

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/109/2017
(Present: A.S. Dasappan)
Dated: 2nd February 2018

Appellant : Sri. Mathukkutty
Madathilkaiathil Rubber,
Footwear Industries,
Pallom, Kottayam 686007

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Pallom,
Kottayam

ORDER

Background of the case:

The appellant is an industrial consumer under LT IV A tariff in Electrical Section Pallom vide Cons No. 5373, with a connected load of 111 KW. The appellant is running a Footwear industrial unit in the name and style "Madathilkaiathil Rubber" in the premises. The APTS Unit of Kottayam conducted an inspection in the premises on 04-03-2017 along with Sub Engineer of Electrical Section, Pallom and detected shortfall in the recorded consumption. Accordingly, the party was served with a short assessment bill, assessing for the period from 01/2014 to 02/2017, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 2363312/-. Against the short assessment bill, the appellant approached the CGRF, Kottarakkara, with Petition No. OP 395/2017 and the Forum quashed the assessment bill issued and directed to revise the bill by limiting the assessment period to two years prior to the inspection. Aggrieved by the decision, the appellant has submitted the appeal petition before this Forum.

Arguments of the appellant:

The appellant is running an industry having LT IV A tariff. An APTS inspection was conducted in the premises on 04.03.2017, and subsequently a huge and

exorbitant bill for Rs.2363312/- was given. As per KSEBL, the CT operated Energy Meter installed in the premises was recording only one third of the actual energy consumption, due to reversal of connection from CT to the Meter installed. Instead of taking the average value for assessing consumption during meter faulty period the KSEBL have taken all monthly readings have multiplied it with 2 for a period from 1/14 to 2/17. This procedure is not as per Supply Code 2014 and Electricity Act 2003 for the following reasons.

1. As per Electricity Act Sec.55 (1) 'No license 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 or if there is phase reverse. It is also his liability to check the healthiness by monitoring the LED as per Reg.110 (7) of the Supply Code 2014. If it was done, the consumer would not have been in trouble. Hence the date of last reading that is 04.02.2017 should be consider as date of inspection.

3. As per Supply Code 2014 Reg.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.

4. The appellant's company is doing mixing the compound for Paragon Rubbers; they are giving the payment as per the monthly expenditure towards the process. The company has calculated the expenditure based on the electricity bills which the respondent have claimed and paid by the appellant. Now if an exorbitant bill is given, the company cannot claim it from the customers.

5. The appellant have filed a complaint before CGRF and the Forum have never considered the argument of six month limitation. In this case the Site Mahazar itself says that one phase is not working due to reversal in lead connection for one of the CTs. This will affect the accuracy of the Meter. Therefore this a clear case of Meter faulty. The penalisation is also regarding meter faulty, and the assessment period for Meter faulty is only six months.

6. The Electricity Act 2003 Sec. 50 is very clear and specific in assigning the duty and responsibility to specify in 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 has to be as per all Regulations such as 134(1) which permits licensee to collect the undercharged amount by issuing a bill, Reg. 115(9) limits the period of assessment as previous 'six months'. Here KSEBL can collect the undercharged amount as per Reg.134(1) but should be limited for a period of six months as per Reg.115(9).

7. Since this is a case of Meter faulty it can be settled only by paying 6 months arrear charges.

Reliefs Sought for:

1. The Ombudsman may direct KSEBL, to limit the assessment period for six months.
2. The Ombudsman may direct KSEBL to provide appellant the installment facility for payment.
3. Direction may be given to the KSEBL not to disconnect the supply of above consumers till hearing and disposal of the complaint.

Arguments of the respondent:

The appellant, Sri.Mathukkutty, Madathilkaiathil Rubber Footwear Industries, Pallom Consumer No. 5373 is a registered consumer of Electrical Section, Pallom. The service connection is a 3phase connection under LT IV-A (TOD) tariff. The complainant had filed a petition before Hon' ble CGRF (South) as OP 395/2017 against a short assessment bill amounting to Rs. 2363312/- issued subsequent to the APTS inspection conducted at the premises of the appellant detecting shortfall in the recorded consumption. The Forum after hearing the case ordered to quash the bill issued and to revise the short assessment limiting the assessment period to two years prior to the inspection. Since complying the order would result in a revised demand of Rs.15,36,177/- inflicting KSEB Ltd with a huge loss of Rs.8,27,135/ , the Board has decided to file a Writ Petition before Hon'ble High court of Kerala against the impugned order the Hon'ble CGRF. Hence no revised demand is issued to the consumer so far.

