 33 (2) of the Terms and Conditions of Supply, 2005. Regulation 33 (2) reads; "If the Board is unable to raise a bill on meter reading due to its non-recording or malfunctioning, the Board shall issue bill based on the previous six months average consumption. In such cases the meter shall be replaced within one month. 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 three months after replacement of the meter."

The Regulation 42 (3) of the Terms and Conditions of Supply, 2005, which reads; "The consumer may report any complaint regarding meter to the concerned Electrical section..... If the existing meter after having found faulty is replaced with a new one, the consumption recorded shall be reassessed based on the average consumption for previous six months prior to replacement of the meter. If the average consumption of 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 the meter and excess claimed if any, shall be adjusted in the future current charge bills".

The Regulation 33(2) deals with, when the meter is not displaying (blurred) or the meter is not recording (still) or is malfunctioning (higher or lower than the actual) and hence the consumption is not available for preferring the correct bill and hence the consumer is assessed on an assumed



average consumption. The Reg. 42 (3) is attracted when the consumer disputes the working or the accuracy of the existing meter.

Since the meter replacement take place at the consumer's premises, normally it will be known to the consumer and particularly this is true in an industrial consumer premises, because even if the power supply is cut off for a few minutes for removing the old meter and giving connections to the new meter, it may affect the production or working of the industry. Normally, in such cases the consumer may switch over his supply to the Generator Set that is usually erected in an industrial premise. Hence in most cases, the 'meter change' will be known either to the consumer or his representatives or those present in the consumer premises.

The argument of the appellant that a consumer is not aware of the technicalities of the meter is correct but the industrial consumers are usually seen to have showing great care and a bit cautious about the energy consumption of his Unit including correct working of the meter and surely will question any higher bill than his normal energy consumption. This is because; the energy bill plays an important role in any industrial concern's growth. In the opposite case, if the Meter slows down in working, there are chances that the consumer may not report it, since it is beneficial to him.

In this case it is also noted that the consumer has not an argument that he approached the KSEB to test the accuracy of the meter at any time, even after receiving the arrear bill. Not only that, after changing the light meter in 6/05 and in 1/08, there was substantial increase in the Meter readings obtained and accordingly a rise in the bill amount. The consumer has paid those bills with out any protest, which suggest me that the consumer was aware of his normal energy usage. So I am inclined to believe that the 'faulty meter' status during the disputed period and the replacements of faulty meter done by KSEB in 6/05 and 1/08 were known to the consumer.

It is also specified in the rules that, when the meter is replaced, a 'sealing certificate' of the new meter, witnessed by the consumer or his representative is obtained and kept by the KSEB. But the respondent failed to produce any such documents. Moreover they also failed to reassess the party after obtaining the true average energy consumption, after changing the faulty meter with a good one in 6/05 and 1/08. Here in the first instance, the faulty meter was not replaced for 12 months from 6/04 i.e. replaced in 6/05 only. The respondent has failed to reassess the consumer as per the true average energy consumption obtained, even after getting the subsequent meter readings on replacing the faulty meter. The respondent's total laxity or omission in this regard is seen to be inexcusable and the revenue loss occurred to Board has to be recovered from the concerned Board officials only. Hence the reassessed amount of Rs. 43568/- pertaining to the period of, Light Meter Faulty period from 6/2004 to 5/2005, is found as not payable by the consumer.

Again, the Light meter was reported faulty in 8/06 and it was not replaced for the next sixteen months from 8/06 to 12/07 and the monthly bill to the consumer was seen raised, for this period at the rate of 173 units per month up to 11/06 and then at 360 units per month up to 12/07. Just prior to this, i.e. in 6/06 the Assistant Engineer had conducted an inspection and detected that the consumer had connected unauthorized additional load (UAL) of 29KW over and above his sanctioned load of 79 KW, in his industrial premises. The light meter was reported as faulty with effect

from 8/06 onwards. For the period, from 8/06 to 11/06, an average of 173 units was seen billed and from 12/06 to 12/07 an average of 360 units was billed. Why such an average assessment of 173 units and later by 360 units was reached by KSEB, when the previous average consumption was around 1000 units, is not seen explained by the respondent.

On perusing the Meter reading register (filed as document), I see that the light Meter was faulty at least from 5/2003 onwards, when the meter reading is stuck at the value 298 continuously and it remained the same value till 6/05, when the meter was replaced. From 6/05 to 12/05, the party has consumed an average energy of 1100 units per month. But subsequently, for the period of 1/06 to 6/06, the consumption was gradually decreasing and reached to just 37 units in 6/06. The meter was declared as faulty from 8/06 onwards and accordingly was billed for an average energy consumption of 173 units/ month till 11/06. Again the consumer's consumption was re-fixed as 360 units from 12/06 onwards. The faulty meter was replaced only on 16.01.2008. Even after changing the faulty meter and having obtained the energy consumption particulars, the Board did not prefer its due claim. It was the audit party who noticed the discrepancy and suggested the reassessment for meter faulty time.

As per Reg.33 (2) of KSEB T & C of Supply 2005, the assessment for the meter faulty period shall be made on the basis of the average consumption in the succeeding 3 months after replacement of the meter, if the previous 6 months average is not available or trustworthy. The previous 6 months consumption (before the detection of UAL in 6/06) is not trustworthy as the meter was working sluggish (gradual decrease in meter Reading) in this case and hence the succeeding three months average after replacement of faulty meter has to be taken for reassessment for the period of 8/06 to 12/07.

There is no logic in the argument of the KSEB that, since the consumer has availed UAL of 29 KW, there ought to be corresponding increase in Light consumption. There can be an increase in power meter consumption as more 'Power load' has been employed, but it is not necessary that the Light meter consumption should also increase correspondingly.

