

THE STATE ELECTRICITY OMBUDSMAN

Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024

www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208

Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO. P/109/2015

(Present: V.V. Sathyarajan)

Dated: 16th September 2015

Appellant : Sri. Biju T. Nair
Indus Towers, 8th Floor,
Vankarath Towers,
Palarivattom, Kochi 24.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Perinjanam, KSE Board Ltd,
Thrissur.

ORDER**Background of the case:**

The appellant is a consumer having a three phase connection with consumer no. 13991 under Electrical Section, Mathilakam under VII A tariff. On 01-08-2014, the APTS team of KSEB conducted an inspection in the premises of the appellant and it was found that one phase of the metering equipment was missing due to the internal damage of the meter. On 04-08-2014, the appellant was issued with a short assessment bill amounting to Rs. 186986/- as the meter faulty period from 2/2013 to 06/2014. Aggrieved by this, the appellant approached the CGRF, Ernakulam by filing a Complaint No. 138/2014-15. The CGRF dismissed the petition and held that the short assessment bill dated 04/08/2014 for Rs. 1,86,986/- is in order, vide order dated 27-03-2015. Still aggrieved with the above decisions of CGRF the appellant has approached this Authority with this appeal petition on 04/05/2015.

Arguments of the appellant

The appellant have more than 6000 own Tower sites all over Kerala with KSEB supply, among that one site at Puribazar for Telecommunication purpose with consumer no. 13991 under Electrical Section, Mathilakam. Appellant is paying monthly current charges regularly without any lapse. But on 04-08-2014 appellant was issued a short assessment bill amounting Rs. 1,86,986/- as the meter faulty period from 2/13 to 6/14. Meter had been tested by KSEB at the spot using their own equipment, but could not able to convince the testing method, so appellant had applied for testing the meter at Electrical Inspectorate. Thus the meter was tested in Electrical Inspectorate and test report had given to him. But the meter faulty period was assessed for 18 months.

As per Regulation 115 of Supply Code, 2014 it is clearly stated that "in the case of meter is found to be faulty revision of the bill on the basis of test report shall be done for maximum period of 6 months or from the date of last testing whichever is shorter and excess or deficit charge on account of such revision shall be adjusted in the two subsequent bills." As per this Clause, the appellant had given appeal to Assistant Engineer to limit the period of short assessment to six months but after conducting a hearing on 31-10-2014. The Assistant Engineer had given final order upholding the short assessment bill and he had stated that Regulation 152 of Supply Code, 2014 licensee has the liberty to recover the entire amount for the entire period.

The Regulation 152 of Supply Code, 2014 in which the heading itself stated that "anomalies attributed the licensee which are detected at the premises of the consumer". In clause 1 "Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in purpose of use of electricity by consumer and the inaccuracies in metering shall not attracted the provision of section 126 of the act or section 135 of the act."

Then the appellant had given complaint to CGRF Ernakulam but Honourable Forum uphold the order of Assistant Engineer, Mathilakam stating that section 152 of Supply Code 2014 is applicable instead of section 115 of Supply Code. As per section 152 of the Supply Code 2014, it is the rule for the defects had made at the time of giving service connection such as wrong application of multiplication factor incorrect application of tariff and the inaccuracies in metering. The above mentioned things were not happened here, inaccuracies in metering means wrong method of connection had done at the time of installation of meter here only the meter became faulty(one phase of the meter had not recording consumption) only due to the internal fault occurred while on running then how Section 152 of the Supply Code is applicable it is applicable only for the defect which had committed by the licensee so the findings of the Honourable CGRF are not supporting the rules mentioned in the Supply Code for reassessing the meter faulty period . If only section 152 is applicable for this case then what is use of the rule mentioned in Section 115 of the Supply Code 2014.

The only complaint appellant had argued for the rule to be followed during the meter faulty period. The meter was in good condition at the of installing it and the connections were intact, no mistake in tariff applied and no mistake in the multiplication factor then how the Section 152 of the Supply Code is applicable only section 115 of the Supply Code is applicable.

