

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/007/2017
(Present: V.V. Sathyarajan)
Dated: 29th March 2017

Appellant : Sri M.J. Thomas,
M/s Labella Hospitality (P) Ltd.,
Kannadikkadu, 309 F,
Behind Nair's Hospital,
Maradu,
Ernakulam

Respondent : 1. The Deputy Chief Engineer,
Electrical Circle,
KSE Board Ltd,
Ernakulam.

2. The Special Officer (Revenue)
KSE Board Ltd.,
Vydyuthibhavanam,
Thiruvananthapuram.

ORDER

Background of the case:

The appellant, Sri M.J. Thomas, is a HT consumer having a three phase connection with consumer code LCN2/6664 under Electrical Section, Maradu under HT IV tariff. On 13-05-2016, the HT Meter Test Unit of KSEB conducted an inspection in the premises of the appellant and it was found that there is current failure on 'R' phase from 23-08-2014 onwards. On detailed examination it was revealed that the 'R' phase in the CT meter was faulty and a flash mark is seen on the 'R' phase PT bush. Further, the respondent issued direction to the appellant to replace both CT and PT. The appellant was issued with a short assessment bill amounting to Rs. 5,05,159.00 on 29-08-2016, for the meter faulty period from 8/2014 to 04/2016. Aggrieved by this, the appellant approached the CGRF, Ernakulam by filing a Complaint No. 72/2016-17. The CGRF dismissed the petition holding that the short assessment bill dated 29-08-2016 for Rs. 5,05,159.00 was in order. Feeling aggrieved against the above decisions of CGRF the appellant has approached this Authority with this appeal petition.

Arguments of the appellant:

The appellant argued that the 'R' Phase is faulty from 23-08-2014 and the respondent has taken the average value when the meter was correct as 10,800 kWh. The respondent has appropriated the same and given the bill for 21 months. This procedure is not as per Supply Code, 2014 and Electricity Act, 2003 for the following reasons.

1. As per Electricity Act Section 55 (1) 'No licensee shall supply electricity, after the expiry date of two years from the appointed date, except through installation of correct meter in accordance with the regulations to be made in this behalf by the Authority'. It is the liability of the KSEBL to provide correct meter and maintain it correctly.
2. Every month the Assistant Engineer is coming for taking the reading. On a single glance it will be revealed that the phase is not working [either voltage or current] if it is so. It is also his liability to check the healthiness by monitoring the LED as per Regulation 110(7) of the Supply Code, 2014. If it was done, the appellant would not have been in trouble.
3. As per Supply Code Regulation 113(6) the KSEBL is directed to test the HT meter once in every year. If the meter is tested within a period of 12 month every year and if we assume that the meter became faulty immediately after testing, the loss for KSEBL will only for a period of 11 months. Here the KSEBL have not done the statutory testing and a consumer cannot be held liable for their ignorance or incompetency of the KSEBL.
4. As per Supply Code 2014 Regulation 115(9), which states that 'In case the meter is found to be faulty, revision of the bill on the basis of the 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'. KSEBL cannot charge more than 6 months if the meter is found faulty. The downloaded data from a meter can only be considered as an inference. This cannot be a conclusive evidence complying with Central Electricity Authority Regulation. The meter is tested as per CEA Regulation, while the MRI is not tested as per Central Electricity Authority Regulation in an approved lab.
5. A poor consumer cannot be made liable for noncompliance of the directive by the KSEB officials such as,

- a) The Regulation 115(9) which reduces maximum period of back assessment as 6 months, in case of meter faulty even if the meter faulty is more than 6 months.
 - b) The Regulation 113(6) which puts the mandatory requirement of testing the meter every year as the responsibility of a licensee like KSEBL every year. Here KSEBL have not tested meter complying with the Regulation surmounting to noncompliance of directives.
 - c) It is true that Regulation 134(1) permits KSEB to collect the undercharged amount 'If the KSEB establishes either by review or otherwise that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer issuing a bill and in such case at least thirty that days shall be given to the consumer for making payment of the bill'. But nowhere is it mentioned that KSEBL can have a claim after operational violation of Regulation and noncompliance of directives. KSEBL can collect the payment only in compliance with Regulations 115(9) and 113(6).
6. The Electricity Act, 2003, Section 50 is very clear and specific in assigning the duty and responsibility to specify electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, etc., and hence KSEBL cannot have their own discretion in billing and collection of payment. While issuing a bill it have to be as per all Regulations such as 134(1) which permits licensee to collect the undercharged amount by issuing a bill, Regulation 115(9), which limits the period of assessment as previous 'six months'. Here KSEBL can collect the undercharged amount as per Regulation 134(1) but should be limited for a period of six months as per Regulation 115(9).

