

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/057/2016

(Present: V.V. Sathyarajan)

Dated: 14th December 2016

Appellant : Smt. E. Shobhana
'Riviresa',
Kokkenpara Road,
Pallikkunnu,
Kannur – 670 004

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Pappinissery,
Kannur

ORDER**Background of the case:**

The three phase service connection bearing consumer No. 9041 is registered in the name of Smt. E. Sobhana, under LT IV A tariff (Industrial) with a connected load of 134625 Watts and was effected on 06-01-1996, under Electrical Section, Cherukunnu. The appellant is running an industrial unit in the name and style of M/s Design and Interiors, Mundappuram. While being so, the Assistant Engineer, Electrical Section, Cherukunnu conducted a surprise inspection in the premises on 16-06-2015 and detected that the one phase of the Current Transformer (CT) to the meter was not working, there by not recording the energy of one of the phases in the CT meter (out of the 3-phase supply) which means a less consumption was recorded in the meter than the actual energy consumed.

Accordingly, a short assessment bill for Rs. 1,64,125.00 was issued to the appellant, assessing the unrecorded portion of the energy actually consumed by the appellant, for the past one year at the prevailing tariff rate. Aggrieved against this bill the appellant filed a petition before the CGRF, Kozhikode which was dismissed vide

judgment dated 16-06-2016 in OP No. 20/2016-17. Hence the appellant filed this appeal before this Authority.

Argument of the Appellant:

The argument of the appellant is that findings of the CGRF in its order dated 16-06-2016 that there was unrecorded consumption are based on surmises and assumptions only and is incorrect, arbitrary, unreasonable and without any basis. The Forum never relied up on Codes and Procedures to be followed while making back assessment on a consumer.

The appellant has submitted that it was the KSEB who raised the dispute saying that the meter was faulty and raised an imaginary bill saying that, had the meter been working properly the complainant would have become liable to pay the said amount of Rs. 1,64,125.00, representing the electricity charges for the 1/3rd portion of the energy consumption, alleged as being not recorded in the meter during that period. He had actually paid the energy charges as per the meter reading for the energy consumed during the relevant time. The appellant has also submitted the following contentions for consideration.

Though the inspection was conducted by the authorities of KSEB Limited on 16-06-2015, a provisional short assessment bill amounting to Rs. 1,64,125.00 was served on him after three months i.e. on 16-09-2015. The bill bears no date and has any basic details. The final bill was served on 22-02-2016 i.e. after five months of the issuance of the provisional bill. The respondent had not followed the stipulations for conducting an inspection in the premises of a consumer and the time limit as stipulated in the Supply Code Regulations. Hence the bill issued is not legally sustainable and time barred.

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 authorized representative of the licensee. If any discrepancy was noted in the supply parameters, the 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 16-09-2015. 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. It is quite ambiguous as to why the licensee never bothered to download the data after the so called inspection. 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. The respondent had not issued an advance notice regarding testing of meter in the TMR Division about the testing date etc which is a mandatory condition required to be followed by the licensee as per the Regulation.

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 realized 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 155 (8) (iv) of Supply Code, 2014 clearly states that for assessing the period of use of electricity data recorded in the energy meter memory may be given due consideration. This has not been followed in the instant case. Hence no short assessment at all can be made. The assessment now made is totally erroneous, without adhering to codes and procedures, bad at Law and hence is not sustainable.

Another argument raised by the appellant is that the increase in consumption of electricity after rectification of CT defects was due to the business expansion on the basis of a tie up with another business firm and thereby the increase in production. It is also submitted that the consumption in the appellant's firm is not in a uniform pattern as shown below.

Period	Consumption
Jan-10	1320
Feb-10	1240
Mar-10	6200
Apr-10	7920
Aug-10	2520
Nov-10	2280
Aug-11	8000
Oct-11	2280
Nov-11	1440
Jan-12	3000
Jul-12	7640
Jan-13	2680
Mar-13	3240
Sep-13	10480
May-14	2520
Jun-14	2920
Jul-14	2560
Jan-15	6080
Aug-15	13050
Nov-15	12450

The decrease in the consumption was due to the change of business orders received during the periods and the high consumption in certain months was due to the increase in business orders. 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.

