

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/011/2017
(Present: A.S. Dasappan)
Dated: 29th May 2017

Appellant : Sri. Shajeev T.S.
Thekkumkara Veedu,
Valavupacha P.O
Chithara Village,
Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Kadakkal,
Kollam

ORDER

Background of the case:

The appellant, Sri Shajeev T.S. is an industrial consumer with consumer No. 9522 having connected load of 7 kW under Electrical Section, Chithara. He is running a flour mill in the compound of mini industrial estate at Chithara. While so on 5/7/2016, he was issued a short assessment notice for Rs.14,045/- with calculation statement, assessing for the period from 04/12 to 10/12 and 11/13 to 02/14, when the meter was found sluggish/faulty, on the basis of the audit of Regional Audit Office, Kottarakkara. Another short assessment notice for Rs. 10,799/- on 05-07-2016 was issued to the appellant for recovering the unrecorded portion of energy due to installation of insufficient capacitors. The appellant being aggrieved by this approached the CGRF, South, Kottarakkara, with petition No. OP 169/2016 and the Forum disposed of the petition vide its order dated 23-12-2016, as ordered below.

- i. "The short assessment bills issued on 05-07-2016 for Rs. 14,045/- is quashed. The respondent is directed to revise the bill for the period from 04/2012 to 10/2012 by taking the average consumption of succeeding 3 months after the meter replacement.

- ii. The petitioner shall remit the amount for Rs. 10,799/- for insufficient capacitor, within one month from the date of receipt of this order.
- iii. If any excess/deficit in amount, the respondent shall collect/adjust in the future bills.”

The respondent revised the short assessment bill for Rs.14045/- and a fresh bill for Rs.8025/- was served on the appellant on 13-01-2017. Aggrieved by the decision of the CGRF, the appellant has submitted the Appeal petition before this Forum.

Arguments of the appellant:

The appellant's contentions in the appeal are the following.

Appellant is using a motor having load of 7.5 HP for the functioning of a flour mill. He was aggrieved by receiving the notices for remitting Rs. 10,799/- and Rs. 14,045/- along with the regular bill on 07/2016. According to the respondent, the amount of Rs. 10,799/- for short of electricity charge from 10/2015 to 3/2016 due to non installation or insufficient capacitor and Rs. 14,045/- is for the under charged current charge for the period from 04/2012 to 10/2012 and from 11/2013 to 02/2014 due to meter fault. The appellant submitted many complaints against these bills before the Assistant Engineer, Electrical Section, Chithara, for which he did not get any satisfactory reply. The appellant has remitted all the regular current charge bills without any default and he is using only a motor for the working of the flour mill with a capacitor which was installed years back. The same is recorded in the concerned registers with the Electrical Section Chithara. There was no notice stating insufficient capacitor in use and directing to replace was issued to the appellant. Hence the appellant requested the forum to direct authorities to cancel the additional bills issued to him on 05-07-2016.

The respondent alleged that consumption from 04/12 to 10/2012 shown very low compared to the previous consumption. They produced 'the details of consumption from 01/2012 to 02/2013, so also 08/2013 to 05/2014, including the period before and after changing of meter. In this version they also stated that the existing capacitor with 3 KVAR is connected to motor with capacities 7.5 HP and 0.5 HP, where it requires KVAR capacitor and that is why they issued the short assessment bill for amount Rs. 14,045/-, this amount was arrived as per law and an additional bill of Rs. 10,799/- was issued for not installing sufficient capacitor for a period for 24 months.

The appellant filed OP No. 169 of 2016 before the lower forum. According to the order the matter was posted for hearing on 18-10-2016 and 17-11-2016. In fact the petitioner was informed hearing date of 18-10-2016 only and no

opportunity was given him for appearing on 17-11-2016, the date on which the respondent came with his defence arguments. The lower forum erroneously went on to the version of the respondent, which was in fact not served to the applicant. It is true the appellant is using two motors of three phase with 7.5 HP and another single phase with 0.5 HP both are used for different purposes and it is more specific to submit that the 0.5 HP motor is fitted with separate capacitor.