The APTS, Kottayam conducted an inspection in the premises of the appellant on 04-03-2017 as part of which the meter was verified with a standard reference meter (Accucheck LT+, Secure Meters make) and found to be recording 66.6% less than actual consumption. On detailed inspection of the meter connections, out of 3nos of 200/5A CT's used for metering, there was a reversal in lead connection for one of the CT's. Thus meter was found to be recording only 33.4% of consumed power.

Further for confirming the same, a parallel meter was installed in the consumer's premises on 21-03-2017. Consumption based on each of the meters were calculated as on 12-04-2017 and CC arrived for old and new meters for the same period are Rs. 32916/- and Rs. 94484/- respectively. The site mahazars prepared during both occasions and the comparison calculation statement was prepared. The ratio reveals that old meter records only 34.84% of energy recorded on the new meter.

The above meter was installed on 07-02-2013. The extract of reading register starting from 2011 January till date is submitted for perusal. The consumption of the appellant has a history of wide fluctuations between a low as 7600 during 5/2011 and a high as 30880 during 7/2012 presumably linked to their business needs. However there is a steady dip to a very low average from the month of January 2014 onwards. It is understood that this corresponds to a change of cable carried out at consumer premises while replacing weather proof wire with XLPE LT cable. Hence the condition of 1/3rd recording of consumed energy started from that point of time.

By analyzing the instantaneous vector diagram at the time of APTS inspection, there is a phase reversal between L3 & V3 and thus both L2 & L3 ending up in same quadrant - further conforming the findings deduced above. By raising the short assessment bill dated 14-03-2017 for an amount of Rs. 2363312/- based on the above findings, the appellant was charged only the unrealized portion of energy charges without claiming any interest, to make good the loss sustained to the Board.

With reference to the contentions put forth by the complainant, it is humbly submitted that as part of inducting TOD metering, KSEB Ltd. had installed a correct meter. During the period under dispute, the 'fraction unrecorded is known and quantified to be 2/3rd based on solid findings through testing it at site and by installing a parallel meter. Hence the bill raised is not based on arbitrary assumptions and the action of KSEB Ltd is in accordance with and upholding Sec 55(1) of Electricity Act 2003.

The following may be taken into account: (a) TOD metering had been newly introduced at that point of time (b) The meter installed (Secure make) had information on CT reversal only in one of its display pages which is not straight away visible but may be accessed with some difficulty (c) As submitted earlier the power requirement fluctuation of the appellant being unusually high due to his business nature (i.e., ranging from a low of 7600 (5/2011) to a high of 30880 (7 /2012)), a low reading in itself could not be interpreted as error in recorded energy;

Humbly submitted that with these in view it is the appellant who is in a better position to recognize the situation having the clear knowledge of his business demands. A slashing of the order of 2/3rd of usual bill must not have escaped his notice. Being bound by Sec 120(1) of Electricity Supply Code according to which "If the consumer notices any defect in the meter installed in his premises, he shall immediately report the matter to the nearest office of the licensee.", he should have taken up the matter with the licensee. Having kept it unexposed on his own interest, the appellant has already enjoyed the benefits having paid only one third of the actual power consumed; it is only natural justice to make good the 'deficit and that too without being saddled with the burden of the interest thereof.

The meter for the case under consideration is not be treated as a faulty meter under which the information of quantum of energy supplied is unknown. On the other hand here, by testing the meter condition at site, analyzing meter dumped data, and re-ensured the same by a parallel meter - it is established that the meter records 1/3rd of consumed energy, and the respondent have all information about the energy supplied. Regulation 134 (1) of Supply Code 2014 is appropriate for this case according to which as licensee, K.S.E.B Ltd., if by review or otherwise establish that it has undercharged the consumer, is authorized to recover the amount so undercharged from the consumer by issuing a bill. Hence the short assessment bill is on the basis of solid material facts and legal practice. The consumer's reluctance to pay the short assessment bill amount is against the principle of contract agreement executed by the party.

The short assessment bill is in order as it is issued in accordance with the law and with justice. The appellant has obtained only benefits (monetary) during long period of short collection and is liable to pay the short collection amount which includes neither penal rates nor interest for the period.

Analysis and Findings: -

The hearing of the case was conducted on 19-12-2017, in the Office of the State Electricity Ombudsman, Edappally, Kochi and the appellant was represented by Sri. Shaji Sebastian and Sri. Mathew Jacob, Assistant Executive Engineer, KSEB Ltd Pallom Sub Division appeared for the respondent 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.

