

THE STATE ELECTRICITY OMBUDSMAN

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REVIEW PETITION NO.P/083/2014

(Present: Sri. V.V. Sathyarajan)

Dated: 30th November 2015

Review Appellant : Sri C.A. Nazar,
1/349, House of Yesudas,
Bastian Street,
Fort Kochi,
Cochin -682 001

Review Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Thoppumpady,
Ernakulam

ORDER

The review appellant Sri C.A. Nazar filed an appeal petition No. P/054/2014 challenging the order passed by the CGRF, Ernakulam against the short assessment bill dated 05-03-2013 for Rs. 28,841.00. The said short assessment bill was issued based on the alleged inspection conducted in the appellant's premises by the APTS on 20-11-2012 and detected the wiring in the CT meter box in damaged condition and for which the meter was not recording actual consumption. After hearing the matter in details this Authority passed an order on 30-06-2015 by quashing the short assessment bill dated 05-03-2013 for Rs. 28,841.00. It is also directed the licensee to issue revised bill based on the average consumption for a previous period of 6 months starting from 10/2012 after deducting the amount already remitted. Against the above order the review appellant filed this review petition.

According to the review appellant this Authority was pleased to quash the short assessment bill dated 05-03-2013 for Rs. 28,841.00. But in the decision it is stated that the review respondent to issue revised bill based on taking the average consumption for a previous period of 6 months starting from 10/2012 after deducting the amount already remitted by the appellant and thus the decision was recorded accordingly and the CGRF order was set aside with no order as to costs. The above order is mainly based and relying on the provisions in Regulation 33(2) of KSEB Terms & Conditions of Supply, 2005, which reads as follows: ***"If the licensee is unable to raise a bill on***

meter reading due to its non recording or malfunctioning, the licensee shall issue a bill based on previous 6 months average consumption. In such cases the meter shall be replaced within one month. If the average consumption for the previous 6 months cannot be taken due to meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in succeeding 3 months after replacement of the meter.”

The provisions in Regulation 33(2) of KSEB Terms & Conditions of Supply, 2005 is singularly on the footing that the meter shall be replaced within one month of such detection and then only an order to take average consumption for previous period of 6 months can be made. It is the condition precedent to replace the meter within a period of one month for the purpose of taking average of previous consumption of 6 months period, as per provision in Regulation 33(2) supra. In the case of hand, the respondent did not replace the meter within a period of one month for the purpose of taking average of previous consumption of 6 months period. The respondent did not replace the meter either within a period of one month or on a subsequent period and therefore it has no authority or power to take average consumption for a period of 6 months. Moreover, since the meter was not replaced in the premises of the appellant, the respondent is not empowered to determine the consumption based on the meter reading in succeeding period also.

In the above circumstances the decision taken by this Authority in the above case directing the respondent to issue revised bill based on taking the average consumption for a previous period of 6 months starting from 10/2012 is unsustainable and thus liable to be reviewed. The decision of this Authority in the above manner directing to take the average consumption for previous six months period is to be treated as an apparent error on the face of record and it is passed without authority and outside the scope of enquiry itself. There is no provision for passing such an order and which is passed violating the provisions regarding previous consumption as provided in the relevant provisions of law. Hence it is prayed that the review petition may be allowed and the said direction may kindly be recalled.

The review respondent stated that the short assessment bill dated 05-03-2013 for Rs. 28,841.00 was revised, based on the average consumption for a previous period of 6 months starting from 10/2012 after deducting the amount already remitted by the review appellant. The revised amount comes to Rs. 36,615.00 which includes duty and surcharge. During the hearing the review respondent stated that as per Regulation 125 (1) of the Supply Code 2014, in case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective. Considering the above provisions, the revised short assessment comes to Rs. 33,750.00 including duty and surcharge. After deducting the amount already remitted balance amount to be paid by the review respondent is Rs. 19,329.00. The review respondent agreed to settle the issue as per the above proposal.

Hearing of the case was conducted on 30-10-2015 in my chamber at Edappally, Kochi. Advocate Peer Mohammed Khan, represented the review appellant and Smt. Asha P.A., Assistant Executive Engineer, Electrical Sub Division, Thoppumpady appeared for the review respondent and argued the case on the above mentioned lines. On perusing the review petition, the statement of facts filed by the review respondent, the arguments of both sides in hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

It is an established fact that the meter was recording a lesser energy consumption than the actual due to defective CTs outputs to the meter. In such cases the meter itself cannot be termed as faulty, as the electric current inputs fed to the meter were missing, causing a reduction in recording the consumption. On a verification of the energy usage of the review appellant by referring the meter reading furnished by the review respondent this facts can be justified. However, the fact remains the review appellant consumed energy for the period 11/2012 and 12/2012, but not recorded actual consumption in the meter. It is true that the procedure adopted by the respondent for issuing short assessment for that period is wrong. That doesn't mean the review appellant is absolved from remitting the charges for the energy already consumed. Now the review respondent has agreed to a settlement in accordance with the provision in Regulation 125 (1) of Supply Code, 2014 which says the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective. But the review appellant did not agree with the proposal for settlement since the calculated amount is in excessive of the original bill. But it is open to the review respondent to settle the issue as proposed above.

The review appellant accepted the order dated 30th June 2015 passed by this Authority. The review respondent implemented that order and accordingly issued revised bill in terms of the order after taking the previous 6 months average consumption. The review appellant has not shown any error apparent on the face of records. The only reason stated in the review petition is that the implementation on the original order resulted in excess demand from the review appellant. This is not a reason for reviewing the earlier order. The contention of the review appellant that the provisions in Regulation 33(2) of KSEB Terms & Conditions of Supply, 2005, is singularly on the footing that the meter shall be replaced within one month of such detection and then only an order to take average consumption for a previous period of 6 months can be made. This argument of the review appellant cannot be accepted since the replacement of the meter within one month is not a pre condition for taking the average consumption for a previous period of six months.

In the review petition nothing is pointed out which escaped the notice of this Authority while disposing the appeal petition. The review jurisdiction is limited to rectify a mistake or error which is apparent on the face of the records and it cannot be used as appellate jurisdiction. The arguments now raised cannot be considered for a review, as it was considered, decided and order issued accordingly. Hence there is no cause or

sufficient reason established by the review appellant, for the review of the order already issued.

In view of the above discussions, I hold that review petition is not maintainable and hence rejected.

ELECTRICITY OMBUDSMAN

No. P/083/2014/ _____ Dated: _____

1. C.A. Nazar, 1/349, House of Yesudas, Bastian Street, Fort Kochi, Cochin - 682001
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Thoppumpady, Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.