

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/027/2018
(Present: A.S. Dasappan)
Dated: 11th July 2018

Appellant : Smt. Lekshmi T.,
Sreekrishna,
Punnathala North,
Thirumullavaram P.O.,
Kollam

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

ORDER

Background of the case

The appellant Smt. Lekshmi. T. is running an ENT hospital in the name 'KERF' under Electrical Section, Olai bearing Consumer No.7521 under VI G tariff with connected load of 68 KW having a contract demand of 35 kVA. While so, on 05-10-2017, the APTS of KSEBL, Kollam conducted an inspection in the premises and found that the energy used in one phase (out of 3 phases) was not recording in the meter (missing of B phase voltage) and unauthorized additional load to the extent of 45 KW (sanctioned load at the time of inspection was 25 KW). Accordingly, the appellant was served with a provisional short assessment bill, for the failure to measure power of all the three phases due to missing of voltage in B phase from 04/2014 to 10/2017, so as to recover the revenue loss of the unrecorded portion of energy, for Rs. 4,02,475/-. The appellant filed objection before the Assessing officer, the Asst. Engineer, against the said assessment. Hence the provisional assessment was reduced to Rs. 2,04,170/- as the final assessment for the period 11/2015 to 10/2017. Aggrieved against this, the appellant filed Petition vide complaint No.539/2017 before the CGRF,SR, Kottarakkara and the CGRF held that the short assessment bill issued by the respondent for two years from 11/2015 to 10/2017 as per Regulation 152 of Supply Code, 2014 is genuine and sustainable, vide its order dated 05-03-2018. Aggrieved against this, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant

1. Appellant's husband is a doctor and he is conducting a hospital in the name and style KERF (Kerala ENT Research Foundation) in the three storied building bearing Kollam Corporation No: 24/1301/1157A owned by the appellant.
2. On 05/10/2017 the respondent conducted an inspection of the premises and alleged to have prepared a mahazar and a copy of the same is served to appellant.
3. As per the aforesaid mahazar, it is noted that, out of three phases RYB, B phase is filled with dust and voltage recorded in B phase is not accurate. Further details in the mahazar are that measurement of voltage taken as per Tong Tester and it is recorded that phases RYB records voltage of 22V, 226V and 218V respectively. As per the assumption of the respondent voltage in B phase is shortly recorded. In the aforesaid mahazar the respondent claims to have conducted error measurement by using Standard Reference Meter of Zera Company and the result is - 33.16% of actual use in B phase. The first respondent narrates that by using 'cubed 100 software the first respondent downloaded data in laptop and on perusing tamper events it is shown that error current without voltage starts on 01.04.2014. Thereafter first respondent removed dust from B phase and reconnected electricity and found that three phases RYB shows 230V, 229V and 229V respectively.
4. Being aggrieved by the short assessment bill for Rs.2,04,170/- dated 10/11/2017 passed by the respondent, the complaint is filed on the following among other grounds:

The mahazar which lead to short assessment bill is conveniently manipulated and fabricated and cannot be relied upon at all. The proof document based on which mahazar was made by first respondent was not shown to appellant or her representatives at the time of preparation of mahazar. For that simple reason, the documentary evidence alleged to be downloaded from the system is unreliable and untrustworthy. The respondent never attempted to convince the appellant or her representative regarding the trustworthiness of the proceedings for downloading the data. If the first respondent is having any fair intention, before downloading data, a notice ought to have been given to the appellant as it is not a secret affair.

In the disputed mahazar it is mentioned that in B phase first respondent noticed error measurement of -33. If that be so nothing prevented the first respondent convincing the consumer regarding such error and to bring up to the notice of the appellant or representative regarding the error so happened. No endeavour in this regard made by the first respondent, which obviously

raises serious doubts as regarding the proceedings of first respondent. As per the impugned mahazar error assessment is -33% whereas assessment is made basing 50% of units billed per month.

The impugned mahazar clearly specifies and accept that meter is not in any way tampered. The only reason for reading as per the version of respondent is that meter is filled up with dust. Such contention of first respondent is logically incorrect and unacceptable. In the impugned mahazar it is noted that the meter is tested with tong tester. An average consumer may not be aware about the technicalities and authenticity of a tong tester. Further it is not evident from the mahazar that the tong tester used by respondent is authentic and approved one. The tong tester used by the first respondent is defective and not approved by KSEB and having no ISI marks.

