

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/029/2017
(Present: A.S. Dasappan)
Dated: 12th July 2017

Appellant : Sri. P.K. Prathapan
Managing Director,
Hotel Sidhartha, Chalakudy,
Thrissur

Respondent : The Special Officer (Revenue)
Vydhyuthibhavanam, KSEBL,
Pattom, Thiruvananthapuram.

The Deputy Chief Engineer,
Electrical Circle, KSEBL,
Irinjalakkuda, Thrissur.

ORDER

Background of the case:

The appellant is running a hotel named Sidhartha at Chalakudy, under the jurisdiction of Electrical Section, Chalakudy having consumer number LCN 3/6330. The tariff assigned is HT IV and the contract demand is 165 kVA. The energy meter of the appellant was changed on 21-07-2015. On 21-01-2016, the CT, panel board and associated equipments were damaged due to short circuit. There was no supply for 3 days and unmetered supply was given to the appellant till commissioning of new CT on 12-02-2016. It is revealed from the data downloaded from the meter, by the TMR, Angamaly, there was one phase voltage (B phase) missing from 24-09-2015 to 12-02-2016 and recommended to review the bills for the above periods. Accordingly, the party was served with a provisional short assessment bill on 17-11-2016, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 6,21,788/-. The consumer lodged complaint before the CGRF, Ernakulam, with Petition No. 108/2016-17 and the Forum held that the short assessment bill is in order and allowed 15 instalments to remit the amount.

Aggrieved by the decision, the appellant has submitted the Appeal petition before this Forum.

Arguments of the appellant:-

The appellant was served with a short assessment bill amounting to Rs. 6,21,788/- for the months of November 2015 to March 2016. This short assessment bill was issued based on the meter downloaded data which revealed that there was missing of voltage in the B phase from 24-09-2015 onwards. The appellant has contended that since it was informed the meter faultiness by the Assistant Engineer and as per the oral direction of the Assistant Engineer, he had purchased a new meter and tested it at TMR. This meter has been re-commissioned on 21-07-2015. On 21-01-2016, the CT and associated equipments were damaged due to short circuit caused by a group of birds resulting supply interruption for 3 days and subsequently un-metered supply was given till commissioning of new CT on 12-02-2016 by the TMR unit. The TMR unit has recommended revision of the bills from 24-09-2015 onwards as one phase was missing from that date onwards.

The appellant has argued that the Assistant Engineer who took the monthly reading had not intimated any kind of metering abnormality. The CGRF has allowed 15 instalments to remit the short assessment bill. Accordingly a notice was served to him by the respondent by calculating an amount of Rs. 1,02,131/- as interest also.

Aggrieved by this, the appellant approached this Authority with a request to waive the short assessment bill or to allow 25 instalments without interest.

Arguments of the respondent:

The appellant has an HT electrical connection assigned HT IV, commercial tariff under the jurisdiction of the Electrical Section Chalakudy. The energy meter of the appellant was changed on 21-07-2015 and all reading was, at that time, shown as zero. The parameters obtained from the meter about the consumption were correct. But, on 30-09-2015, the voltages obtained to the meter VI and V2 were wrong and the same was continued up to 01-03-2016. The reading for the above period was downloaded by the TMR Division Angamaly. The voltage unbalance and failure noticed from 24-09-2015. This voltage imbalance has paved the way for under registering of energy consumption from 24.09.2015. This was continued till March 2016. Hence, the current charge of the appellant's consumer number was reassessed from October 2015 to March 2016. This was the reason for issuance of bill for Rs. 6,21,788/-. And the bill was issued vide dated 17-11-2016. As per regulation 134 of the Kerala Electricity Supply Code 2014, if the licensee establishes either by review or otherwise that it has undercharged the consumer, the licensee may recover the amount so undercharges from the consumer by

issuing a bill for. It was in this backdrop the bill for Rs. 6,21,788/-. The bill issued for Rs. 6,21,788/- is legally right even by virtue of regulation 152 of the Kerala State Electricity Supply Code 2014 and this is correct both by de-jure and de-facto. The issue of arrear bill vide section 56(2) of the Electricity Act 2003 has been upheld in the judgements in 2009 (1) KHC 945 (Sunderdas P. V. Kerala State Electricity Board and Another), 2013 KHC 7794 (Tata Steel Ltd. (M/s.) v/s Jharkhand State Electricity Board and Others) and 2013 KHC 2767 (Thangal Kunju Musaliar College of Engineering v/s KSEB and Others).

