

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/122/2015

(Present: V.V. Sathyarajan)

Dated: 16th October 2015

Appellant : Captain Suresh K.K.,
Regional Manager,
DDRC SRL, Calicut Region,
Sana Tower, near Medical College,
Kozhikode.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kovoor, KSE Board Ltd,
Kozhikode

ORDER**Background of the case:**

The appellant is a three phase consumer having a connected load of 27425 watts with consumer number 21332 under LT 6F tariff within the jurisdiction of Electrical Section, Kovoor. The connection is registered in the name of Sri. Joy Joseph. The APTS team conducted an inspection on 17-5-2014 in the premises of the appellant and found that the meter is faulty. On the basis of site mahazar prepared, a short assessment bill amounting to Rs. 2,74,253.00 was served on the appellant. Aggrieved by this, the appellant approached the CGRF, Kozhikode with a petition which was dismissed due to lack of merits. However, Forum has directed the respondent to allow twelve equal instalments to remit the amount by the appellant without interest. Against the above order of the Forum, the appellant filed this appeal before this Authority on 18-6-2015.

Arguments of the appellant:

The appellant stated that he had not damaged or tampered with the meter in any manner and the respondents have no such case also. If any damage had occurred to the meter that was only due to technical issues and in natural way. Though the appellant had approached the respondent for testing

the meter by letter dated 26-5-14, no action was taken in this regard. Further the appellant argues that a perusal of previous bills from April 2013 to April 2014 would show that difference in reading can be seen only in the month of April 2014 and not in any previous months. Therefore, the appellant may not be penalized for the fault of the meter which is not identifiable by naked eyes. Appellant is no way responsible for the improper working of meter and therefore not liable to pay the bill claimed in the impugned demand notice/short bill.

Further he contended that as per the dictum laid down by the Hon'ble High Court of Kerala in KSEB v/s M.K. Fabrics (2013(2)KHC571), held that so long as the consumer had not committed any theft of electrical energy or to make a meter dysfunctional, normally, he cannot be penalized by demanding huge amount. In the instant case, the respondents have no case that the appellant had committed theft of energy or had committed anything to make the meter dysfunctional. Therefore the dictum laid down in the above case is squarely applicable in the instant case. A perusal of bills after installing new meter would also shows that the difference of reading only in the month of April 2014. This shows that the meter became faulty only in the month of April 2014. The respondents have no case at what date the meter becomes faulty. The appellant also argued that the multiplier adopted by the respondent is erroneous.

The assessment of the respondent and findings of CGRF that as per the Electricity Act, 2003, the licensee was empowered to issue short assessment bill for a period of twelve months is erroneous. Since there was no finding of any tampering of meter or theft of energy, Section 26(6) of the Indian Electricity Act 1910 is having application in the instant case. The calculation of energy supplied for 12 previous months is against the Section 26(6) of the Indian Electricity Act 1910.

Nature of reliefs sought for:

1. To set aside the short assessment bill dated 22-5-2014 issued by the AEE, Electrical Sub Division, Kovoov.
2. To set aside the order dated 29-4-2015 in OP No.43/2014-15 passed by the CGRF, Northern Region, Kozhikode.

Arguments of the respondent

The respondent stated that on 17th May 2014, the APTS Wing of KSEBL at Kozhikode had conducted an inspection in the premises of the appellant. During the inspection the accuracy of the energy meter installed in the premises of the appellant was checked by using 'Accucheck meter calibration device' and it is found that there is marked difference in the recording of energy consumption in the calibrating meter and the consumer meter. While the

'Accucheck meter' recorded 1700 WH, the energy meter installed in the premises recorded only 1000 WH. This shows that the consumer meter is recording 41.1% less than the actual recording. The current transformer connection with the energy meter is seen properly connected. But the energy meter is not recording the actual consumption. This fact has been recorded in the site mahazar prepared during the inspection and the appellant affixed his signature on it in token of the acceptance of the fact.

The Accucheck meter calibration device is used for checking the energy meters by the APTS Wing of Kerala State Electricity Board Limited. The reduction in the energy meter reading for the month of April 2014, compared to May 2014 is only because of the reduced consumption. The energy consumption of the succeeding month is in the range of previous month itself.

Based on the findings of the inspection, a site mahazar was prepared by Sri Dinesh Kumar, Sub Engineer, Electrical Section, Kooror who had accompanied the inspection team and the same has been got signed by the witnesses. On 16-01-2015 the Assistant Engineer, Electrical Section, Kooror sent the meter to the Office of the Executive Engineer, TMR Division, Kannur for testing the correctness of meter. But the test report No. DB21/M-LT/TMRD-KNR/2014-15 dated 28-01-2015 says while tested on, single phase load errors were found beyond permissible limits. Hence meter is declared faulty. A short assessment demand for Rs, 2,74,253.00 was issued to the consumer on 22-05-2014 and no penalization was done in this bill. Details of the calculation are as below.

Actual consumption during June 2013 to May 2014 was recorded multiplying the recorded consumption and the unrecorded portion is 0.69 part of recorded consumption. E.g. in 6/2013 recorded consumption is 3420.
Hence unrecorded portion = $3420 \times 0.69 = 2359.8$

Unrecorded portion is calculated in the above way for 12 months from 6/2013 to 5/2014.

