

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/174/2015
(Present: V.V. Sathyarajan)
Dated: 31st March 2016

Appellant : Sri Godson Varghese,
Managing Partner,
M/s Apex Rubber Industries,
Rubber Park,
Valayanchirangara,
Perumbavoor.

Respondent : 1. M/s. Rubber Park India Ltd.,
2A.Kautileeyam,
Valayanchirangara P.O.,
Perumbavoor

2. The Managing Director,
M/s. Rubber Park India Ltd.,
Valayanchirangara P.O.,
Perumbavoor

3. The Resident Engineer,
M/s. Rubber Park India Ltd.,
Valayanchirangara P.O.,
Perumbavoor

ORDER

Background of the case:

The appellant Sri Godson Varghese is the Managing Partner of M/s. Apex Rubber Industries, Rubber Park, Valayanchirangara P.O, Perumbavoor, engaged in the business of manufacturing tread rubber and allied products. The connection was given to the industrial unit by the Rubber Park India Ltd. the Licensee, bearing consumer No. 128, under HT I tariff with a Contract Demand of 325 kVA. The respondent has issued a demand notice for back assessment amounting to Rs. 18,24,091.00 towards the energy charges of unrecorded consumption of 401964 units during the period from 01-04-2013 to 01-1-2014 alleging that an error occurred as a result of the interchanged polarities of the phase currents. Aggrieved by this, the appellant approached the Managing Director of Rubber Park India Pvt.

Ltd, and preferred a petition. The appellant also filed a Writ Petition No. WP (C) 19814/2014 before the Hon'ble High Court of Kerala which was disposed of on 07-08-2014 with a direction to consider the objections of the appellant by the Managing Director of Rubber Park India Pvt. Ltd, the 2nd respondent in the Writ Petition. The Managing Director of Rubber Park India Pvt. Ltd has ordered to revise the disputed bill and directed to remit an amount of Rs. 18,12,670.00. Aggrieved against the said order, the appellant approached the Hon'ble CGRF of the licensee on 14-05-2015, for redressal of grievance. A complaint along with detailed note regarding the entire episode was submitted before the CGRF of the Licensee pleading redressal of grievance. But the Forum directed the appellant to remit the entire amount of Rs. 18,12,670.00 assessed by the respondents and disposed the petition accordingly. Aggrieved against the above order, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

1. On 09-01-2014 the appellant was informed through a communication of the Rubber Park India Ltd directing the appellant to pay charges for unrecorded consumption of energy for the period from April 2013 to Dec 2013. The reason stated in the said letter was an energy audit conducted by an outside agency and inspection conducted in the metering equipments of appellant's Industrial unit on 13-12-2013. No information of any kind was given to the consumer regarding such an inspection and no anomaly, if any, found in the metering circuit was intimated before the communication dated 09-01-2014. If at any inspection was conducted, no site mahazar was prepared. The consumer was totally unaware of any such inspection and no representative of the appellant or any independent witnesses were present at the time of the so called inspection.

2. Aggrieved by the contents of the said letter appellant approached respondent 3 in person and was told to "Ignore" it. Then after a lapse of 5 months i.e. on 26-5-2014, the appellant was served with a bill said to be back assessment for the period from 01-01-2013 to 01-10-2013 based on average consumption from January 2014 to March 2014 for an amount of Rs 18,24,091.00. The appellant filed objections in the matter before the respondents on 21-07-2014 and no tangible results were coming up. Finally appellant approached the Hon'ble High Court of Kerala for relief, and filed writ petition No.WPC19854 of 2014 and the Hon'ble court was pleased to direct the respondents to consider the objection filed by the appellant and also given opportunity for personal hearing. Additional objections were filed by the appellant on 29-09-2014 and 15-12-2014. A hearing was conducted by the respondents on 19-12-2014. Ignoring all the objections of the appellant and without applying mind, the respondents issued an order on 31st March 2015, directing the appellant to remit Rs. 18,12,670.00.

3. The computation and quantification arrived at for calculating assessment for the alleged unrecorded consumption is totally erroneous,

misconceived, imaginary and against facts in evidence. No inspection of any kind was conducted in the premises of the appellant on 13-12-2013. If at all any inspection was conducted and an anomaly was noticed in the recording of the energy meter, a site mahazar should have been prepared in the presence of consumers representative / independent witnesses and a copy of the same handed over to them then and there. Neither, the consumer was informed of any anomaly in the meter till communication dated 09-01-2014 from the Licensee, in which it was alleged that current in two phases of CT's were interchanged in the energy meter circuit.