It is also submitted that the order is not communicated to the appellant in time and in fact he realized the passing of an order against his petition only after receiving a revised Bill No: BB/4 AUDIT/2016-2017 dated 13-01-2017 issued by Assistant Engineer, Chithara Section.

Hence for the reasons above and grounds stated below this Hon'ble Ombudsman may kindly allow this appeal.

- 1) The arrears of bill calculated are absolutely wrong and they ought not to have taken higher rates of consumption which were seen due to the fault of the meter are of peak periods of use like festival season.
- 2) The reading of meter is being recorded by a Sub Engineer authorized by KSEB; also periodical inspection is being conducted by concerned officials of Kerala State Electricity Board. Hence the appellant cannot be blamed respondent's wrong.
- 3) The bill issued for non installation of sufficient capacitor is based on wrong concept without conducting proper enquiry.
- 4) The lower forum ought to have given opportunity to appellant for hearing on 17-11-2016, the proceedings in that way is against natural justice.

Arguments of the respondent:

On verifying the billing details of the consumer by the Regional Audit Office, Kottarakkara, it is reported that the consumption pattern of the consumer from 04/2012 to 10/2012 is lower than the previous consumptions. The consumption pattern of the consumer from 01/2012 onwards is as follows:.

01/2012	503 units
02/2012	408 units
03/2012	422 units
04/2012	378 units
05/2012	233 units
06/2012	250 units
07/2012	163 units
08/2012	128 units
09/2012	54 units
10/2012	0 units

Accordingly the meter was changed on 06-10-2012. The consumption pattern of the consumer after changing the meter is as follows:

11/2012	381 units
12/2012	386 units
01/2013	428 units
02/2013	480 units
03/2013	415 units
04/2013	507 units
05/2013	422 units
06/2013	458 units
07/2013	467 units
08/2013	658 units
09/2013	622 units
10/2013	511 units
11/2013	0 units (door lock)
12/2013	794 units
01/2014	399 units
02/2014	378 units (average)

Here also the consumption is seen considerably decreased from 11/2013 to 02/2014 and seeing the meter recording sluggish reading, the meter was changed on 06-02-2014.

After changing the meter the recorded consumption is as follows:.

03/2014 - 388 units
04/2014 - 398 units
05/2014 - 448 units

From the Meter reading details from 01/2012 to 01/2014, it was revealed that the appellant was under charged from 04/2012 to 10/2012 and 11/2013 to 02/2014 and a short assessment bill for Rs. 14,045/- was issued on 05-07-2016.

Further it was noticed that the appellant is connected and using two motors having connected loads of 7.5 HP and 0.5 HP in the premises. On verifying it is seen that only a capacitor rating 3 KVAR is connected. Actually the above connected load needs a capacitor of 4 KVAR and hence the meter is not recording the actual consumption and thereby causing huge loss to the licensee. Considering the actual loss sustained to the licensee another short assessment bill for Rs. 10,799/- also was issued to the appellant. As per the Gazette notification dated 9th September 2013 and 28th November 2012, part B: low tension tariff general condition 3, "the consumers who have not installed capacitors with ISI certification of specified value, the fixed charge and energy charge shall be levied 20% extra for LT Industrial and LT Agricultural Consumers."

At the time of meter faulty, KSEB terms and conditions of Supply 2005 was in force and as per Regulation 33 (2) of the terms and conditions of supply, if the Board is unable to raise a bill on meter reading due to its non- recording or malfunctioning, the Board shall issue a bill based on the previous six months average consumption. In such case the meter shall be replaced within one month. 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 succeeding three months after replacement of meter.

Aggrieved by the same, the consumer filed a petition before the Hon'ble CGRF (South) vide OP No. 169/2016 and the forum had issued interim order directing not to disconnect the supply to the consumer until further orders. Later the CGRF (South) had posted the case for hearing on 18.10.2016 and 17.11.2016. As the petitioner was absent on both the days, as per the direction of the CGRF (South), the Assistant Engineer, Electrical Section, Chithara had conducted an inspection in the premises to ascertain the actual load in the premises and reported that two numbers of motors having load of 7.5 H P and 0.5 HP are connected and using in the premises and also this respondent had made an inspection in the premises and noted that the energy factor in the energy meter reads to a value of only 0.63 and noticed that nearly 37% loss was incurred due to insufficient capacitor. From the above itself it is evident that the short assessment bills are in legal and sustainable. The consumer had enjoyed the benefit very earlier and the present demand was not a penal one.

