

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/ 330/ 2012.

(Present-T.P. Vivekanandan)

APPELLANT : Sri. Sasidharan P.S,
Pamba Electronics Systems Pvt. Ltd.
Kereekkad P.O, Thiruvankulam,
Ernakulam.

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Chottanikkara, Ernakulam.

ORDER.

Background of the case: -

The appellant is consumer No. 8397, who has availed an industrial connection under LT IV tariff from Electrical Section, Chottanikkara. While so on 25.05.2012, the appellant was issued with a short assessment bill for Rs.28470/- based on the APTS inspection dated 07.05.2012. Again on 01.06.2012, another short assessment bill amounting to Rs.3, 53, 236/- was issued to him, revising the previous short assessment bill, intimating that there was a clerical mistake in the former bill. The appellant preferred a complaint before the CGRF, Ernakulam, requesting to set aside the demand cum disconnection notice dated 01.06.2012 and to declare the bills as arbitrary, unfair and void. The CGRF disposed of the complaint by directing the respondent to revise the bill, by reassessing the meter malfunctioning period of 28.12.2006 to 06.10.2012, based on the subsequent 3 months average consumption of the healthy meter, vide Order dated 17.11.2012 in CGRF-CR/Comp. 37/ 2012-13. Aggrieved by this decision, the appellant has submitted this appeal petition on 21.12.2012, before this Authority.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his appeal petition.

- (1). He argues that the CGRF had failed to appreciate the technicalities of the dispute. The KSEB has failed to provide a valid justification for the different error percentage shown by the electric meter at different points of time. Initially when APTS has done the inspection, the percentage of error was found to be 77.87%, which later during the proceedings changed to 55% and then to 60.86% and such a huge variation is impossible in a small scale industry like that of consumer using resistive load. The CGRF has blindly accepted the version of KSEB and has not gone into the technical details of the dispute, which ought to be done for a fair settlement of this Case.
- (2). The CGRF has failed to appreciate the binding decision of the Hon. High Court of Kerala in

WP (C) No. 5614/2007, which was produced by the complainant. The Hon. Court has held that, in cases where there is no fault on the part of consumer and the error in billing occurred is due to the negligence of the employees of the licensee, the consumer is liable to pay the arrears of electricity charges only for 12 months prior to the date of inspection. The CGRF has done a mistake when it observed that the order of High Court is case sensitive and not of general in nature. The CGRF ought to have found that the facts of this dispute are exactly similar to the decision of Hon High Court. In such circumstances the principle of 'stare decisis' mandates that CGRF ought to have followed the decision of High Court and not complying with High Court decision is an error of law and should be rectified.

(3).The CGRF has not considered the interests of consumer when it observed that the pending bills ought to be paid from 28.12.2006, which is the date of installation of the CT meter in the premise of the consumer. It is to be noted that a consumer has no means to ascertain whether the phases have interchanged in the meter installed in his premises or not. Moreover, in usual circumstances he has no means to ascertain the date of installation or correction done on the meter installed in his premises. In the instant case, the consumer is forced to pay the price for negligence of officers of the licensee. As the Hon High Court has observed in the said judgment, there is no provision for recovery of arrears of electricity charges, in the case of fault of meter not attributable to the complainant. Moreover, the consumer is paying every month inspection charges to the licensee for inspecting the electrical installation to ensure that the electrical installation is working properly.

Reliefs sought for: -

1. To set aside the decision of the CGRF, Ernakulam dated 17-11-12 and declare the assessment bills dated 1-6-12 and 25-2-12 as void, arbitrary and unfair.
2. To identify the exact technical reason for the varying error percentage in the meter installed within the premises of the appellant.
3. To appreciate and comply with the directions of Hon. High Court of Kerala in WP © 5614 of 2007 which is binding on any Forum established by a statute.

On the hearing day, the appellant pleaded that the Appeal Petition may be decided based on the verdict pronounced by the Hon High Court in WP(C) 5614 Of 2007, by limiting the dues to a maximum of one year.

Arguments of the respondent: -

The respondent has denied all the averments and allegations contained in the petition. The respondent has adduced the following arguments against the contentions of the appellant.