4. The aforesaid finding of the Licensee is not based on real facts and records and the assessment is totally based on assumptions, misconceived, illegal not sustainable and bad at law. Regulation 109 (14) of supply code 2011 and Regulation 19 (1) Supply Code, 2005 makes it mandatory that "Details of any fault in the meter, repairs, replacement etc shall be entered in the meter particulars sheet/meter card given to the consumer at the time of installing the meter" by the licensee. In this case no such entry is seen anywhere and hence the presumption that interchanged polarities of phase current was detected in an inspection is totally misleading and against facts in evidence.

5. According Regulation 109 (20) of supply code 2014 Regulation 27(2) of Supply Code 2005 and Sec.42 (l) of conditions of supply 2005, "it shall be the duty of the Licensee to maintain the meter and keep it in good working condition at all times". It may be noted that meter readings were taken regularly on the first day of every month by the authorised representative of the Licensee. If any discrepancy was noted in the supply parameters, the LED display will clearly show an anomaly in the meter and the Licensee shall inform the same immediately to the consumer. Here no such anomaly is reported or informed the consumer till communication dated 09-01-2014. Moreover if such an anomaly was noticed, data from the meter should have been downloaded by the Licensee and made the consumer convinced about the defects, if any.

The appellant had requested to down load data from the meter in the objection filed on 21-07-2014 against the impugned demand dated 26-05-2014. Despite repeated requests to down load the data this was done only during the last week of October 2014 i.e. nearly 11 months after the so called inspection. Whatever data downloaded and given does not substantiate the claim of the Licensee that there was a polarity change of the CT's. It is not the appellant's fault that the Licensee never bothered to download the data in support of their allegation (that there was interchange of phase currents) for such a long period. The Licensee gave a communication dated in which it was stated that no data could be retrieved for the period of assessment made, as storage of data in the meter is limited to 12 months.

It is quite ambiguous as to why the Licensee never bothered to down load the data for nearly one year after the so called inspection. It is

presumed that the Licensee never wanted to divulge whatever data was available in the metering equipments to the consumer. It is brought before the Hon'ble Ombudsman that the licensee failed to establish their claim and reasoning for short assessment as contemplated in Regulation 37(5) of Supply Code, 2005.

6. Regulation 152 (2) of Supply Code, 2014 states that in case of short assessment due to review or any other reason, electricity charges short collected shall be realised from the consumer under normal tariff, to the period during which such anomaly persists. But before making such an assessment the Licensee has to give sufficient data to prove the genuineness and authenticity of their claim. Regulation 134 of Supply Code, 2014 clearly states that before making such an assessment the Licensee have to clearly "establish" that they have under charged a consumer. This has not been followed in the instant case. Hence no short assessment at all can be made. The assessment now made, based on average consumption for 3 months after the inspection, is totally erroneous, without adhering to codes and procedures, bad at Law and hence is not sustainable.

7. As per Section 123 (i) (h) of Supply Code, 2014 the **status of the meter** shall be clearly furnished in the monthly energy bill served on to the consumer. No defect of any kind is furnished in the monthly bills issued to the appellant till date. No evidence or data to substantiate the claim was furnished and the small scale industrial unit is been pressurised to remit the amount. Even request for the downloaded data from the meter was complied with only 11 months after the so called inspection. That too without any details pertaining to the period to which assessment is made. The down loaded data now produced is only from Dec. 2013 to Oct. 2014. It is brought to the kind notice of this forum that the assessment under dispute was made for the period from April 2013 to Dec. 2013. All these do not fit in to the codes and procedures to be followed by the Licensee as is laid down in the Electricity Act, 2003 and Supply Codes 2005 and 2014, which is denial of principles of natural justice. Hence the assessment is illegal arbitrary and not sustainable.

8. Section 173 (1) of supply code 2014 makes it mandatory that every inspection conducted by a Licensee shall be transparent, fair and free of prejudice and section 173 (5) makes it mandatory that the inspecting officer shall inspect thoroughly, all relevant aspect of the installation including condition of the metering installation without limiting the scope of inspection to one or two aspects. If a proper inspection was conducted, details were to be downloaded from the meter and instruments in the metering circuits, tested by appropriate authority and real facts ascertained. Here the inspection if any conducted by the Licensee was not transparent or fair. No intimation was given to the consumer regarding inspection, no anomaly in the metering circuit if any was brought to the notice of the consumer at the time of inspection, no witnesses were present and not even a mahazar was prepared at site. Hence the assessment itself is prejudicial, arbitrary and does not stand the test of Law.