The appellant was served with a short assessment bill for Rs. 2363312/-, on detecting that out of 3nos of 200/5A CT's used for metering, there was a reversal in lead connection for one of the CT's and the meter was found to be recording only 33.4% of consumed power, as per Regulations 134 (1), 152 (2) and 152 (3) of the Kerala Electricity Supply Code, 2014. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable, but directed to revise the bill limiting to a period of 24 months.

The appellant has contended that if failure of the CT connection was from 01/2014 onwards as assumed by the licensee, it could be easily found out by the Sub Engineer who had taken the monthly readings regularly.

Further the appellant also contended that Regulation 134 (1) of Supply Code, 2014 is not at all applicable in this case of meter defective case. According to the appellant, this provision applies in only a case where he has undercharged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately.

Refuting the above contentions, the respondent has averred that the total period of phase failure was obtained on the basis of the consumption pattern. The respondent relied upon the consumption pattern for establishing the period of wrong CT connection. According to him, the dip in consumption from 01/2014 is the result of the wrong CT connection. It is submitted by the respondent that the meter installed in the premise is not reported as defective or damaged. The terminal of the CT was found missing (somehow) and Regulation 115(9) of Supply Code 2014 is not applicable in this case. Under charging of prior bill is established due to an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 134(1) and

Regulations 152(2) and 152(3) are applicable. The respondent has an argument that, the meter is not defective, to attract Clause 115(9) of Supply Code, 2014.

Meter defined as under Supply Code, 2014 is extracted here for ready reference,

“2. (57) "meter" means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system; and shall include, wherever applicable, other equipment such as current transformer (CT), voltage transformer (VT), or capacitance voltage transformer (CVT) necessary for such purpose;”

The meter is not a recording or display unit only but as defined above all the components above including lead wires include a meter. Moreover, this is not a whole current meter but a CT operated meter, where CT is connected with metering unit using lead wires and phase voltage from all three phases are tapped from the source of supply and then connected with the same metering unit. Thereby wiring is also there for this metering system. This coordinates for computing energy is lead to the processing unit of the meter from different components of the meter then various electrical quantities are processed then recorded cumulative or otherwise and displayed in the display unit. Any defect in any part or component of meter is defect in meter. The fact of the matter is, the meter was defective since CT connection was not correct. Under the regulation 113, sub clause (7) of Supply Code, 2014 requires the licensee to test the CT, PT and the wiring connections, where ever applicable while testing the meter.

In the judgment in WA. No. 114 of 2013 in WP(C) 5614/2007 dated 13-02-2014, the Hon: High Court of Kerala ordered and held that:-

“5. Insofar as Clause 24(5) of the Supply Code is concerned, that provision states that if the licensee establishes that it has undercharged the consumer either by review of the bill or otherwise, the licensee may recover the amount undercharged from the consumer. It is true as contended by the learned counsel for the appellant this provision does not specify any limitation on the period up to which the recovery is permitted. However this provision also may not have much relevance insofar as this case is concerned because this provision takes in only a case where the licensee has undercharged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately. Therefore, none of the aforesaid three provisions pointed out by both the sides specifically deal with a

situation where the meter is inaccurately recording the energy consumed on account of a wrong connection given to the meter”.

Regulation 134 (1) of supply Code, 2014 is almost a verbatim reproduction of Regulation 24 (5) of Supply Code, 2005. Regulation 24 (5) of Supply Code, 2005 and Regulation 134 (1) of Supply Code, 2014 is extracted here under for ready reference.

Clause 24 (5) of Supply Code, 2005:- 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.

Clause 134 (1) of 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 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.

In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board then in the case of under charging, the Board shall have a right to demand an additional amount and in the case of over charges, the consumer shall have the right to get refund of the excess amount provided at that time such claims were not barred by limitation under the law then in force.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Hence revision of the bill on the basis of the test report is not possible in this case. Here in this case, the respondent confirmed the non recording of energy on the basis of the inspection conducted in the premises and a Accucheck Test Certificate. But the quantum of loss calculated based on 2/3rd missing of the energy is not established conclusively.

The issue arising for consideration in this appeal is whether the period assessed and the quantum of energy loss computed are in order and the appellant is liable for the payment of short assessment for Rs. 2363312/- as per Regulation 134(1) of Supply Code, 2014.