Month	Recorded Consumption	Unrecorded Portion
6/2013	3420	3420 x 0.69 2359.80
7/2013	3450	3450 x 0.69 2380.50
8/2013	3765	3765 x 0.69 2597.85
9/2013	3315	3315 x 0.69 2287.35
10/2013	3150	3150 x 0.69 2173.50
11/2013	3315	3315 x 0.69 2287.35
12/2013	3330	3330 x 0.69 2297.70
1/2014	3825	3825 x 0.69 2639.25
2/2014	3075	3075 x 0.69 2121.75
3/2014	3915	3915 x 0.69 2701.35
4/2014	5535	5535 x 0.69 3819.15
5/2014	2415	2415 x 0.69 1666.35
		29331.90

Energy Charges = 29331.9 x 8.50
= 249321.15 +

Electricity Duty = 24932.12
274253.00

The respondent argues that the short assessment bill was issued on lawful grounds to make good the unrecorded portion of energy used by the consumer for a period of 12 months from 2013 June to May 2014. The period taken for short assessment in the instant case is only 12 months and the Kerala State Electricity Board Limited is ready to give 12 equal instalments without interest. There is no penalization made on the consumer in this aspect. As a custodian of the public property, the respondents are duty bound to make good the loss sustained to the Board as and when it is unearthed. The respondents acted only to that extent. On the aforesaid grounds the respondent prays to dismiss the petition.

Analysis and findings

Both parties were absent during the hearing on 18-9-2015 and as requested by them, hearing postponed to 07-10-2015. A hearing of the case was conducted in my chamber at Edappally, Ernakulam on 07-10-2015. Sri Ranjith Babu, advocate was present for the appellant's side and Smt. Maya P.V., Assistant Executive Engineer, Electrical Sub Division, Koorvur represented the respondent's side. Both sides have presented their arguments on the lines as stated above. On examining the petition of the appellant, the statement of facts filed by the respondent and the argument note filed by the appellant, the statement of facts of the respondent, perusing 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.

The point to be decided is as to whether the appellant is liable to pay the short assessment bill issued for 12 months prior to the date of inspection when the meter is not working due to defect in meter.

The Anti Power Theft Squad inspected the electrical installation of the appellant and prepared site mahazar. In the same, it was found that the meter is not tampered or not damaged. But it is found that there is a marked difference in the consumption recorded in the meter. While checking the appellant's meter by using "Accucheck" shows that the appellant's meter is recording 41.1% less than the actual consumption. Not satisfied with the testing conducted by the APTS, the appellant's meter was again tested at TMR Division, Kannur which also revealed that the errors in the meter were beyond the permissible limits. Accordingly the meter is declared faulty.

On a perusal of the records it can be seen that based on the findings of the inspection, the respondent issued a short assessment for Rs. 2,74,253.00 for the unrecorded portion of energy for a period of 12 months from June 2013 to May 2014. The respondent stated that the short assessment bill was issued on lawful grounds to make good the unrecorded portion of energy used by the appellant for a period of 12 months from June 2013 to May 2014. There is no penalization made on the appellant and also allowed 12 equal installments without interest.

According to the appellant there was no tampering of meter and the respondent has no case that the appellant had tampered the meter. Further, submitted that the respondent is silent regarding the contention of the appellant that a perusal of meter reading from April 2013 to April 2014 would show that difference in reading can be seen only in the month of April 2014 and not in any previous months. This shows that meter was become faulty only in the month of April 2014. Hence the appellant was no way responsible for the improper working of the meter and not liable for the payment of short assessment.

On a perusal of the consumption pattern of the appellant it is noted that the consumption for the month of March 2014 is 5535 units and for April 2014 is 2415 units. From the above it is revealed that there is a drastic reduction in consumption which may be due to the defect of the meter. Since the respondent failed to furnish the actual date of meter faulty by downloading the data of existing meter, the contention of the appellant that the meter became faulty only during April 2014 cannot be neglected. The sudden decrease in consumption for the month of April 2014 also corroborates the above argument of the appellant. According to the appellant, in so far as there is no allegation of any malpractice or theft of electrical energy by the appellant it is unjust to saddle the appellant if the liability for a period of 12 months. During the hearing, appellant's representative has agreed to settle the issue as per **Regulation 115(9) of Supply Code, 2014** which 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”. On the basis of admitted facts of the case that the energy meter installed in the appellant’s premises records 41.1% less than the actual consumption, the appellant is liable to pay for the unrecorded portion of the energy used by him. If the officers of the respondent were negligent in the matter of inspection of appellant’s installation to ensure that the energy meter is working properly, it is totally unjust to issue a short assessment for Rs. 2,74,253.00 all of a sudden. Hence this Authority is of the opinion that it is just and fair to limit the short assessment period to 6 months prior to the date of inspection as per the Regulation cited above.

Decision

Consequently, in view of the above discussions, the instant appeal is hereby allowed as indicated above without any order as to cost. The impugned order of CGRF in OP No. 43/2014-15 dated 29-04-2015 is hereby modified. The respondent is directed to issue revised bill for a period of 6 months as per Regulation 115(9) of Supply Code, 2014 at any rate within a period of 30 days from the date of communication of this order.

ELECTRICITY OMBUDSMAN

P/122/2015/ _____ /Dated: _____

Delivered to:

1. Captain Suresh K.K., Regional Manager, DDRC SRL, Calicut Region, Sana Tower, near Medical College, Kozhikode.
2. The Assistant Executive Engineer, Electrical Sub Division, Kovoov, KSE Board Ltd, Kozhikode

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSEBoard Ltd, Gandhi Road, Kozhikode