9. The licensee's claim that there was unrecorded consumption due to wrong connections in the metering equipments is not supported by any material evidence. No interference of any kind by the consumer with the metering equipments or connections in the metering circuits has been alleged. There was regular consumption in the energy meter, charges for which was demanded and duly paid by the consumer. More over the metering equipments are installed outside the factory compound, in an open space on the road side and perfectly sealed and covered by the Licensee. The consumer has no access to the metering equipments and the Licensee never alleged any manipulation on the side of the consumer. Hence the claim of the licensee that there was reversal of phase currents and unrecorded consumption is unfounded and bogus. The assessment made based on false notions, surmises and assumptions is not sustainable and the consumer is not bound to pay the same.

10. If two phase currents in a metering circuit are inter changed, the resultant power will be zero in a two watt meter method energy measuring unit. This means the meter will not record at all. Here there was regular consumption in the energy meter, readings were taken regularly and no anomaly of any kind was recorded. The copy of meter reading register given to appellant showed that the phase sequence during the entire period was RYB and the meter never recorded RBY. Moreover no data was down loaded from the meter for the period under dispute (which was a mandatory requirement) to substantiate the claim of the Licensee that there was inter change in phase current. The appellant have promptly remitted monthly demands made by the Licensee based on actual consumption in the energy meter. The claim of the Licensee regarding any unrecorded consumption was never brought to the appellant's notice till January 2014. This clearly shows that the Licensee could not "Establish" their claim as contemplated in Regulation 37 (5) of Supply Code, 2005. Hence appellant is not liable to pay the assessment as per the impugned demand dated 26-05-2014.

11. Erection and commissioning of the appellant's plant was completed in 2012. But before taking commercial production, pursuant to an agitation by the local public alleging pollution, series of conciliatory negotiations were required to be conducted to settle the issue. Anyhow for the satisfaction of the local public, the appellant had to carry out too many alteration works in the factory premises, which took considerable time. More over due to a manufacturing defect in the mixing mill one of the rollers had to be replaced which also took nearly 3 months. All these facts are known to the authorities as well as employees of Rubber Park. In the aforesaid scenario the energy consumption was very low till November 2013. Hence the assessment made is based on assumptions and surmises and the appellant are not entitled to pay the same.

12. The Licensee claims that the entire events carried out in the premises of the appellant have been recorded in the permit book kept in the substation. The operators diary and permit book are kept by the operator in

the Substation. Only activities / operations made in the Substation shall be recorded by the operator in the operator's diary and permit book, in good faith. He shall be supervisor and witness to the activity for any entry made in the operator's diary. The permit book contains only date, time, the person who takes or returns the permits and a small entry regarding the place of work. The operator shall never leave the control room during duty hours and is quite unaware of the activities carried out in consumer's premises. From the above it is quite evident that somebody asked the operator to make these entries in the operator's diary and permit book. Hence operator's diary cannot be construed as a record to "establish" there was interchange of polarities (of CTs) and unrecorded consumption.

13. The respondents arguments pointing out Sections 37(5) and 42(3) of Condition of Supply 2005 and endorsing the same by the CGRF, in its decision is totally misconceived and against the intention and sprit of the said clauses. Section 37(5) of Condition of Supply 2005 is dealt with incorrect billing. In the case of a properly working meter only arithmetical errors and a change in tabulation of reading due to wrong application of multiplication factor (in the case of CT meter etc) comes under this Clause. Sec 42(3) deals with the procedure for arriving at the average consumption during faulty period of energy meter. The said clause is applicable only for meters that are faulty or burnt off without possibility to review previous readings. In the appellants case the meter is still installed for measuring the actual consumption of the consumer and Licensee never disputes correctness of the meter.

14. Whenever an inspection is conducted in the premises of a consumer and an anomaly is detected, it is a precondition that, the consumer should be served with copy of mahazar prepared at site in the presence of independent witnesses. No matter, whether the inspection was carried out by the Licensee themselves or with the help of an outside agency hired by the Licensee.