(i). On 07.05.2012, the APTS of KSEB inspected the premises of the consumer and detected that the voltage wires from the R and B phases were interchanged while giving connection to the meter and as a result there was an error of 77.87% in the recording of energy consumption in the power meter. As per the direction of APTS, to reassess the consumer from the last date of Meter change, by taking the actual consumption as $1 / (0.7787) \times$ recorded consumption in the meter \times MF, the short assessment bill for Rs. 28470/- was issued to the consumer. Thereafter the APTS informed a correction, since there occurred a clerical error while calculating the actual consumption. Accordingly the actual energy consumption was calculated as $[1 / (1-0.7787)] \times$ recorded energy \times MF (since % of error = actual consumption - recorded consumption/actual consumption \times 100) and accordingly, a the bill was revised to Rs. 353236/- and was issued.

Taking the error as (-77.87%), the short assessment is calculated as follows:

Actual consumption	= $[1 / (1-0.7787)] \times \text{recorded consumption} \times \text{multiplication Factor (MF)}$
Reading on the date of inspection	= 1424
Recorded consumption from 12/2006, the Date of meter change	= $1424 \times 20 \text{ (MF)} = 28480 \text{ units}$
Actual consumption	= $[1 / (1-0.7787)] \times 1424 \times 20 = 128694 \text{ units}$
Short assessment	= $128694 - 28480 = 100214 \text{ units}$
Amount to be realized	= $100214 \times \text{Rs. } 3.25 \text{ (existing rate per unit)} = \text{Rs. } 325695.19$
Duty	= Rs. 27540.81
Total	= <u>Rs. 3, 53, 236/-</u>

(ii). The appellant, during the hearing before the CGRF, argued that the meter installed in his premises is working properly and demanded to test the meter by a 3rd party. Though steps were taken to test the meter at Electrical Inspectorate, Ernakulum, he informed that such disputed meters are not tested here and such cases are dealt at their headquarters, Thiruvananthapuram. Then as per the direction of CGRF, the Board fitted a Check meter to test the existing meter (both in service), which showed the percentage error as (-) 55%, for the period from 18.8.2012 to 13.09.2012. The consumer objected the findings of the tested parallel meter and demanded calibration certificate of the tested meter. The Board dismantled the parallel meter, got it tested and calibrated from the Electrical Inspectorate and again re-installed the Meter in the premises in which the % of error was (-) 60.86%. In all the above findings the meter recording was less than 50% of the actual consumption and the error occurred was above 50%. The argument of the consumer, that the recording error is varying in each time, is because of the loading pattern at the premises of the consumer. The error in Recording will be minimum when the loads are balanced in all the phases and it will vary depending upon the loading on each phase. In the 1st case, during the time of inspection, the recording error was calculated for a small period of loading, which was obtained as (-) 77.87%. In the 2nd instance, the error was calculated for a period of less than one billing cycle which shows (-) 55% error and finally for a period of one billing cycle i.e., one month and it was found as (-) 60.865 and hence the average recording was taken as (-) 60.86%.

(iii). The metering unit installed at the premises of the consumer was not faulty. Moreover, it is working properly but the recording of the consumption in the power meter is less due to wrong connection given during the time of installation of CT meter. The bill was raised based on the actual usage of the electricity at the premises of the consumer. The consumer is liable to pay the amount as per Reg. 24(5) of Supply Code for the entire period and as per Section 27 A sub section 1 (5) of the Supply Code.

(iv). As per the consumption pattern recorded at the premises of the consumer the average consumption is found as 1370 units for the period from 7 / 2004 to 3 / 2006 (21 months). Then the reading became sluggish for 3 months and finally became faulty (i.e. in 4 / 2006 = 851 units, 5 / 06 = 650 units, and 6 / 06 = 221 units). Consequently the meter was changed on 05.07.2006 and after this, the consumption again became an average of 1039 units for the period from 7/06 to 11/06 (5 months) i.e. up to the installation of a CT meter in the premises and after this, the energy consumption has decreased to 374 units and the average consumption was 447 units for the next 5 months. From this itself, it is clear that there was a recording error of 57% when

comparing the energy consumption of 5 months just before and after the installation of CT meter. When calculating average consumption based on the connected load of 29 KW, taking working of 8 hours daily for 25 days a month, by taking an average load factor 0.4 and diversity factor 0.6, it comes to around 1390 units per month, which was almost near to the consumer's consumption, during the normal working period 04 / 2005 to 03 / 2006.