The appellant prays to cancel the order of the CGRF thereby cancelling the demand raised by the Mathilakam Section for consumer no: 13991.

Arguments of the respondent

The Petitioner, Sri. Biju T. Nair possesses an electric connection having Consumer No. 13991 in "the name of Indus Tower Ltd, Palarivattom, Kochi for Mobile tower at Pathazhakad area under KSEB Electrical Section, Mathilakam under Electrical Sub Division, Perinjanam and Electrical Division, Kodungallur. An inspection was conducted in the above premises on 01-08-2014 by the KSEB Ltd, APTS team from Thrissur as part of their routine testing activities in meters and inspection of any

anomalies in the consumer premises. On inspection by them it was found that one phase of the metering equipment was missing due to internal damage of the meter. The APTS has downloaded the data by the computer port for the history and it was noticed that the actual consumption was not recorded in the meter from 07-02-2013 onwards. And the meter recorded was only 76% of the actual consumption by the tower site. The site mahazar was prepared and issued to the consumer and consumer signed in it. It is worth to be mention that the KSEB's meter readers may not recognise such defects as such during their meter reading jobs as it is an internal fault in the metering equipment.

Based on the above, a short assessment amounting to Rs. 1,86,986/- was issued to the complainant on 04-08-14 with proper acknowledgment . Regarding the above the consumer had submitted a request dated 21-08-2014 for testing the metering equipment in the testing lab of Electrical Inspectorate and they informed the willingness to pay the short assessment amount if the test results are genuine.

As per the request, Assistant Engineer, Electrical Section, Mathilakam had arranged to test the metering equipment in the testing lab of the Electrical Inspectorate, Thiruvananthapuram on 10-08-2014. The test result of the disputed meter was received and it was stated as Y phase pressure circuit of trivector meter is open. The energy recorded by the meter 33.3% less than the actual consumption. The same had been forwarded to the complainant to comply with the test result of accredited laboratory by the Assistant Engineer on 15-10-2014. But the consumer had again submitted an application to revise the bill as per Regulation 115 Clause (9) of Supply Code 2014. It is stated as in case the meter is found faulty a revision of bill on the basis of test report shall be done for a maximum period of six months or from the date of last testing whichever is shorter and excess or deficit charges on account of such revision shall be adjusted in the two subsequent bill.

In order to convince the consumer the Assistant Engineer, Mathilakam had invited the consumer to attend the hearing on 31-10-2014 at Mathilakam KSEB office. The representative of consumer had attended the hearing and his statements recorded, then explained details on KSEB's part. After hearing, the AE, Mathilakam had issued Final Order, by quoting the Regulation 152 of Supply Code, 2014 it is stated as

1. Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of section 126 of Act or section 135 of the act.
2. In such case the amount of electricity charges short collected by the licensee if any shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.
3. The amount of electricity charges short collected for the entire period during which such anomalies persisted may be realised by the licensee without any interest.

Provided that the period of such short collection due to the anomalies is not known or cannot be reliably assessed the period of assessment of such short collection of Electricity charges shall be limited 12 months.

Provided further that while assessing the period of such short collection the factors as specified in the sub Regulation (B) of Regulation 155 shall be considered.

Provided also that realisation of Electricity charges short collected shall be limited for a maximum period of twenty four month, even if the period during such anomaly persisted is found to be more than twenty four month.

As the total electricity consumed by this connection for the period 2/2013 to 6/2014 could not be realised by the KSEB LTD due to one phase missing or the metering equipment, consumer is liable to pay the short assessment amount for the unrecorded consumption.

On 04-08-2014 Assistant Engineer, Mathilakam was issued with a short assessment bill amounting to Rs. 1,86,986/- indicating meter faulty period from 2/2014 to 6/2014 (18 months} for missing of one phase in the metering equipment. The bill issued to the consumer as per Regulation 152 of the Supply Code, 2014, for a period 2/2013 to 6/2014 is genuine. So the consumer must pay the bill amount, calculated by KSE Board Ltd.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 19-08-2015. The Sri Sudip B, Assistant Manager, Indus Towers Ltd was present for the appellant's side and Sri Sankaran, Assistant Executive Engineer, Electrical Sub Division, Perinjanam and Sri Suresh V.A., Asst. Engineer, Electrical Section, Mathilakam represented the respondent's side. Both sides have presented their arguments on the lines as stated above.