15. The findings of the CGRF that fault was detected in the meter is not correct. The very same meter is still working properly and monthly demand is made based on the consumption recorded in the meter. The contention of the CGRF that no site mahazar required for an assessment based on anomaly detected in the meter or metering circuit is totally against the spirit and essence of Electricity Act 2003. A consumer who is penalised or when a short assessment is made has a right to be convinced about why he is being penalised or assessed. The findings of the CGRF that there was unrecorded consumption are based on surmises and assumptions only. The Forum never relied up on Codes and Procedures to be followed while making back assessment on a consumer. The consumer was never informed of any anomaly in their metering equipments on the date of inspection or not served with any data downloaded from the metering equipments to prove that there was an anomaly in the metering circuit.

Arguments of the respondents:

The computation and quantification in the assessment are correct and the averments to the contra are wrong. The appellant contended in the appeal that no inspection was conducted in their premises on 13-12-2013. The said contention of the appellant is baseless and incorrect. The respondents had inspected and carried out fault rectification works on the metering cubicle in the premises of the consumer on 13-12-2013. The fault in the meter was identified during the energy audit conducted with the help of Kerala State Productivity Council and the report submitted by them itself revealed that the said fault was existed in the metering connection of the appellant and the fault was rectified on 13-12-2013. The sequence of events is fully recorded in the permit book and operators diary kept within our Substation. The report submitted by Kerala State Productivity council clearly mentioned that the fault in the connection to the meter was identified during their inspection on 12-12-2013 and the connections to the meter were temporarily corrected on the same day itself. Hence it is clear from the above that fault rectification works on the metering cubicle of the appellant was conducted by these respondents on 12-12-2013 and the connection in the meter are temporarily corrected on the same day itself and the connection error in the meter are permanently corrected after one day observation on 13-12-2013.

The inspection was conducted in the presence of the competent officers / staff of the Appellant. Hence it is clear from this that the appellant was aware of the metering cubicle rectification works carried out in their premises on 12-12-2013 & 13-12-2013 and the contention of the appellant that no such inspection was conducted in their premises on 13-12-2013 was baseless, incorrect and not sustainable. It is not mandatory as per the Supply Code to prepare and deliver the site mahazar during all inspections. The Regulation 50(1) of the KSEB Terms and Conditions of Supply 2005 states that " If on an inspection of any place or premises or after inspection of the equipment, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the Board's officer not below the rank of Assistant Engineer (Assessing Officer) comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use as per Section 126 of Electricity Act."

Similarly, the regulation 4(4(i)) of the Kerala State Electricity Supply Code 2005 states that "In case of prejudicial use of power supply, the Licensee should draw mahazar at the time of inspection when such prejudicial use is detected. The mahazar shall be drawn in the presence of the consumer or his representative along with two other witnesses who shall sign the mahazar report. One copy of such report shall be handed over under acknowledgment of the consumer or his representative". As per the above Regulation the issue of provisional bill and preparation of Mahazar is only mandatory for power theft and unauthorized extension or use of

electricity. Hence as per the above regulation, it is very clear that the licensee was not required to provide the provisional bill and Mahazar in this case.

Moreover the appellant was issued with a letter on 09-01-2014. It was clearly mentioned in the letter that the respondent had observed a metering error in the metering cubicle and the appellant was liable to pay the energy charges for the unrecorded consumption during the faulty period. The appellant had not made any objection on the claim and they had never ever objected the findings up to demand notice for Rs. 18,24,091.00 towards the un recorded energy charges consumed by the appellant. The appellant was directed to settle the account on or before 30-06-2014 by giving more than 30 days time.

As per the clause 42 (3) of the KSEB Terms and Conditions of Supply if the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding six months after replacement of meter. The average consumption of the consecutive six months was 53592 units and the average consumption of the consecutive three months was 50174 units. Since the average consumption of the consecutive 3 months was lesser than the average consumption of the consecutive 6 months the respondent had given maximum relief to the appellant by taking the average consumption of consecutive 3 months instead of taking the average consumption of consecutive six months for calculating the unrecorded consumption during the meter faulty period.

The fault in the consumption recorded in the meter was identified with the help of standard power quality analyzer of Productivity Council during the verification of the consumption recorded in the meter and in the analyzer. The report submitted by the energy auditor pointed out the variation in energy consumption recorded in these two meters. Analyzing the consumption before and after the meter rectification work is easily conclude that polarities of phase is reversed and So it was resulted in considerable reduction in the recorded consumption of the appellant. The allegations in paragraph 2 regarding information is incorrect. The appellant was well aware of all the above facts.