(v). The decision of the CGRF to revise the bill based on the average consumption of the new meter installed is not acceptable because the petitioner can regulate his consumption suitably accordingly and revising the short assessment bill based on that will cause a huge loss to the Board since the consumption now recording is very low compared to the earlier consumption.

(vi). The respondent on the hearing day argued that the verdict in WP(C) 5614 of 2007, of the Hon High Court of Kerala is applicable to the specific case concerned and is not applicable here. He pointed out that in the judgment in WP(C) 2196 of 2009, the Hon High Court has endorsed the decision to raise the bill against the consumer.

(vii). This is not a meter faulty case and it is a case of 'less recording in the Meter' due to wrong connection given to the meter.

Analysis and Findings: -

The hearing of the case was done on 18.6.2013, in my Chamber at Edappally, Kochi, and the appellant was represented by his learned Counsel, Sri. Jithin Paul Varghese, and opposite side by the Assistant Executive Engineer, Electrical Sub division, Chottanikkara, Sri. Babu Paul and they have argued the case mainly on the lines stated above. On examining the Appeal Petition, the argument note of the appellant, counter statement of the Respondent, the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions, leading to the decisions thereof.

Firstly, the consumer's energy consumption pattern for the last few years including the disputed period was verified which is reproduced below.

Consumer's Meter Reading and energy consumption details for the Period 7/2004 to 12/2012

Month	Consum-	Month	Consum-	Month	Consum-	Month	Consum-	Month	Consum
07/2004	916	6/2006	1304	05/2008	360	04/2010	180	03/2012	200
08/2004	975	7/2006	1005	06/2008	480	05/2010	-----	04/2012	220
09/2004	1032	8/2006	1223	07/2008	560	06/2010	560	05/2012	320
10/2004	1027	9/2006	1039	08/2008	720	07/2010	340	06/2012	200
11/2004	1330	10/2006	911	09/2008	760	08/2010	300	07/2012	380
12/2004	1783	11/2006	1017	10/2008	640	09/2010	240	08/2012	360
01/2005	1728	12/2006	374 (MC)	11/2008	1000	10/2010	360	09/2012	220
02/2005	1505	01/2007	338	12/2008	478	11/2010	360	10/2012	220
03/2005	1885	02/2007	368	01/2009	930	12/2010	280	11/2012	160
04/2005	1642	03/2007	480	02/2009	992	01/2011	260	12/2012	260
05/2005	1505	04/2007	674	03/2009	920	02/2011	320		

06/2005	1037	05/2007	478	04/2009	560	03/2011	300	{MC = Meter changed in 5/2006 and 12/2006}.
07/2005	1649	06/2007	490	05/2009	860	04/2011	260	
08/2005	1123	07/2007	546	06/2009	1080	05/2011	240	
09/2005	600	08/2007	588	07/2009	960	06/2011	240	
10/2005	1134	09/2007	602	08/2009	620	07/2011	220	
11/2005	1377	10/2007	840	09/2009	400	08/2011	260	
12/2005	1423	11/2007	460	10/2009	400	09/2011	320	
01/2006	1676	12/2007	318	11/2009	260	10/2011	180	
02/2006	2047	01/2008	340	12/2009	320	11/2011	240	
03/2006	1269	02/2008	366	01/2010	200	12/2011	160	
04/2006	851	03/2008	368	02/2010	360	01/2012	200	
05/2006	650(MC)	04/2008	396	03/2010	420	02/2012	200	

Note: The CT type energy meter was installed in 12/2006

(1). M/s Pampa Electronics System Pvt. Ltd, Thiruvankulam is an industrial consumer with a connected load of 29 KW and its Meter (direct reading type) was replaced with a CT (Current Transformer) fed Energy meter on 28.12.2006 when the existing meter became not recording correctly. From the energy consumption details of the consumer filed by KSEB for the period of 7/2004 to 12/2012, I notice that the consumer had an average energy consumption of around 1000 units per month, till the CT type meter was installed in 12/2006. After this, it is seen that the energy consumption has decreased considerably and is showing nearly one third of the previous average, mentioned above. The respondent did not notice the reduction in energy consumption, till the APTS conducted an inspection of the premise on 07.05.2012 and found that the 'Voltage connections' to the meter was given wrongly i.e. the 'voltage' wires (input to the meter) from R & B phases were got interchanged by mistake.

