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REPRESENTATION No: P 52/09

Appellant : Smt K.K.Valsa
Lakshmi Ice & Cold Storage
CHANDIROOR (Po) 688547
Aroor,Alappuzha

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Sub Division, POOCHAKKAL, Alappuzha

ORDER

Smt K.K.Valsa Lakshmi Ice & Cold Storage Chandiroor submitted a representation on 10.2.2009 seeking the following relief :

> *Cancel the Provisional Assessment and Bill (Bill dated 30.10.2008 of Electrical Section Aroor for Rs 146003/-)*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 1.7.2009 .
Consumer Number 8437 of the Appellant is an LT 3 phase connection to run an Ice plant and the connected load is 56KW .The CT operated meter of the premises burnt out on 24.9.2007 and the Appellant was made to pay the cost of meter to the extent of Rs 18961/- .The meter was replaced only on 11.3.2008 which again became faulty in 4/08 with FR 333.The Respondent replaced it with a new meter on 2.1.2009 only. The Respondent assessed a monthly average of 9280 units based upon the 6 months consumption prior to 9/2007 and issued monthly invoices for the period from 24.9.2007 to 2.1.2009.

The Respondent felt that the consumption in the premises would be much higher during the months of August and September 2008 due to the rush of work consequent to the lifting of trawling ban. Hence they revised the assessment of August and September 2008 computing a monthly consumption of 29988units (56KW*LF0.85*21 Hrs*30 days) and issued a short assessment bill for Rs 1,46,003/- The Appellant is agitating against this invoice and the short assessment. CGRF upheld the action of the Respondent.
The representation with the pleas noted above is submitted to the under signed in the above back ground.

The Appellant has contended that the 'provisional assessment order' does not indicate the section, rule or sub rule under which it was issued. The statutory rights available under Kerala Electricity (Service of Provisional Assessment orders) Rules 2005 is totally ignored. The provisional assessment order should be in accordance with section 126 of the Electricity Act . Without installing a good meter the Appellant was deliberately allowed to consume electricity for about one year. The Respondent had not handed over even a copy of the mahazar of the inspection based on which the assessment is said to be done. The Appellant also contended that the machinery of the 16 year old plant was under repair during the period and produced a certificate from a workshop to support it.

The Respondent stated that since the power meter remained faulty for a long period and since the ice factory has seasonal variations in working pattern, the methodology adopted for calculating the average for the initial months can not be adopted for all the months. The consumption assessed based upon connected load, working hours, seasonal factors etc is substantiated by the consumption shown by other similar ice factories in the area. The season after the lifting of the trawling ban was a prosperous season for the entire sea food industries. The consumption recorded by all similar ice plants during the period are submitted which shows consumption to the tune of 30000 to 35000 units per month. The re-assessment had been done under Section 24(5) of the Supply Code.

The contentions submitted by the learned counsel of the appellant on the applicability of the 126 of the Electricity Act and Kerala Electricity (Service of Provisional Assessment orders) Rules 2005 are irrelevant and these contentions are rejected out right. It should regretfully be noted here that most of the legal grounds narrated by the learned counsel are not at all relevant in this case. But that should not prevent me from examining the scope for redressal of the grievances of the Appellant.

The issue to be decided here is the legal validity and propriety of *revising an assessment already made* by the Licensee on new grounds.
The assessment done by the Respondent from 24.9.2007 onwards based upon the 6 months consumption prior to 9/2007 is in accordance with section 19(2) of the Supply Code and Section 42(3) of the Terms& Conditions of Supply regulations even though they failed to replace the meter in time .
But can the Licensee revise their own assessment on a future date? Section 24(5) of the Supply Code says that:

> *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 and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the Licensee shall specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account.

This Section undoubtedly provides for recovery of any under charged amounts from the consumer if the Licensee could *establish* under-recovery. The Licensee is also bound to provide an *explanation* on the matter.

Now the question boils down to whether the respondent has established the under recovery and details have been explained to the consumer. The *establishment* of the undercharging and the *explanation* of the rationale behind it have to be done primarily to the consumer. These activities should not be confined to the Forums which scrutinize the assessment on subsequent periods .

The communication dated 2.11.2008 attaching there on the Invoice for Rs 146003/- states that the bill is issued taking two factors into consideration: 1.general increase in the consumption of ice factories during the period and 2.prportionate computation based upon connected load. None of the above statements are supported by any calculations or statistics. On the side of the invoice it is noted that 'calculation statement made available in the section office'. Even the quantum of units assessed based on connected load has not been shown in the invoice. Why at least the calculation statement could not be attached to the invoice? This action of the Respondent tantamount to arbitrariness. Asking a consumer to pay higher charges simply because similar units have shown higher consumption is also not fair. The licensee should be able to assess the consumption by appropriate methods, try to establish the same and communicate the details to the consumer. Establishing the under recovery should involve at least an attempt to convince the consumer with all facts and figures. The Respondent has erred in these aspects.

Any way the logic behind the re-assessment shall also be verified. The Respondent has provided the consumption of the Appellant for the periods from August to November for 4 years:

Year	August	September	October	November
2004	5440	18380	25620	12620
2005	11440	32780	32740	36650
2006	1520	8300	9800	10120
2007	9040	24980	MF	MF
2008(Average)	9280	9280	9280	9280

From the table it can be seen that the consumption for August had not gone beyond 11500 units any year. The consumption for September widely varies from 8300 to 32780. It can also be concluded that the consumer has no clearly identifiable pattern of consumption for the two months.

The respondent had submitted the consumption of some ice plants for the periods 8/08,9/08 and 10/08. Even these consumption figures show considerable variations. It is also not clear whether the list provides the complete picture of all the ice plants in the area or is an indicative one.

The average already assessed by the Respondent from 9/07 reflects the peak consumption of September 2007 and this average had been used to assess for all the meter-faulty-

months of 2007 and 2008 including non-seasonal periods.
Considering all the above aspects I conclude that the Respondent has failed in establishing the under recovery and in providing the due explanation on this account under Section 24 of the Supply Code.
More over the consumer had produced a certificate dated 10.11.2008 from one workshop at Cochin certifying that the plant was under repair from 12.8.2008 to 5.9.2008.The Appellant had raised this contention much earlier , in their objection letter dated 10.11.2008 to the Respondent. The Respondent had not raised any arguments or evidence against this contention.

Under the above circumstances it will be fair to conclude and decide as follows:

The invoice of re-assessment for August and September 2008 had been raised in an arbitrary manner without observing the basic procedures specified in the Supply Code. Hence the invoice dated 30.10.2008 for Rs 146003/- shall be withdrawn.
However the anxiety of the respondents to protect the revenue due to the Licensee is well appreciated. But the best way to do it is to measure the consumption appropriately, not to assess it arbitrarily.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The provisional assessment along with the Bill (Bill dated 30.10.2008 of Electrical Section Aroor for Rs 146003/-) is set aside*
2. *No order on costs.*

Dated this the 3rd day of July 2009,

P.PARAMESWARAN
Electricity Ombudsman

No P 52/09/ 52 / dated 03.07.2009

Forwarded to: 1 Smt K.K.Valsa
Lakshmi Ice & Cold Storage
CHANDIROOR (Po) 688547
Aroor,Alappuzha

2 The Assistant Executive Engineer
Electrical Sub Division, POOCHAKKAL, Alappuzha

Copy to :

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   Thiruvananthapuram 695010
2. The Secretary ,KSE Board,
   VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,
   Power House Road ERNAKULAM 682018