

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO.P/076/2014

(Present: Sri. V.V. Sathyarajan)

Dated: 20th May 2015

Appellant : Sri. Joseph Jacob,
Managing Director,
M/s Poabs Enterprises (P) Ltd.,
Kuttoor. P.O.,
Thiruvalla – 689 106

Respondent : The Assistant Executive Engineer
Electrical Sub Division
KSE Board Ltd.,
Vandiperiyar,
Idukki District

ORDER**Background of the case**

The appellant's establishment has two service connections with consumer Nos. 11315 and 15114 under Electrical Section, Vandiperiyar. Two short assessment bills dated: 23-11-2013 amounting to Rs. 30,647/- and Rs. 3,173/- respectively were issued to the appellant. The appellant approached the CGRF on 01/08/2014 seeking to revise the said bills. The Forum found that the appellant already remitted the bill amounting to Rs. 3,173/- for consumer No. 15114 on 13-02-2014 without any objection. Therefore the Forum did not intervene in that matter. As far as the bill relating to consumer No. 11315 is concerned, the Forum is of the view that the assessment cannot be recovered after a span of two years. Hence the respondents were directed to revise the bill for Rs. 30,647/- by limiting the period of assessment for two years. Aggrieved against the said order, this appeal petition was filed.

Appellant's arguments

On 21-11-2013, the APTS unit, Vazhathopu inspected the premises having service connections with consumer Nos. 11315 and 15114. The tariff applied thereat was I (a). The APTS unit found that a Dispensary (consumer No. 11315 and a Muster office (consumer No. 15114) had been functioning in the said premises. According to the APTS, the tariff is to be assigned as VII A. The appellant filed objections against the provisional assessment.

The tariff applicable to the Dispensary is not LT VII A. The letter and invoice issued by the Assistant Engineer shows that a short assessment bill was prepared on the

basis of VII A tariff for the period from 07/2004 to 11/2013. The calculation statement was not attached with the invoice. The tariff of the consumer was changed to LT VIII with effect from 23-03-2014. From the invoice of the consumer for 11/2014, it can be seen that LT VI F was assigned as reclassified by the tariff order of the KSERC for 2014-15. The APTS that inspected the premises was silent on the status of the meter. The average monthly consumption of the consumer will be around 50 units as the Dispensary keeps open only for 2 hours daily. The Licensee has not taken any steps to change the suspected faulty meter after its detection. As per the rule the average can be charged only for 2 invoices and the faulty meter is to be changed within one month.

The energy meter in respect of consumer No. 15114 was faulty with effect from 03-09-2011. No action has been taken to replace the same. If the Licensee is unable to issue bills based on meter reading due to its non-recording or malfunctioning, the Licensee shall issue a bill based on the previous six months' average consumption. In such cases, the meter shall be replaced within one month.

The CGRF issued direction to reassess the demand of consumer No. 11315 limiting the period to two years prior to the date of inspection. The order is silent on the faulty meter. The demands were issued based on average consumption. The meter is faulty as per the invoice since 05/2011 and an average consumption of 120 units had been invoiced up to 06-09-2011 and 260 units thereafter. The average bimonthly consumption at present is only about 50 units. The appellant, therefore, requests to issue direction to the respondent to change the meter urgently and to reassess the demand with effect from 11/2011 based on the average consumption recorded by the new meter to be installed.

Respondent's arguments

The APTS inspected the premises of the appellant (consumer Nos. 11315 and 15114) on 22-11-2013 and found that both connections had been given for domestic purpose under tariff LT I (a). But it was being used for purposes other than domestic. Consumer No. 11315 was found to be used for a private dispensary and consumer No. 15114 was found to be used for Muster office. The APTS prepared mahazar and recorded the above anomalies. As per the findings of the APTS, the tariff of consumer No. 11315 has to be billed under LT VIII and that of consumer No. 15114 has to be billed under LT VII A. Hence short assessment bills were issued to the appellant for the period commencing from the date of connection. The bills issued are not penal bills, but only short assessment bills and hence the bills do not come under the purview of Section 126 of the Electricity Act. As the meters of the connections are faulty, the same are billed based on the average consumption. The appellant remitted the assessed amount of Rs. 3,173/- of consumer No. 15114 on 13-02-2014. Hence the said matter has been closed. The CGRF already directed the respondent to limit the period of assessment of consumer No. 11315 to two years.