Relief Sought

1. Direction may be given to the Assistant Engineer not to disconnect the supply till hearing and disposal of the appeal.
2. Direction may be given to the Assistant Engineer to cancel the impugned bill.
3. The Hon'ble Ombudsman may limit the billing period for six months without attracting the interest.

Arguments of the respondent:

Appellant is a High Tension consumer under Electrical Section, Maradu and billed under HT-IV Tariff. It is submitted that the HT Meter Testing Unit inspected the premises of the appellant having Consumer Code LCN 2/6664 on

13-05-2016. It showed that the current failure on R-Phase occurred from 23-08-2014 onwards. On detailed examination it was revealed that the 'R' Phase in the CT meter was faulty and a flash mark is seen on the R-phase PT bush. It is further submitted that intimation was issued to the appellant to replace both CT and PT. The new CT/PT unit was commissioned on 03-06-2016.

As per Section 55(1), specifies that the Regulation regarding meter and allied matters shall be in accordance with the Regulation to be made in this behalf by the Central Electricity Authority. The Authority has made the Regulations accordingly. Regulation 15(2) of the Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006 provides that the Licensee shall take necessary steps as per the procedure given in the Electricity Supply Code of the appropriate Commission read with the notified conditions of supply of electricity. As such the Electricity Supply Code, 2014 of the Regulatory Commission provides various Regulations dealing the testing of meter and billing of the period in which the meter remained faulty. It cannot be said that there is only one Regulation applicable in this regard.

The scope of Regulation 110(7) of the Code is limited in this case. Sub regulations (7) & (8) mandates to check the LED indicator and to advise the consumer any leakage and the rectification of the leakage. The appellant hasn't any case of such leakage. The authority competent to issue Regulations regarding meter is the Central Electricity Authority. As per Clause 18(2) of this Regulation, 2006, regarding consumer meters, which is applicable in this case, the testing of the consumer meters shall be done at the site at least once in five years. As per the said Regulation the licensee tested the meter within the prescribed time limit.

Regulation 134(1) states that if the licensee establishes either by review or otherwise that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill. Testing is mandated once in five years. A technical snag occurred during 08/2014 was revealed in the testing of the meter by the TMR of the licensee and thereby an undercharging was established. The appellant hasn't any case that the findings in the testing were wrong or there was no consumption during the period by the appellant. There was no change in the contract demand. The energy had been consumed by the appellant for running the business. The liability to pay charges is statutory as per Section 45 of the Electricity Act, 2003.

The average consumption 10800 kWh was arrived by taking the consumption of May 2014 (15016 kWh), June 2014 (9394 kWh) and July 2014 (7990 kWh). The short assessment bill was raised for Rs. 5,05,159.00 The consumption of the consumer after replacing the CT/PT unit is as follows:

Jul-16	13842	kWH
Aug-16	15692	kWH
Sep-16	13676	kWH
Average	14403	kWH

The average consumption of 10800 kWh only was billed in the short assessment bills. The consumption after replacing the CT/PT was higher than the previous average consumption.

The respondents have issued the bill only in accordance with rules. This Hon'ble Forum may be pleased to dismiss the appeal and allow the respondents to realize the bill.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 07-03-2017. Sri. Shaji Sebastine was present for the appellant's side and Sri Sukumaran, Accounts Officer of Special Officer (Revenue) KSE Board Ltd., Vydhyuthibhavanam and Smt. K. Rajashree, Executive Engineer, Electrical Circle, Ernakulam 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 appellant, who is the consumer of an electric connection provided under HT category, was issued with a short assessment for an amount of Rs. 5,05,159.00. It is alleged that there is current failure on the 'R' phase of the metering equipment from 23-08-2014 onwards. So, considering the meter as faulty, the above short assessment was made for the period from 08/2014 to 04/2016. The respondent stated that an inspection was conducted in the appellant's premises on 13-05-2016 and found that current failure occurred on 'R' phase in the metering equipment from 23-08-2014 onwards. On detailed examination, CT connected in the 'R' phase was found faulty and directed to replace both CT and PT. Accordingly, the appellant replaced the CT and PT and the same was commissioned on 03-06-2016.