The Regulation 19(1) of the Supply Code, 2005 states that "the meter reading shall be taken by the employee or the persons authorized by Licensee and record the same on the meter card provided for such purposes by the Licensee near such meter;" The Licensee had kept an independent meter reading register which is accessible for the consumers at any time. There is no Clause in the said Regulation that details of any fault in the meter, repairs, replacement etc shall be entered in the meter. The Hon'ble Commission had implemented the Kerala State Electricity Supply Code, 2014 with effect from 01.04. 2014. Hence the Regulations mentioned in the Supply Code, 2014 are not applicable in this case.

4. The contention of the appellant that the licensee stated that no data could be retrieved for the period of the assessment made as the storage of data in the meter is limited to 12 months is baseless, incorrect and hence denied. The anomaly's are recorded in a meter as sequential storage. The said meter had a capacity to store maximum of latest 50 Nos. of sequential storage for events. The events are recording in the meter as first come first out manner. The said anomaly events will be recorded in the meter for every power failure, load unbalance etc. The latest 50 data's within the meter were downloaded on 27-10-2014. The meter had recorded 50 events within 19-10-2014 to 26-10-2014. Neither the consumer nor the licensee can ascertain the date up to which the data's available in the meter without downloading the same. The no. of events determines how many days' data's are stored in the meter.

The said fault was that the polarities of two phases of CT's connected for measurement of energy was reversed and the R&B phases of the CT's & PT were in out of phase sequences and this was resulted in considerable reduction in the recorded consumption of the appellant. The respondents had enquired the meter testing lab of Electrical Inspectorate to download the datas, but they had informed us that they only carry out the accuracy testing and calibration of the meters. Since the respondents had not objected the accuracy of the energy meters installed in the premises of the appellant, it is not relevant to carry out the accuracy testing and calibration of the meters in this case.

However, respondents had downloaded the available data's based on the additional objection filed by the consumer with the help of the Service Engineer of the manufacturer of the meter M/s. L & T Limited within the presence of the representative of the appellant and served a copy of the same at the site itself. The anomaly will be displayed in a meter when the load is not equally segregated on every phases or putting the load on single phase or due to low power factor of the system. Since the anomaly displayed in the meter may be due to the load pattern of the consumer, it is not pragmatic to inform the consumer whenever an anomaly string displayed in the meter.

Even though the Supply Code, 2014 was not applicable in this case as per the Regulation 152 (3) of the Supply Code, 2014 "the period of assessment of such short collection of electricity charges shall be limited to twelve months". It is very clear from this Regulation that Licensee can issue back assessment bill up to 12 months, however the respondent had limited the same to nine months. After rectification of the fault, the appellant was seen using an average consumption of 53592 units per month, taking the succeeding six months average after correcting the meter, i.e. for the period of 01/2014 to 6/2014. This is done as per clause 42 (3) of KSEB Terms & Conditions of Supply, 2005. However, the respondent had calculated the unrecorded consumption based on the average consumption of the succeeding three months, i.e., 50174 units. As per section 37(5) of the KSEB

Terms and Conditions of Supply, 2005 "If the Licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee may recover the amount undercharged from the consumer by issuing a bill". The respondent had calculated the average consumption of the appellant based on the section 42(3) of the KSEB Terms and Conditions of Supply, 2005. The Section 42(3) of the KSEB Terms and Conditions of Supply, 2005 clearly specifies that "If the existing meter after having found faulty is replaced with a new one, the consumption recorded during the period in which the meter was faulty shall be reassessed based on the average consumption for the previous six months prior to replacement of meter. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding six months after replacement of meter and excess claimed if any, shall be adjusted in the future current charge bills".

It is not mandatory as per the Supply Code to prepare and deliver the site mahazar during all inspections. The Regulation 50(1) of the KSEB Terms and Conditions of Supply 2005 states that " If on an inspection of any place or premises or after inspection of the equipment, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the Board's officer not below the rank of Assistant Engineer (Assessing Officer) comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use as per Section 126 of Electricity Act."