The respondent also submitted that the period of bill was limited to 2 years as per Section 56 (2) of the Electricity Act, 2003. The said restriction would not apply since the bill of consumer No. 11315 was issued on 23-11-2013. As per the decision of Bombay High Court in WP No. 264/2006, the payment becomes due only on issuance of bill. In other words where a bill continues to show the sum recoverable as arrears of charges for electricity supplied, the sum due can fall for recovery even after the expiry

of a period of 2 years. Hence the appellant submitted that in this case the bill was served on a later date and hence the limitation as stipulated in Section 56 (2) of Electricity Act, 2003 would not hold good. Considering the above facts the respondent requested to dismiss the petition and to retain the period of assessment which was limited to 2 years by the CGRF. The respondent has also requested to direct the appellant to remit the amount.

Analysis and findings

Hearing of the case was conducted on 17-04-2015 in my chamber at Edappally, Kochi. Sri P. Raghuvaram represented the appellant and Sri Tony M. Keeranchira, Assistant Executive Engineer, Electrical Sub Division, Vandiperiyar represented the respondent. Hearing the arguments of the parties, perusing the records in the matter and considering the facts and circumstances of the case, this Authority comes to the following observation and findings.

As per the site mahazar a dispensary is functioning in the premises having consumer No. 11315. But the appellant changed the tariff of the premises from LT I (a) to LT VII A which is found not in order. Private hospitals were classified under LT VI B tariff as per the tariff notifications. Hence it appears that the said tariff category was applicable in the present case also.

Further, it can be seen that the respondent issued short assessment bill for a period from 07/2004 to 11/2013 even without any valid ground or valid reasons. It is quite surprising that the respondents' meter reader who visits the appellant's premises bimonthly after the introduction of spot billing system failed to find that the supply was being used for non-domestic purpose. Hence it is unreasonable to issue such a short assessment bill for more than 9 years. Nothing has been brought in record by the respondents to show or even suggest the basis for demanding short assessment for such a long period. Hence it appears that it is more reasonable and more appropriate to limit the short assessment period for 2 years as suggested by the Forum.

Regarding the accuracy of existing meter, the appellant had raised complaints but the respondent had not taken any action. Instead, the respondent issued bills for an average consumption of 120 units from 03-05-2011 to 06-09-2012 and 260 units thereafter even without replacing the meter or ascertaining the consumption after a detailed checking of the installations. The respondents' inaction in the matter cannot be justified. Hence this Authority is of the opinion that the fixing of average consumption as 120 units and 260 units respectively even without proper reasoning cannot be justified. In the circumstances the demand will have to be revised as per Clause 125 of Supply Code, 2014 which reads as follows:

125 *(1) In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of the meter being found or reported defective: Provided that average shall be computed from the 3 billing cycles after the meter is replaced if required detail pertaining to previous billing cycles are not available.*

(2) Charges based on the average consumption as computed above shall be levied only for a maximum period of 2 billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter.

In the instant case the respondents failed to replace the meter but issued bills fixing average consumption as 120 units and 260 units arbitrarily. It shows serious lapses on their part.

As far as consumer No. 11514 is concerned, the appellant remitted the short assessment bill and regularised the connection. But in this case also, the respondents have to take steps to replace the meter if found faulty and to revise the assessment based on the above Clause 125 of Supply Code, 2014.

Decision

In view of the above discussion, the respondents are directed to replace the existing meters if not already done, in respect of consumer Nos. 11315 and 15114. The respondents are also directed to revise the bills dated: 30-01-2014 for Rs. 30,647/- and Rs. 3,173/- based on the average consumption after replacing the meter as per Clause 125 of Supply Code, 2014. In the case of consumer No. 11315 the period of short assessment shall be limited to a period of 2 years as suggested by the Forum. The order of the CGRF is set aside. The appeal petition is allowed. No order as to costs.

ELECTRICITY OMBUDSMAN

No.P/076/2014/ _____ /Dated: _____

Forwarded to:

1. Sri Joseph Jacob, Managing Director, M/s Poabs Enterprises (P) Ltd., Kuttoor. P.O., Thiruvalla – 689 106
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Vandiperiyar, Idukki District

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018