The sub engineer without authority or consent from the appellant or her representative opened the meter which no law permits. Malafide of first respondent crystal clear from the way in which he conducted inspection and mahazar and the respondent came up with avowed object to victimize appellant for taking personal grudge and vengeance. The accuracy of meter is again to be tested and such a request made by the appellant on 10/10/2017 was never considered by the respondent. The calibration certificate of reference meter is not valid on the date of testing. The validity of calibration certificate expired on 15/02/2017. Therefore short assessment based on faulty reference meter is unsustainable.

As per the downloaded data the current without volt start on L3 on 1-4-2014 and it ends on the same day after half an hour. Then it occurred again on 24.01.2017 and ended on 27/01/2017. Again the same happened for nine days during February 2017 and for one day in May 2017. Therefore total number of days on which the event occurred is only for 13 days for the period from 01/04/2017 to 05/10/2017. Hence the basis of assessment in the mahazar from 04/2014 is totally misleading and not true to facts.

The proceeding of the respondents is in virtual violation of Regulation 114 and 115 of the Kerala Electricity Supply Code, 2014. The testing meter used by first respondent does not fulfill minimum criteria fixed under Central Electricity Authority (Installation and operation of Meters) Regulations 2006 and also violated norms specified in Rule 5 and 18. The order is in violation of Regulation 152 of the Kerala Electricity Supply Rules 2014, in as much as the maximum period for which short assessment bill can be raised is 12 months. The short assessment order is not in parity with and in violation of Regulation 155 of the Kerala Electricity Supply Rules, 2014.

The order passed in violation of principles of natural justice and the objections raised by the appellant not considered by the respondent. The calculation made by the respondent is incorrect, illegal and unsustainable.

Nature of relief sought for:

- 1) To set aside the order of the CGRF, Kottarakkara dated 05/03/2018 and to set aside the first short assessment bill for Rs. 2,04,170/-dated 05/10/2017.
- 2) To direct the APTS to conduct proper assessment in the premises of the appellant with ISO certified Tong Tester.
- 3) To pass such other orders as the Forum deems fit and proper.

Arguments of the respondent

The ownership of the land and building specified in the Appeal Petition is to be proved by the appellant with the support of authentic documents. The appellant has enhanced the connected load from 25 kW to 68 kW following surprise inspection held in the aforesaid premises by APTS Kollam and Authorized officer of the Electrical Section, Olai on 05.10.2017. During the inspection, the following irregularities were detected by the inspection team.

- i. Missing of 'B' phase voltage and percentage error of -33.16 in the energy meter.
- ii. Unauthorized additional load to the extent of 45 kW (sanctioned load at the time of inspection was 25 kW).

It is specified in the site mahazar prepared by the Authorized Officer that details of inspection were brought to the notice of Sri. Rejikumar, Manager, KERF Hospital who was present during the inspection and affixed his signature in the mahazar without any express or implied dissent and accepted a copy of the site mahazar affixing his signature as a taken of acceptance. It is submitted that phase to neutral voltage is available on the energy meter. The respondent made it affirmative that 'B' phase to neutral voltage recorded in the meter is very low compared to the standard low tension voltage. Whereas the voltage between phase and neutral when measured at fuse terminals using clip on meter was 232V, 226V and 218 Volts respectively. In order to ascertain the period of missing or very low voltage, -/5 Amp secure make energy meter of Sl. No. KSE 08198 was downloaded using the "M cubed 100" software provided by the manufacturer of Secure Energy meters. This respondent noticed that current without voltage on L3 started with effect from 01/04/2014.

The "Zera" make standard reference meter recorded an error percentage of -33.16 when connected to the existing metering system. It is therefore obvious that the existing energy meter fail to measure power of all three phases due to lack of voltage in 'B' phase. Pursuant to this, the appellant was served

with a short assessment bill for Rs. 4,02,475/- for realizing the amount short collected for the period from 4/14 to 10/2017. The appellant was also served a provisional assessment for unauthorized use of electricity. Upon objection, it was revised to Rs. 2,62,514/- by issuing a final Assessment Order. Aggrieved on the final assessment order, the appellant preferred an appeal before the Appellate Authority and this respondent in compliance with the order of the appellate authority issued a revised final assessment order to the appellant.

This respondent however reduced the period of short assessment to '2' years preceding the date of inspection and reduced the bill amount to Rs. 2,04,170/- as per Reg. 152 of the Supply Code, 2014.