(2). As per the 'Theory of measurement of electrical energy', such an interchange of two voltage phases to a 3-phase Energy meter, will cause the energy recorded in the meter to be decreased considerably and may even go reverse (direction of rotation of meter disc), depending on the Power factor of the electric load, connected to the electric supply. As the power factor of the load goes low, the error also starts drooping. Therefore the findings that the Meter has showed or recorded varying errors when put to 'Test' is possible theoretically, and is not an abnormality.

(3).The disputed meter of the consumer was tested again with a Check meter (calibrated meter) i.e. testing of the consumer's meter along with the Check meter, (both meters being connected in series simultaneously), in such a way that both meters records the same energy consumed by the party, so as to note the difference in their recordings. The recording in the existing meter is reported as having a lesser consumption i.e. has an error of (-) 60.86% than that recorded in the Check Meter. The appellant has not disputed the test undertaken by the Respondent at the direction of CGRF nor the readings obtained or the error noticed in the Test. The appellant

argues that the error is not steady in the meter and is varying in each 'Test' done by KSEB and hence questions the validity in the statement of the respondent in the error percentages reported after 'Test" of Meter.

(4). It is certain that the interchange of two phases of voltage leads to a 3-phase energy meter will result in an error (reduction) in the recording of the actual energy consumed, in the Meter. The KSEB argues that the low recording in the meter was due to the mistake occurred in giving the voltage leads (connections in two phases) of the CT meter at the time of its installation on 28.12.2006, which seems to me as likely, because the energy consumption of consumer has gone down sharply, with the replacement of the existing Meter with a CT type one from that month onwards. Moreover, the fact of interchange of two phases voltage wires to the Meter, was confirmed in the APTS inspection done on 07.05.2012 and this is not disputed by the party. The site mahazar prepared on 7.5.2012 clearly depicts the anomaly found on the date of APTS inspection and is witnessed by the representative of the appellant. This mahazar is also not disputed by the appellant. Hence, I come to the conclusion that the wrong connection given to the Meter, during its replacement in 12/2006, has resulted in Low energy recording in it.

(5). The appellant was issued with a short assessment bill for Rs.28470/- on 25.5.2012, to recover the revenue loss occurred due to malfunctioning of the Meter since the CT type meter was installed in the premise, which was later revised to Rs. 353236/-, since it was found that some clerical error has occurred while calculating the actual consumption. The reassessment based on percentage of error, reported as 77% during APTS inspection and around 60% when tested with a Calibrated meter etc. are not dependable as the error will vary considerably, depending on the power factor of the Electric load connected to Supply system i.e. will vary with the machinery or equipments put to use at the consumer premises. Hence the assessment made by KSEB based on the % error of meter as approximately at 60% is found as not correct and hence not maintainable.

(6). The mahazar prepared during the APTS inspection revealed that the seal was intact and the respondent has no case that the consumer has in anyway manipulated the meter. It is clear that the laxity or the negligence on the part of respondent has created this situation and issue of the short assessment bill to consumer. This is because nobody has verified whether the connection given to the CT Meter was in order and moreover, KSEB has never bothered to check the Meter, even after there was a drastic reduction in energy consumption recording of the consumer.

(7). The appellant submits that he is liable to pay arrears of electricity charges only for the last 12 months prior to the date of inspection. In this context he relies on the observations held by the Hon. High Court in WP © No. 5614/2007, wherein the Court viewed that the consumer must not be put to pains for the negligence and lapses of the Licensee. The KSEB also have cited a Division Bench judgment in WP(C) 2196/ 2009, of the Hon High Court of Kerala, which has endorsed the decision of the Deputy chief Engineer in assessing the consumer, based on the working hours of the industrial unit. I feel that both verdicts are applicable only to the relevant cases it deals with.

But in a recent Division Bench Judgment of the Hon High Court of Kerala, in WA. No. 99 of 2013 reported as [2013(2) KHC 571(DB)], the Hon Court has endorsed the Single Bench decision to assess the consumer based on his average consumption and I rely on the same.

(8). As per Reg. 24(5) of the Kerala Electricity Supply Code, 2005, if the licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee can recover the amount (electricity charge) undercharged from the consumer by issuing a bill. This clause does not stipulate any limitation for the recovery. The intention is that the consumer is bound to pay the charges for the actual electricity he has consumed. There are chances that electric devices like the Meter may go wrong and also that there may occur some 'error or omission' in the preparation of Bill, which should be rectified and set right, when brought to notice, whether it is in favor of the consumer or the Licensee.