Similarly, the regulation 27 A (4(i)) of the Kerala State Electricity Supply Code, 2005 states that "In case of prejudicial use of power supply, the Licensee should draw mahazar at the time of inspection when such prejudicial use is detected. The mahazar shall be drawn in the presence of the consumer or his representative along with two other witnesses who shall sign the mahazar report. One copy of such report shall be handed over under acknowledgment of the consumer or his representative". As per the above regulation the issue of provisional bill and preparation of Mahazar is only mandatory for power theft and unauthorized extension or use of electricity.

Hence as per the above Regulation, it is very clear that the licensee was not accountable to provide the provisional bill and mahazar in this case. The meter rectification work has been carried out on 13-12-2013, the consumption during the period from 01-12-2013 to 13-12-2013 was only 300 kWh and the consumption after the rectification work from 13-12-2013 to 01-01-2014 was 44190 kWh. This shows that the metering equipment of the appellant was not working properly during the above period. The consumption recorded before and after the fault rectification works on the metering cubicle conducted on 13-12-2013 was detailed as below. The consumption of the petitioner before the rectification of the metering fault was as follows.

Sl. No.	Month	Total Consumption in kWh
1	Jun-13	384
2	Jul-13	448
3	Aug-13	2,144
4	Sep-13	384
5	Oct-13	360
6	Nov-13	752

The average consumption of the 6 months prior to the metering fault rectification work is

Sl. No.	Month	Total Consumption in kWh
1	Jan-14	43,188
2	Feb-14	69,864
3	Mar-14	37,470
4	Apr-14	44,076
5	May-14	56,046
6	Jun-14	70,908

From the above tables the variation in the consumption was easily analyzed.

The appellant had issued with a letter 09-01-2014 and in which it was clearly mentioned that Respondents had observed a metering error in the metering cubicle installed for the appellant. Hence the appellant was issued with letters regarding the non recording of actual consumption and the argument of the appellant that the ToD meter installed in the premises of the appellant was not subjected to any inspection was not tenable. The HT connection to the premises of the consumer was energized on 25-02-2012. The copies of the meter reading register was earlier served to the appellant from April 2012 to till date.

The respondent had strongly denied the argument of the appellant that the concerned officers of the licensee were asked to ignore the communication dated 09-01-2014. None of the officers of the licensee were advised the appellant to ignore the letter dated 09-01-2014. The report submitted by Kerala State Productivity Council clearly mentioned that the fault in the connection to the meter was identified during their inspection on 12-12-2013 and the connections to the meter were corrected on the same day itself.

The fault detected after the meter rectification work is that the polarities of two phases of CT are connected for measurement of energy is reversed and the R&B phases of the CT's & PT were in out of phase

sequences. Appellant was using 3 phase 3 wire system for the energy measurement. If two phase currents in a metering circuit are inter changed, the resultant power will be zero in a two watt meter method energy measuring unit only when the load in each phase is balanced. Whenever a single phase load connected in the system, that unbalanced load only be recorded in the above case and because of that the consumption during the disputed period was very less. So it was resulted in considerable reduction in the recorded consumption of the appellant.

The argument of the appellant that the plant started functioning only in April 2012 is not correct, the HT connection to the premises of the appellant was energized on 25-02-2012. The appellant claimed that the appellant's premise was closed during the period under dispute due to protest of public alleging pollution which is not correct. The appellant's argument that factory was closed which resulted in less consumption is not correct. The appellant also did not produce any proof to substantiate such contention. The meter rectification work has been carried out on 13-12-2013, the consumption during the period from 01-12-2013 to 13-12-2013 when the factory was functioning in full swing was only 300 kWh and the consumption after the rectification work from 13-12-2013 to 01-01-2014 was 44190 kWh. This shows that the metering equipment of the appellant was not working properly during the above period.

The fault rectification work or any major electrical work was carried in any of the site of Rubber Park was completely recorded in the permit book or Operator's diary for providing reliable supply to the consumers as well as for ensuring the safety of the personals engaged in the work. The licensee was using Ring Main distribution feeder system for the distribution of the power to the consumers. The operator in the Substation should know about the point at which the Ring Main distribution network was opened for maintenance while arranging the supply to the other consumers in the distribution network. The licensee was obligated to ensure the safety of the personals engaged in the maintenance activities in the power distribution network.