Even though the petitioner was absent the CGRF (South) considered the petition on its merit and observed that at the time of meter faulty, KSEB terms

and conditions of Supply, 2005 was in force and as per Regulation 33 (2) of the terms and conditions of supply, if the Board is unable to raise a bill on meter reading due to its non-recording or malfunctioning, the Board shall issue a bill based on the previous six months average consumption. In such case the meter shall be replaced within one month. 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 succeeding three months after replacement of meter.

The grounds stated for appeal is erroneous and hence denied. The short assessment bills were issued as per the prevailing rules and regulations. No penalization was imposed on the appellant and only the actual amount due to the licensee.

Analysis and findings:

The hearing of the case was conducted on 15-05-2017 in the CGRF Court Hall, Kottarakkara and Sri. T.S. Shajeev represented for the appellant's side and Sri. Shibu R, Assistant Executive Engineer, Electrical Sub Division, Kadakkal represented for the side of respondent. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the decision.

The KSEB has reassessed the consumer, during meter faulty period, as per the provision of Regulation 33 (2) of the Terms and Conditions of Supply, 2005. Regulation 33 (2) reads; "If the Board is unable to raise a bill on meter reading due to its non-recording or malfunctioning, the Board shall issue bill based on the previous six months average consumption. In such cases the meter shall be replaced within one month. 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 three months after replacement of the meter."

The Regulation 33(2) deals with, when the meter is not displaying (blurred) or the meter is not recording (still) or is malfunctioning (higher or lower than the actual) and hence the consumption is not available for preferring the correct bill and hence the consumer is assessed on an assumed average consumption. In the instant case, Regulations of Supply Code, 2005 is not applicable as the Supply Code 2014 came into force with effect from 01-04-2014 and the Regulations made there under contains clear provisions how to deal such cases. Moreover, the respondent has taken action on the basis of

audit report in 7/2016 only i.e., after the implementation of Supply Code, 2014.

On perusing the Meter reading register (filed as document), I see that the Meter was faulty at least from 07/2012 onwards, when the meter reading is decreasing and stuck at the value 20604 continuously, when the meter was replaced. Even after changing the faulty meter and having obtained the energy consumption particulars, the Board did not prefer its due claim. It was the audit party who noticed the discrepancy and suggested the reassessment for meter faulty time.

It is true that the KSEB shall supply electricity only through a correct meter, but the mechanism may get corrupt due to many reasons and may take some time, say 2 or 3 readings when there is gradual decrease in consumption rate, to test and decide the condition of the meter. I see that the consumer has challenged the arrear bills but has neither questioned the accuracy of the meter nor they raised any contention on the average energy assessed during the disputed meter faulty period.

On going through the records it can be seen that the respondent has issued monthly bills based on the recorded consumption and the appellant remitted the same without any fail. It is to be noted that the respondent has detected that the meter was faulty for the period from 04/2012 to 10/2012 and 11/2013 to 02/2014 and a lesser consumption was recorded during that period. It is pertinent to note that even without conducting any inspection or checking the appellant's meter, the respondent declared the meter as sluggish for the previous period due to the reduction in consumption. Regulation 125 of Supply Code, 2014 stipulates the procedure for billing in the case of defective or damaged meter. **"In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of meter being found or reported defective.**

Provided that the average shall be computed from the 3 billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available".

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. **Regulation 115 (9) says that "in the 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 6 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 two subsequent bills".** Here in this case, the respondent declared the meter as faulty that too even without conducting any testing. There is no

justification for issuing such a demand for a previous period as there is no allegation of any willful misuse by the appellant.

According to Clause 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, **“the testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of the consumer meters up to 650 Volts”**. In the instant case, the respondent has not followed the procedures prescribed above before charging the appellant as meter faulty. Further, there is no mechanism for the appellant to know whether the meter is working properly or not.