DECISION : -

From the analysis done above and the findings and conclusions arrived at, I take the following decision.

This is not a case of Meter faulty. The Meter has recorded less, as the wires from two phases of Power Supply (voltage inputs) given to the Meter got interchanged, by mistake from the part of KSEB, while installing a new CT meter in 12/2006. This fact was established in the inspection of APTS and is recorded in the site mahazar, which is not disputed. It is also proved that the Meter was showing a reduction of around 60%, when put to 'Test' the disputed meter, along with a Check Meter (Standard Reference Meter), so that both meters simultaneously registers the same energy, consumed by the party. This Test was done by the respondent in the presence of the consumer and as directed by the CGRF and is also not disputed by him, except on the variation in the error percentage obtained on the meter. Theoretically, when two phases of voltage inputs to the energy Meter is interchanged, the result is an appreciable reduction in the recording of energy and may vary at random and may even go reverse, according to the power factor of the connected load used by the consumer at that time. That is why different error percentages were obtained in the 'Test' undertaken by the APTS and the KSEB.

Here, it is a case of wrong connection of wires given to the Meter and the intervention of Electrical Inspector in such cases is not mandatory. Further, there is clear provision given in the rules to deal such cases. As per Regulation 42(3) of KSEB Terms and Conditions of Supply, 2005, it is specified that when there is a meter complaint, the Board shall carry out test and if it conclusively establishes the nature of the fault, the Board shall issue Bill based on the previous 6 months average consumption.

In the case under dispute, the actual date of installation of the new CT Meter is known and it is possible to ascertain the average quantum of energy consumed per month by the consumer based on his previous consumption details. As such, I find the average consumption of the consumer prior to the meter change in 12/2006 as, i.e. during 6/2006 to 11/2006 as 1083 units per month (from the month-wise consumption data filed by KSEB). Therefore the true energy used by the consumer for the period of, 12 / 2006 to 04 / 2012 (65 months) is determined as $(65 \times 1083) = 70395$ units and the recorded consumption in the Meter during the same period is reported as $1424 \times 20 = 28480$ units. Thus the balance energy consumption to be billed is

finalized as (70395 – 28480) = 41915 units only.

Accordingly, the balance energy escaped from billing is determined as 41915 units, instead of 100214 units fixed by KSEB. The consumer is bound to pay the energy charges for the actual energy he has consumed. Even if there is any error or omission in the billing, it has to be made proper and is applicable to both sides. Moreover, if it is established, either by review or otherwise, that an undercharging of the consumer has happened, then the Licensee (KSEB) can recover the amount so undercharged, by issuing a separate bill, as per Regulation 24(5) of the Kerala Electricity Supply Code, 2005.

The respondent is directed to revise the bill as decided above and issue to the consumer giving 30 days time (due date) to pay the bill, giving credit to the amount deposited, if any. The appellant is also eligible for suitable installments, say up to 30 (thirty), if requested for, and respondent may allow the same. The consumer need not pay any interest or surcharge up to the due date of the revised bill ordered now. The consumer may remit the whole amount or the 1st installment by the due date and the subsequent installments will carry interest from the due date of the revised bill to the actual date of payment, as per clause 22(8) of the Electricity Supply Code.

Having concluded and decided as above, it is ordered accordingly. The appeal Petition filed by the consumer is found having some merits and is allowed to the extent ordered now. The related CGRF Order dated 17.11.2012 in CGRF-CR/Comp. 37/ 2012-13, is set aside.

No order on costs.

Dated the 3rd of September, 2013.

Electricity Ombudsman.

Ref. No. P / 330 / 2012 / 1984 / Dated 03.10.2013.

Forwarded to : : (1). Sri. Sasidharan P.S,
 Pamba Electronics Systems Pvt. Ltd.
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(2). The Assistant Executive Engineer,
 Electrical Sub Division, Chottanikkara,
 KSEB, Ernakulam.

Copy to :- (1). The Secretary, Kerala state Electricity Regulatory Commission,
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 (2). The Secretary, KSEBoard,
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 (3). The Chairperson, Consumer Grievance Redressal Forum,
 KESB, Power House Building, Ernakulam- 682018.