The appellant has conceded that he is ready to remit the amount in the representation to the Hon'ble Electricity Ombudsman. Hence, the present representation itself lacks merits.

The decision of the Hon'ble Consumer Grievance Redressal Forum is de jure and de facto. The Forum has taken the decision and dismissed the complaint and the appellant has been given the facility to remit the amount in 15 instalments as per rules. If any instalment facility is allowed the person to whom such instalment facility is allowed shall be liable to pay interest on the outstanding balance of the instalment pending. There is no rule to waive the interest amount pending on the outstanding balance of instalment. Hence, the plea of the appellant is allowed, it will be ultra vires. Hence representation itself is sans merit.

Analysis and Findings: -

The hearing of the case was conducted on 23-06-2017, in my Chamber at Edappally, Kochi, and the appellant was represented by Sri. Omanakuttan P.K., and the respondent by the Assistant Executive Engineer of the Chalakudy Sub Division, E.S. Sivadasan and Sri. K. Sukumaran, Accounts Officer, Office of the Special Officer (Revenue), Vydhyuthi Bhavanam, Thiruvananthapuram and they have argued the case, mainly on the lines stated above.

On examining the petition and argument notes filed by the appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

On going through the records, I find appreciable difference in the quantum of energy recorded in the Meter on the energy consumed, after to the meter faulty period and during the alleged meter faulty period. That is to say, the meter was seen recorded less consumption from 24-09-2015 to 12-02-2016, and the consumption after commissioning the new CT on 12/2/2016. The test report of the meter showing failure of voltage in 'B' phase of TMR, Angamaly **witnessed** by the appellant is confirmed this fact. The respondent has stated that the demand of the consumer was re-assessed from November

2015 to March 2016 on the basis of average consumption computed after 3 months from the date of changing the meter i.e. 12-02-2016. The respondent has not furnished the consumption details of the appellant for the months of March, April and May 2016. The period of short collection is to be limited from 24-09-2015 to 12-02-2016 i.e., 139 days except 3 days' supply interruption. There is no allegation of any willful misuse of energy by the appellant. But the appellant is bound to pay the electricity charges for his actual consumption.

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.

Hence as per Regulation 152 (2) of Supply Code, 2014, the amount of electricity charges short collected by the licensee shall be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.

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.”***

It is found that the statutory requirement of testing of the meter in an accredited lab or with a standard reference meter with better accuracy class was not done before declaring the meter as faulty and replacing the meter on 21-07-2015.

During the Hearing of the case, the appellant was ready to pay the short assessment bill, but requested 'interest free 10 installments to remit the amount. The Respondent was agreeable to installments but with interest only. As per clause 134 of Electricity Supply Code, 2014, if the licensee establishes that it has under charged the consumer, by review or otherwise, it is open to the licensee to recover the amount so undercharged from the consumer by issuing a bill. In this case, the respondent has only done that and so it is found that the consumer is liable to honor the short assessment bill. The appellant shall be allowed to pay the disputed bill, in 10 installments and the 1st

installment shall be paid within 30 days of the issue of this order and the respondent shall intimate the 'installment due dates' within 10 days of the receipt of this order.

Decision

From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

1. Revise the bill for the period from 24-09-2015 to 12-02-2016 exempting 3 days of interruption during the period, based on the average consumption of March, April and May 2016.
2. Granted 10 monthly instalments without interest, and the 1st installment shall be paid within 30 days of the issue of this order and the respondent shall intimate the 'installment due dates' within 10 days of the receipt of this order.

Having concluded and decided as above, it is ordered accordingly. The order of CGRF in petition No. 108/2016-17 dated 04-02-2017 is modified to this extent. No order on costs.

ELECTRICITY OMBUDSMAN

P/029/2017/ _____ /Dated: _____

Delivered to:

1. Sri. P.K. Prathapan, Managing Director, Hotel Sidhartha, Chalakudy, Thrissur
2. The Special Officer (Revenue), Vydhyuthibhavanam, KSEBL, Pattom, Thiruvananthapuram.
3. The Deputy Chief Engineer, Electrical Circle, KSEBL, Irinjalakkuda, Thrissur.

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.