In order to ensure the safety of the personals engaged in the work, the details of the work reported by the station engineer had entered in the operator's diary to avoid unnecessary operation of the work to permit issued area. The meter rectification work carried out in the premises of the petitioner was after switching off the ring main unit installed in the ring main distribution feeder. The Station Engineer in our 110 kV Substation was the responsible person assigned for carrying out the maintenance activities in the Substation as well as in the distribution network. The work scheduled on the premises of consumer was carried out by the Station Engineer in consultation with the engineer in charge of the operation. So the operator was recorded the activities reported by the station engineer in the operators diary. So, no need for the operator to leave the control room in the duty hours for recording these details. The licensee was following this procedure for all the maintenance activities in the licensed area of operation.

Since the licensed area coming under the licensee is very limited, the entire maintenance activities were entered in the operator's diary.

The anomaly will be displayed in a meter when the load is not equally segregated on every phases or putting the load on single phase or due to low power factor of the system. Since the anomaly displayed in the meter may be due to the load pattern of the consumer, it is not pragmatic to inform the consumer whenever an anomaly string displayed in the meter. So Respondents had inspected and carried out fault rectification works on the metering cubicle in the premises of the consumer on 13-12-2013. Whenever a fault was rectified, the same metering equipments can be used for further metering. In this case the polarities of two phases of CT are connected for measurement of energy is reversed and the R&B phases of the CT's & PT were in out of phase sequences.

The respondent had rectified the above defect on 13-12-2013. Since the fault in the metering was rectified, the argument of the appellant that the very same meter is still working properly and monthly demand is made based on the consumption recorded in the meter is baseless. More over the Hon. CGRF clearly mentioned that they had arrived the order based on the clauses 42(3) and 37 (5) of the KSEB Terms and Conditions of Supply, 2005. Hence the argument of the appellant that the Forum never relied up on codes and procedures to be followed while making back assessment on a consumer is incorrect.

Analysis and findings

A hearing of the case was conducted in the chamber of the Electricity Ombudsman at Edappally on 11-02-2016. Sri S. Babukutty and Sri Godson Varghese were present for the appellant's side and Sri Akhil Raj, Assistant Resident Engineer, Rubber Park India (P) Ltd. represented the respondent's side. 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 respondent has issued a demand notice for back assessment amounting to Rs. 18,24,091.00 towards the energy charges of unrecorded consumption of 401964 units during the period from 01-04-2013 to 01-01-2014 alleging that an error occurred as a result of the interchanged polarities of the phase currents. Later the Managing Director of Rubber Park India Pvt. Ltd has ordered to revise the disputed bill and directed to remit an amount of Rs. 18,12,670.00. The calculation of the back assessment was based on the average consumption of the consecutive six months after the meter rectification works. But the appellant has alleged that no inspection was conducted in their premises and no site mahazar prepared and issued

to him. Further, no notice was issued pursuant to the alleged inspection on 13-12-2013 but raised a demand which is of final in nature.

Moreover, the appellant was not given an opportunity to raise his objections against the demand made therein by issuing a provisional bill. According to the appellant it is mandatory that "Details of any fault in the meter, repairs, replacement etc shall be entered in the meter particulars sheet/card given to the consumer at the time of installing the meter" by the licensee as per **Regulation 19(1) of Supply Code, 2005 and Regulation 109 (14) of Supply Code, 2014**. In this case no such entry is seen recorded anywhere and hence it is only a presumption that the error occurred as a result of the interchanged polarities of the phase currents was detected in the alleged inspection, is totally misleading and against facts in evidence.

As per Regulation 27(2) of Supply Code 2005, Section 42(l) of Terms and Conditions of Supply, 2005 and also Regulation 109 (20) of Supply Code, 2014, "it shall be the duty of the licensee to maintain the meter and keep it in good working condition at all times". According to the appellant, meter readings were taken regularly on the first day of every month by the authorised representative of the licensee. If any discrepancy was noted in the supply parameters, the LED display will clearly show an anomaly in the meter and the licensee ought to have informed the same immediately to the appellant. Here no such anomaly is reported or informed to the appellant till the issue of letter RP/E/47/9480 dated 09-01-2014.

Another argument of the appellant is that there is no fault in the meter or in the CT and PT units and the energy consumed was being properly recorded without fail. No rectification works as alleged was ever carried out in the premises during the aforesaid period. One of the important dispute is that prior to issuance of the impugned demand, the ToD meter installed in the premises was not subjected to any inspection or examination.