Here in this case, the respondent declared that one number of CTs connected to the meter is detected as 'reverse' on the basis of the inspection conducted in the premises on 04-03-2017. Though the respondent has claimed reversal of CT connection in one phase of the energy meter from 01/2014 onwards, the load survey data from that date is not available.

From the site mahazar, it is revealed that the failure of recording energy is due to reversal of connection from CT to the meter installed. Thus the meter was found to be recording only 33.4% of energy used. The meter will record the time and date of tampers, and the same can be downloaded using MRI/Laptop and can be analyzed. Date of occurrence of CT open/bypass/short, voltage missing/low voltage/ unbalance etc can easily be found out using downloaded data. Considering these facts, an assumption of missing of 2/3rd consumption during the disputed period from 01/2014 to 02/2017 cannot be sustained.

The reversal of CT connection in one phase of the appellant's metering equipment in the appellant's premises was detected by the licensee during the inspection conducted on 04-03-2017 and the site mahazar also justifies these facts. In view of the above facts it is clear from the site mahazar that the energy meter installed in the appellant's premises was faulty on the inspection date of 04-03-2017, but not confirmed the missing of energy at the rate of 2/3rd from 01/2014 onwards, as argued by the respondent.

The respondent has issued the short assessment bill for a period from 01/2014 to 02/2017 by taking 2/3rd of the recorded consumption/demand for 37 months following the inspection conducted on 04-03-2017 and detecting of non-recording of energy. 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 whether meter recorded actual consumption.

From the site mahazar, it is understood that the data was downloaded from storage memory, but the same was not produced by the respondent for

verification. The respondent depends for calculation of the period based on the assumption of previous consumption pattern. Further this Authority is of the opinion that if the calculation of the short assessed amount was done based on the downloaded data, the period of defect could have been detected and convinced by the appellant. Moreover, if the respondent had to inspect the metering system soon after the recorded consumption decreases considerably during the disputed period, it can be easily detected the defect in the metering and to avoid the loss if any occurred to the licensee. The respondent's argument that it is the appellant who is in a better position to recognize the situation having the clear knowledge of his business demands and a slashing of the order of 2/3rd of usual bill must not have escaped his notice, is not valid since the appellant's consumption varies based on his production. According to the respondent, the period of the bill was fixed because there was steep downward fall in the consumption from 1/2014 onwards despite the fact that firm was functioning in full capacity. The appellant's contention that as an Industry the consumption varies due to the change in order pattern and work load is also to be considered in this case.

The reason for the non recording of actual consumption is the wrong connection between the CT and the energy meter, which was done by the respondent or the employees entrusted by him. Hence this case cannot be treated as a normal failure of connection between CT and the meter. The version of the respondent "However there is a steady dip to a very low average from the month of January 2014 onwards. It is understood that this corresponds to a change of cable carried out at consumer premises while replacing weather proof wire with XLPE LT cable. Hence the condition of 1/3rd recording of consumed energy started from that point of time" cannot be accepted because installation, sealing etc of the meter are the responsibility of the respondent. The respondent had to check the working of the meter soon after the maintenance carried out by the appellant. Even though a team is entrusted for meter reading and billing, they have not taken any effort to find out the reason for low consumption, whether defect of the meter system or any others, till the inspection of APTS. The date from which the defect in the metering system occurred could not be confirmly pointed out by the respondent, only relied upon the consumption pattern. Here the appellant also accepted reversal of CT connection in the meter by expressing their willingness to remit the short assessed amount for six months. Regulation 152 reads as "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 of Section 135 of the Act.

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

As such this Authority considered it as proper and justifiable to reassess the period for one year prior to the inspection, as the anomaly cannot be reliably assessed, as per the above provision.

Decision: -

From the findings and conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 2363312/- issued to the appellant. The respondent is directed to revise the bill for the consumption for the period of one year prior to the inspection dated 04-03-2017. The respondent shall issue a revised bill within a period of 15 days from the date of receipt of this order.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed as ordered and stands disposed of as such. The order of CGRF in 395/2017 dated 21-08-2017 is set aside. No order on costs.

Electricity Ombudsman

Ref No: P/ 109/ 2017/ _____ /dated

Forwarded to:

1. Sri. Mathukkutty, Madathilkaiathil Rubber, Footwear Industries, Pallom, Kottayam 686007
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Pallom, Kottayam

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum, (South), Vidyuthi bhavanam, Kottarakkara 691506.