Arguments of the respondent:

Assistant Engineer, Electrical Section, Cherukunnu conducted a surprise inspection at the premises of consumer No. 9041 on 16-06-2015 due to the abnormal decrease of monthly consumption noticed while preparing the monthly ToD billing in the Section. A site mahazar was prepared at the time of inspection. On the inspection, it is understood that the energy of this service connection is used for the manufacturing of treated Rubwood. The existing three phase CT 'Time of day' meter connected in this premises is vide Serial No. 09556784, Larson and Tubro make, -/5 A capacity and 4 numbers of 200/5 current transformer is also connected in the metering point.

On the inspection it is also found that the energy consumption of the consumer has not properly recorded in the meter. On a detailed physical verification it is understood that one of the current transformers installed in the premises became faulty and the actual consumption of this phase was not properly recorded. The faulty current transformer was sent to TMR Division, Mangattuparamba for testing and they declared faulty on 19-06-2015. On verification of the monthly energy consumption of the consumer, it is understood that the energy consumption decrease from January 2014 onwards. Based on the crystal clear solid evidences the short assessment bill for Rs. 1,64,125.00 is prepared and issued to the appellant on 16-09-2015 along the letter No. BB/CHK/TOD/2015-16/161.

Short assessment for the period from 07/ 2014 to 06/2015 was charged as per calculation given below.

Month	Unit	Rate	Total
01-07-2014	2460	4.7	11,562.00
01-08-2014	1460/2	4.70/ 5.20	7,227.00 (tariff revision on 16.08.2014)
01-09-2014	1220	5.2	6,344.00
01-10-2014	2560	5.2	13,312.00
01-11-2014	2240	5.2	11,648.00
01-12-2014	3040	5.2	15,808.00
01-01-2015	2720	5.2	14,144.00
01-02-2015	2900	5.2	15,080.00
01-03-2015	1760	5.2	9,152.00
01-04-2015	1400	5.2	7,280.00
01-05-2015	2320	5.2	12,064.00
01-06-2015	4920	5.2	25,584.00
	Total		1,49,205.00
	Duty		14,920.00
	Grand Total		1,64,125.00

Even though monthly average consumption decreased from January 2014 as per the meter reading register, the actual failure of current transformer was not available; the period of short assessment has been limited to one year. Since the

consumer has not turned up to remit the short assessment bill, a fresh bill along with letter vide No. BB/CHK/2015-16/292 issued to the consumer on 22-02-2016. Considering the request of the appellant, he was allowed to remit the short assessment bill in two instalments on 22-03-2016 & 22-04-2016. Since the short assessment bill was actually due to the Board during the short assessment period from 07/2014 to 06/2015, the consumer is bound to remit the same at the earliest. Hence the assessment may be permitted.

Considering the above statement of facts and documents the Honourable State Electricity Ombudsman may kindly admit this version and the petition may kindly be disposed.

Analysis and Findings:

The hearing of the case was conducted on 29-11-2016, in the Court Hall of CGRF, Kozhikode and both parties were present. The appellant's side was represented by the Sri. Anil Kumar John and the respondent's side was represented by Sri P.R. Raji, Assistant Engineer in charge of Electrical Sub Division, Pappinissery and they have argued the case on the lines detailed above. On examining the petition, the statement of facts of the respondent, the documents attached, the averments raised during the hearing and considering all the facts and circumstances of the case, this Authority come to the following findings and conclusions leading to the decisions there of.

The issue leading to the dispute was originated in June, 2015, when the Assistant Engineer, Electrical Section, Cherukunnu conducted a surprise inspection in the premises of the appellant. During the inspection it was detected that one phase of the CT connected to the metering equipment was not working. So, a short assessment bill amounting to Rs. 1,64,125.00 was issued to the appellant, being the charges for the unrecorded portion of the energy actually consumed by the appellant for a previous period of one year as per Regulation 152 of the Supply Code, 2014. According to respondent, the short assessment bill issued as per the Regulation 152 of Supply Code, 2014 for the meter faulty period from 07/2014 to 06/2015 is genuine and hence the appellant is liable for making the payment.