On the other hand, the respondent's contention is that they have inspected and carried out fault rectification works on the metering cubicle in the premises of the appellant on 13-12-2013 and the sequences of events are fully recorded in the permit book and operator's diary kept in the Sub-station. The fault in the meter was identified during the energy audit conducted by the Kerala Productivity Council on 12-12-2013. Another contention raised by the respondent is that it is not mandatory as per Supply Code, 2005 to prepare and deliver site mahazar during all inspections except in the cases of power theft and unauthorized use.

The point to be decided in this case is as to whether the issuance of back assessment bill dated 31-03-2015 for an amount of Rs.18,12,670.00 towards the charges for the unrecorded portion of energy alleged to have been consumed by the appellant during the period from 01-04-2013 to 01-01-2014 due to interchanged polarities

of the phase currents in the metering circuit of the appellant is in order or not.

On a detailed analysis of the pleadings and the documents produced by both sides it can be held that, admittedly there is no inspection conducted in the appellant's premises and no mahazar is seen prepared detailing the interchanged polarities of the phase currents in the metering circuit of the appellant. Apart from the allegation that the respondent had conducted inspection and fault rectification work on 13-12-2013, the licensee failed to produce any documents to prove their arguments that the non recording of energy consumption was due to interchange polarities of the phase currents in the metering circuit. **Regulation 27(6) of the Supply Code, 2005, reads, "if it appears to the Licensee that the metering equipment provided for supplying electricity to the consumer is defective, the Licensee must test the metering equipment and repair and replace the metering equipment, as the case may be"**. In this case, the licensee himself unilaterally decides that the meter is not recording energy consumption correctly and without conducting testing of the meter in an approved testing lab decides himself that the appellant should remit the short assessment bill as estimated by him.

It is to be noted that before making any short assessment the licensee had to provide sufficient details to prove the genuineness and authenticity of their claim. **Regulation 24(5) of Supply Code, 2005 clearly states that before making such an assessment the licensee have to clearly "establish" that they have under charged a consumer.** This has not been followed in the instant case. There is no justifiable reason for not intimating the appellant about the defect if any found in the metering equipment and for issuing a revised bill in accordance with the actual consumption in time. Instead, the appellant is mulcted with a heavy demand for an amount of Rs.18,12,670.00 which is arbitrary and unreasonable.

It is also pertinent to note that there is no allegation that the appellant has tampered the meter or any wilful misuse. There is no mechanism for the appellant to know whether the metering system is working or properly functioning. It is the duty of the respondent to rectify the defects if any found in the meter or CTs and to ensure that the electrical installations are working properly. **According to Clause 18 (2) of Central Electricity Authority Regulations, 2006 (Installation and Operation of Meters), the testing of consumer meters shall be done at site at least once in 5 years.** This was also not done by the licensee. In view of the settled legal position, short assessment bill issued without observing the mandatory provisions of the Act is not sustainable. The action of the licensee without complying the legal formalities amounts to arbitrariness and denial of natural justice.

Decision

Here in this case, it is evident that the licensee has not conducted any inspection in the premises of the appellant or not prepared any mahazar or conducted any testing of the disputed meter in an approved lab or Electrical Inspectorate. It is the duty of the respondent to rectify the defects if any found in the meter or CTs and to ensure that the electrical installations is working properly. If the officers of the licensee were negligent in the matter of inspection of the same, it is totally unjust to saddle the appellant with a liability to pay huge amount all of a sudden in lump sum.

In view of the above findings there is no justification for issuing such a short assessment bill for Rs. 18,12,670.00 as long as the appellant had done any malpractice or theft of energy. Hence it is decided to quash the short assessment bill issued for Rs. 18,12,670.00 to the appellant. Having concluded and decided as above it is ordered accordingly. The appeal petition is found having some merits and is admitted. The order of CGRF Rubber Park India (P) Ltd No CGRF, 02/2015 dated 27-10-2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/174/2015/ _____ /Dated: _____

Delivered to:

1. Sri Godson Varghese, Managing Partner, M/s Apex Rubber Industries, Rubber Park, Valayanchirangara, Perumbavoor.
2. The Managing Director, M/s. Rubber Park India Ltd., Valayanchirangara P.O., Perumbavoor
3. The Resident Engineer, M/s. Rubber Park India Ltd., Valayanchirangara P.O., Perumbavoor

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Chairperson, CGRF of Rubber Park, Valayanchirangara P.O., Ernakulam