The contention of the appellant is that the meter is tested as per Central Electricity Authority Regulations, while the MRI is not tested as per Central Electricity Authority Regulation in an approved lab. Further, as per Regulation 113(6) the licensee has to test the meter of High Tension consumers once in every year. Here, the licensee has not done this statutory testing and a consumer cannot be held liable for the ignorance or incompetency of the

licensee. On the other hand, the respondent argued that as per Clause 18(2) of Central Electricity Authority Regulations, 2006, the testing of consumer meter shall be done at site at least once in five years. As per the said Regulation, the licensee tested the meter within the prescribed time limit. Further, Regulation 134(1) empowers that if the licensee establishes either by review or otherwise that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making payment of the bill. Hence the bill issued is in order.

The issue arising for consideration in this appeal is whether the appellant is liable for making the payment of short assessment for Rs. 5,05,159.00 for the meter faulty period from 8/2014 to 04/2016?

On a detailed analysis of the pleadings and documents produced by both sides it can be held that, admittedly, the appellant has not challenged the test result of meter. It is essential to look into the provisions contained in Regulation 115(8), which is extracted below:

115. Procedure for testing of meter – (8) If a consumer disputes the result of testing at the laboratory of the licensee, the meter shall be got tested at a laboratory selected by the consumer from among the laboratories accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL).

Regarding the allegation that the respondent has not checked the healthiness of the meter by monitoring the LED conditions as per Regulation 110(7) of the Supply Code, 2014, is also found not valid, since the LED indicator for earth leakage provided in the electronic meters is to inform the consumers that there is leakage in the premises and to advise to get the wiring checked.

According to the appellant the short assessment bill can only be issued for 6 months as per Regulation 115 of Supply Code, 2014, instead charged as per Regulation 152.

Regulation 115(9) of Supply Code 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”**.

In order to explain this Regulation, it will be necessary to refer Regulation 115(4) which says **“In the case of testing on the request of the consumer, he shall have to pay the testing fee as per the Schedule of Miscellaneous Charges given in schedule 1 of the Code: provided that if**

the meter is found to be recording incorrectly or defective or damaged due to technical reasons such as voltage fluctuation or transients, attributable to the licensee, the testing fee shall be refunded to the consumer by the licensee by adjustment in the subsequent bill.”

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.

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. The non recording of one phase of the appellant’s metering equipment in the appellant’s premises was detected by the licensee during the inspection conducted on 13-05-2016 and the test report issued by the Meter Testing Unit also justifies these facts. The appellant also convinced with the test results but only raised objection against the assessing for the entire period i.e. from 08/2014 to 04/2016.

In case of an existing connection, if voltage over current missing or any other anomaly is detected, the actual date of missing of voltage or current can be found out after downloading the data through an MRI. It is also pertinent to note that almost all CT meters being used in KSEB are having data storage and downloading facility. Making use of downloaded data is very useful in clearing the disputes from consumer side. Here in this case, the appellant has not any contention that the finding of ‘R’ phase in CT meter was faulty or there was no consumption during that period.

As per Regulation 134 (1) if the licensee establishes either by review or otherwise, that it has undercharged the consumer, licensee may recover the amount so undercharged from the consumer by issuing a bill

and in such cases at least 30 days shall be given to the consumer for making payment of the bill.

In the instant case, it is proved beyond doubt that one phase of the energy meter was missing from 23-08-2014 and thus the appellant has actually consumed the energy, the short assessment bill issued for the period from 8/2014 to 04/2016 as per Regulation 152(3) is found in order. It is also found that the short assessment bill is calculated based on the average consumption of previous 3 months and the consumption after replacing the CT/PT is higher than the previous average. Hence the appellant is liable to remit the amount without any interest.

Decision

In view of the above factual and legal position, I don't find any reason to interfere with the short assessment bill issued dated 29-08-2016 for Rs. 5,05,159.00. Hence the appeal is dismissed.

The order of CGRF in OP No CGRF-CR/Comp./72-2016-17/475 dated 21-12-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/007/2017/_____ /Dated: _____

Delivered to:

1. Sri M.J. Thomas, M/s Labella Hospitality (P) Ltd., Kannadikkadu, 309 F, Behind Nair's Hospital, Maradu, Ernakulam
2. The Deputy Chief Engineer, Electrical Circle, KSE Board Ltd, Ernakulam.
3. The Special Officer (Revenue), KSE Board Ltd., Vydhyuthibhavanam, Thiruvananthapuram

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503