Refuting the above contentions the appellant has stated that the non recording of one phase of the appellant's metering equipment was detected by the licensee during the inspection conducted on 16-06-2015 and the test report issued by the TMR Division, Mangattuparamba also justifies these facts. However, the appellant raised objection in conducting the test without issuing notice as stipulated in Regulation 115 (5) of Supply Code, 2014 and also for the demand for a period from 7/2014 to 6/2015 even without downloading the data. Hence the short assessment issued is not leviable, is the contention.

The question raised in this appeal is whether the appellant is liable for remitting the payment of short assessment for Rs. 1,64,125.00 as per

Regulation 152 of Supply Code, 2014 during the alleged meter faulty period from 07/2014 to 06/2015?

The perusal of records reveals that even though the respondent conducted an inspection in the appellant's premises on 16-06-2015 and detected one phase of CT is not working, he failed to download the data in order to find out the actual date of non functioning of CT. It is pertinent to note that almost all CT meters being used in KSEB are having data storage and downloading facility. Using the downloaded data, actual date of voltage/ current missing and wrong phase association can be easily detected. Making use of downloaded data is very useful in clearing the disputes from consumer side.

As per Regulation 109(20) of Supply Code, it shall be the responsibility of the licensee to maintain the meter and keep it in good working conditions at all times. Hence the respondent is duty bound to inspect the meter display of the consumer and make sure that no anomaly exists in the meter. Regular inspection using calibrators (Accucheck) and other equipments are necessary for detecting irregularities, if any. After noting the anomaly indications go through all the display parameters to find out the reasons. It is essential to physically verify the connections from voltage tapping and CTs. A prudent interference from the respondents would have taken to download the data; the actual date of non-functioning of CT can be easily detected. But this was not seen done in this case and not even a reasonable explanation was seen given to the appellant to satisfy his queries regarding the excess billing.

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.

In order to explain this Regulation, it will be necessary to refer Regulation 115(9) of Supply Code 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"**. 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. But in the instant case, it can be presumed that one phase of the energy meter was missing as on the date of inspection but the respondent failed to establish the actual date of missing of energy in one phase. The only reason stated by the respondent in this regard is that the current transformer installed in the appellant's premises was tested at TMR Division and declared as faulty on 16-09-2015.

While evaluating the rival contentions it is essential to look into the provisions contained in the Regulation 115(5) of Supply Code, 2014, which is extracted below.

115 - Procedure for testing the meter - "Before testing a meter of the consumer, the licensee shall give an advance notice of three days, intimating the date, time and place of testing so that the consumer or his authorized representative can, at his option, be present at the testing".

The foremost aspect which needs to be considered is whether the respondent had complied with the procedures prescribed above before testing the CT. On perusal of records it is evident that the respondent has not issued any notice as stipulated in Regulation 115(5) of Supply Code, 2014 while testing the meter. Further, the respondent took three months time for testing the alleged CT at TMR Division. Moreover, there was undue delay in issuing the provisional assessment and the final bill to the appellant. In view of the settled legal positions, a final bill issued without observing the mandatory provisions of the Act is not sustainable. The action on the part of the respondent without complying with the legal formalities also amounts to arbitrariness and denial of natural justice. In this background, the short assessment issued to the appellant cannot be justified.

Decision

In view of the above findings the short assessment bill issued for Rs. 1,64,125.00 is not sustainable and hence quashed. The order of CGRF in OP No. 20/2016-17 dated 16-06-2016 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/057/2016/_____ /Dated: _____

Delivered to:

1. Smt. E. Shobhana, 'Riviresa', Kokkenpara Road, Pallikkunnu, Kannur – 670004

2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Pappinissery, Kannur

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, KSE Board Ltd, Gandhi Road, Kozhikode