The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The contention of the appellant that the respondent issued a short assessment bill for Rs. 1,86,986/- for a period from 2/2013 to 6/2014 for one phase of the metering equipment was missing due to internal damage of the meter is not proper. According to the appellant the short assessment bill can only be issued for 6 months as per Regulation 115 of Supply Code, 2015. Against this the appellant was charged as per Regulation 152 of the Supply Code, 2014. On the other hand the respondent argued that the short assessment bill issued for Rs. 1,86,986/- for the meter faulty period from 2/2013 to 6/2014 is as per the Regulation 152 of Supply Code, 2014 is genuine and the appellant is liable for the payment.

The issue arising for consideration in this appeal is whether the appellant is liable for the payment of short assessment for the meter faulty period from 2/2013 to 6/2014 is as per Regulation 115 or 152 of Supply Code, 2014.

Regulation 115(9) of Supply Code reads as **“In case the meter is found to be faulty, revision of bill on the basis of test report shall be done for a maximum period of six months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in the two subsequent bills”**.

In order to explain this Regulation, it will be necessary to refer Regulation 115(4) which says **“In the case of testing on the request of the consumer, he shall have to pay the testing fee as per the Schedule of Miscellaneous Charges given in schedule 1 of the Code:**

provided that if the meter is found to be recording incorrectly or defective or damaged due to technical reasons such as voltage fluctuation or transients, attributable to the licensee, the testing fee shall be refunded to the consumer by the licensee by adjustment in the subsequent bill.”

Regulation 152 of the Supply Code, 2014 deals with *Anomalies attributable to the licensee which are detected at the premises of the consumer. (1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or Section 135 of the Act.*

(2) In such cases the amount of electricity charges short collected by the licensee if any shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.

Upon a plain reading, the mark differences in the contents of Regulation 115 and 152 of the Supply Code, 2014 are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. Regulation 152 gives liberty to the licensee to realize the amount of electricity charges short collected by the licensee from the consumer under normal tariff applicable to the period during such anomalies persisted.

The non recording of one phase of the appellant’s metering equipment in the appellant’s premises was detected by the licensee during the inspection conducted on 01-08-2014 and the test report issued by the Electrical Inspectorate, Thiruvananthapuram also justifies these facts. The appellant also convinced the test reports but raised objection in assessing the entire period i.e. from 2/2013 to 6/2014. In view of the above facts it is clear that the energy meter installed in the appellant’s premises was only recording in two phases with 76% of actual consumption. *As per Regulation 134 (1) if the licensee establishes either by review or otherwise, that it has undercharged the consumer, licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making payment of the bill.*

In the instant case, it is proved beyond doubt that one phase of the energy meter was missing from 2/2013 and thus the appellant has actually consumed the energy, the

short assessment bill issued for the period from 2/2013 to 6/2014 as per Regulation 152(3) is found in order. Hence the appellant is liable to remit the amount without any interest.

Decision

Above analysis leads to the conclusion that the short assessment bill issued by the respondent for an amount Rs. 1,86,986/- is found in order. The appellant is directed to remit the same without any interest. Consequently the appeal petition is dismissed as being devoid of merits and the order CGRF-CR/Comp/138/2014-15 dated: 27-03-2015 is hereby affirmed. No order as to costs.

ELECTRICITY OMBUDSMAN

Petition No. P/109/2015 Dated:

Forwarded to:

1. Sri. Biju T. Nair, Indus Towers, 8th Floor, Vankarath Towers, Palarivattom, Kochi 24.
2. The Assistant Executive Engineer, Electrical Sub Division, Perinjanam, KSE Board Ltd, Thrissur.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
2. The Secretary, KSE B Ltd, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018