The assessment made in this case is relying on preceding 3 months' consumption which was made after a lapse of 2 years. The respondent's contention is that the meter showed decrease in consumption which might have been a result of meter becoming sluggish. On going through the consumption pattern of the appellant from 01/2012 to 04/2014, it is found that the consumption varies considerably in every month. Hence the period of sluggishness cannot be proved conclusively without conducting testing of the meter. The statutory requirement of testing of the meter in an accredited lab or with a standard reference meter with better accuracy class is not done before declaring the meter as faulty. There is patent illegality in issuing the short assessment bill to the appellant. Without complying with the statutory formalities, the assessment now made in this case is not sustainable before law and liable to be quashed.

As per Regulation 118 of the Supply Code, 2014, **“If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall be immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid future damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee.”**

According to the respondent the monthly consumption shows enormous decrease from 04/2012 onwards. In the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately succeeding the date of meter being found or reported defective. If there is an omission or error on the part of respondent, it has to be set right in time with a notice to the appellant giving him an opportunity for

being heard. The appellant is bound to pay the electricity charges for his actual consumption.

It is also specified in the rules that, when the meter is replaced, a 'sealing certificate' of the new meter, witnessed by the consumer or his representative is obtained and kept by the KSEB. But the respondent failed to produce any such documents. Moreover they also failed to reassess the party after obtaining the true average energy consumption, after changing the faulty meter with a good one in 10/2012 and 2/2014. The respondent has failed to reassess the consumer as per the true average energy consumption obtained, even after getting the subsequent meter readings on replacing the faulty meter. The respondent's total laxity or omission in this regard is seen to be inexcusable and the revenue loss occurred to Board has to be recovered from the concerned Board officials only. Hence the short assessed amount of Rs. 14,045/- pertaining to the period of, Meter Faulty period from 04/2012 to 12/2012 and 11/2013 to 02/2014, is found as not payable by the consumer.

Here in this case, though the appellant has not given any evidence about the conditions of working and occupancy of concerned premises during the said period, the short assessment bill preferred for the period in dispute based on presumption only that the meter was sluggish from 04/2012 onwards and hence is not sustainable. There is no material to show that the respondent has conducted any detailed checking of the appellant's meter. In this background, the issuance of short assessment bill on the appellant merely on the basis of presumption and succeeding consumption pattern cannot be justified before law and liable to be quashed.

Regarding the case of insufficient capacitors, the respondent had demanded penal charges of Rs. 10,799/- as 20% extra for the non installation of capacitors. The respondent's contention is that connected load of the two motors 7.5 HP and 0.5 HP needs a capacitor of 4 KVAR in the place 3 KVAR connected by the appellant and hence the meter is not recording the actual consumption and thereby causing huge loss to the licensee. The contention of the appellant is that the 7.5HP motor functions in 3 phase connection and the other in single phase connection. The appellant is contended that the 3KVAR capacitor connected with the 7.5 motor is sufficient and the other motor is not required a capacitor as it is built with capacitor. Further it is argued that the bill issued for installation of sufficient capacitor is based on wrong concept without conducting proper enquiry.

On conducting an inspection in the premises of the appellant by the respondent as directed by the CGRF, it is detected that a 3 KVAR capacitor installed in the premises but not specified in the report whether two motors are functioning with the same capacitor. Further the respondent had not issued any notice to the appellant for installation of a 4 KVAR capacitor even after conducting the inspection in the premises. During the hearing the respondent

has stated that he has not checked whether capacitor is provided for the 0.5 motor. For the aforesaid reasons, I accept the contention of the appellant that the capacitor installed is sufficient and hence the arrear bill issued is not payable.

Decision

In view of the above facts, the revised bill for Rs. 8025/- towards the short assessment during the alleged faulty meter period and the bill for Rs. 10,799/- towards the non installation of insufficient capacitor are hereby quashed.

The order of CGRF in OP No. 169/2016 dated 23-12-2016 is hereby set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

No. P/011/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Shajeev T.S., Thekkumkara Veedu, Valavupacha P.O., Chithara Village, Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kadakkal, Kollam

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, Kottarakkara - 691 506.