It is true that the KSEB shall supply electricity only through a correct meter, but the mechanism may get corrupt due to many reasons and may take some time, say 2 or 3 readings when there is gradual decrease in consumption rate, to test and decide the condition of the meter.

The judgment of the Hon: Supreme Court in Laffan's Case was filed in 1996 and the judgment was based on Section 26(6) of the Indian Electricity Act 1910. In the instant case, Electricity Act 1910 is not applicable as the Electricity Act 2003 came into force with effect from 6/2003 and the Regulations made there under contains clear provisions how to deal such cases. Moreover, the consumer has not an argument that they filed petition to test the old faulty meter and the respondent could not produce it. I see that the consumer has challenged the arrear bills but has neither questioned the accuracy of the meter nor they raised any contention on the average energy assessed during the disputed meter faulty period. The appellant mainly contents on the points of (i) Limitation under Sec. 56(2). (ii) Board failed to inform the consumer that the meter is faulty, (iii) Lost opportunity to test the faulty meter. All the three points were analyzed above.

DECISION: -

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

(i). Light Meter Faulty period, 06/2004 to 05/2005:

The respondent has failed to replace the faulty meter for quite some months and even after its replacement in 6/05 and getting the true average consumption, failed to reassess the consumer subsequently. The meter has gone faulty again in 8/06 and was replaced in 1/08 and even failed to reassess the said period, till 10/09. I find total negligence and irresponsibility on the side of Board officials for which the consumer should not be held liable. The Board is duty bound to watch the discrepancies in the meter readings obtained and take appropriate action in time, including the replacement of faulty meters. The respondent's laxity or omission in this regard is inexcusable and the revenue loss occurred to Board has to be recovered from the concerned Board officials only. Hence the reassessment done for the Light Meter Faulty period, 6/2004 to 5/2005, amounting to Rs. 43568/-, is decided as not admissible.

(ii). Light Meter Faulty period, 08/2006 to 12/2007:

The increase in the recording of energy consumption in the Meter, after the faulty meter change both times (in 6/05 and 1/08), has established that the true average energy use of the Light meter of the consumer, was around 1000 units per month, whereas the consumer was being billed for 173 or 360 units, during this period. The consumer has not approached the respondent with a complaint on the accuracy of the meter neither on getting rise in energy consumption recordings after changing the meter nor after getting the short assessment (arrear) Bill in 10/2009. The party has not a case that his true average energy consumption found at 1095 units for the said period was wrong. In these circumstances, I see no reason to disbelieve the version of the Respondent that the old meter was malfunctioning leading to an average billing during the disputed period of 8/06 to 12/07 and there was revenue loss to the Board on that account. The Short assessment bill prepared for its recovery, for the period of 8/06 to 12/07, which is reproduced below, is found as reasonable and hence justifiable.

Period 08/06 to 11/06	= 1095-173 = 922 × 4 months × Rs. 3.25 = Rs. 11986.00
Period 12/06 to 12/07	= 1095-360 = 735 × 13 months × Rs. 3.25 = Rs. 31053.00
Duty	= Rs. 3641.00
Total	= Rs. <u>46680.00</u>

(iii). Power Meter Faulty period, 09/2008 to 12/2008:

In the case of reassessment done for the faulty 'Power Meter' of the Industrial unit, pertaining to the period of 9/2008 to 12/2008, it is seen that the consumer was being billed with an average energy consumption of 20010 units per month. Later, after changing the faulty meter, the average energy consumption was obtained as 20460 units per month, as per Reg. 33(2) of T & C of supply. Accordingly the respondent has raised a bill for the meter faulty period of 9/2008 to 12/2008, with the difference of (20460-20010) units = 450 units per month.

Since both the above values are only the 'average values' and cannot be the exact value with certainty, there is no sanctity in raising a bill, when the difference between the two 'average

values' is meager (2.2%) and is only a rough estimation nearer to the actual value. Hence I am of the view that, no reassessment is required for the disputed period, 9/08 to 12/08 as both values are compatible. Therefore, the reassessment done and accordingly the bill portion amounting to Rs. 6344.00, is found as not needed.

Therefore, it is decided that the total assessment done for the disputed meter faulty period by the Respondent, has to be revised to Rs. 46680/- (only for the Light Meter Faulty period of 8/2006 to 12/2007) and is found payable by the consumer. The respondent is directed to revise the bill as decided above and shall issue to the consumer with thirty days time (due date) given for making the payment. The consumer is also eligible for up to fifteen (15) installments, if requested for, and the respondent may allow the same. No interest is payable by the consumer up to the due date of the revised bill as ordered now. But the consumer needs to pay the applicable interest for the installments, as per Reg. 22(8) of Electricity Supply Code, from the due date of the revised bill, to the date of actual payment of installments.

Accordingly; (i) the CGRF order dated 07.08.2012 in complaint No.34 of 2012 of CGRF, Ernakulum, (ii). the bill dated 07.10.2009 of the Assistant Engineer, Electric section, Perumbavoor, and (iii). the order dated 22.05.2012 issued by the Executive Engineer, Perumbavoor, stand set aside.

Having concluded and decided as above, it is ordered accordingly. No order on costs.  
Dated the 3<sup>rd</sup> September, 2013.

Electricity Ombudsman.

Ref No. P/ 302/ 2012/ 1935/ Dated 03.09.2013.

Forwarded to

- 1). Sri. K. K. Jayaprakash,  
Vetikalil House, Iringole,  
PERUMBAVOOR-683 548.
- 2). The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
PERUMBAVOOR.

Copy to: -

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