The data downloaded stipulates that there is voltage missing from 1/4/2014 onwards. Despite the voltage restores at many occasions, it would have never reached a considerable value and the restoration level is seen indicated as the "voltage missing ends" at Voltages 66.7 V, 23.00 Volts etc. This fact is evident from the downloaded data. What ensues from the above is that contention of the appellant in respect of voltage missing limiting to 13 days is against the facts and hence not sustainable. The consumer was neither penalized nor imposed any penal interest for the said short assessment period of 2 years. The CGRF upholding the averments of the respondent, ordered that the short assessment bill for Rs. 2,04,170/- is genuine and legally sustainable on the basis of reliable scientific data and that the appellant is liable to remit the bill.

The respondent conducted a transparent, fair inspection which is free of prejudice in the appellant's premises observing all formalities and strictly in conformity with the rules and regulations in force from time to time. The respondent has made inspection complete in all respects so that all relevant aspects of the installation including the load connected, purpose for which electricity is being used, conditions of the metering etc., without limiting the scope of the inspection to one or two aspects, could be surfaced. The averments of the appellant are not confined and structured by rational relevant and non discriminatory norms.

It is averred that error is -33% whereas assessment is made basing 50% of units billed per month. Once the voltage in any one of the phase is absent only 2/3 of the actual consumption would be recorded in the meter and the energy lost shall be 1/2 of the energy recorded or displayed in the meter. Hence 50% of the recorded consumption is taken for computing the short assessment bill amount. The appellant failed to remit the requisite fee for testing the meter and the respondent didn't find any reason to suspect the accuracy of the meter in the facts and circumstances of the case.

The B phase to neutral voltage recorded in the meter and downloaded data were the documents chiefly relied on by the respondent to short collect the

appellant for a period of 2 years from 11/2015 to 10/2017 despite the period of missing B phase voltage started with effect from 4/2014 onwards. Hence the averments as to validity of calibration certificate of Zera make standard reference meter as well as the tong tester do not have any bearing on the instant case. The B phase to neutral voltage is made available by properly cleaning the joints at the point of tapping and rewiring the meter circuit at the time of inspection. Therefore the respondent is legally entitled to realize the said short assessment bill amounts.

Further it is evident from the consumption pattern of the appellant succeeding the date of inspection that 1/3rd of the actual consumption went unrecorded in the energy meter for the past years and the consumption prior to the date of inspection is also yielding documentary evidence of cessation of recording of 1/3rd of the actual consumption owing to the missing of B phase to neutral voltage on the -/5 amps Secure make CT energy meter.

The respondent submits that the averments of the appellant are false, frivolous and vexatious and the appeal is merely an experimental one. Further the Appeal is bereft of bonafides and hence none of the reliefs sought for in the appeal is sustainable.

Analysis and Findings

The hearing of the case was conducted on 19-06-2018, in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri Jani A, represented the appellant's side and Sri. Rajmohan P, Assistant Executive Engineer, Electrical Sub Division, Kollam, represented the respondent's side. On perusing the Appeal Petition, the counter of the respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The APTS has inspected the consumer's premises on 05-10-2017 and found that B phase to neutral voltage recorded in the meter is very low compared to the standard low tension voltage, thus resulting in the recording of a lower consumption than what is actually consumed. Hence, the appellant was issued a provisional short assessment bill to recover the cost of energy escaped from billing due to insufficient voltage in one phase of the meter. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable and hence the consumer is liable to pay the amount.

The respondent has averred that the total period of phase failure was obtained by downloading the meter. The respondent relied upon the downloaded data and consumption pattern for establishing the period of phase failure and missing of voltage in one phase. According to him, the dip in

consumption from 04/2014 is the result of the missing of voltage between B phase and neutral. It is submitted by the respondent that the meter installed in the premise is not reported as defective or damaged. Under charging of prior bill is established due to an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 152 is applicable. It was also contended that the downloaded data was convinced by the CGRF.

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. 2,04,170/- as per Regulation 152 of Supply Code, 2014.

Here in this case, the respondent declared that the measuring voltage in one phase of the meter is missing on the basis of the inspection conducted in the premises on 05-10-2017 and there also unauthorized additional load to the extent of 45 KW in the premises. The data is downloaded by the APTS by using the "M cubed 100" software provided by the secure energy meters.

The appellant has averred that an average consumer may not be aware about the technicalities and authenticity of a tong tester and the tong tester used by respondent is not authentic and approved one. It is also contended that the tong tester used by the first respondent is defective and not approved by KSEB and having no ISI marks. The appellant has also challenged the accuracy of meter and a request made by the appellant on 10/10/2017 was never considered by the respondent. According to her, the calibration certificate of reference meter is not valid on the date of testing since the validity of calibration certificate expired on 15/02/2017. Therefore short assessment based on faulty reference meter is unsustainable.

Normally, the respondent is bound to rectify the defects to the meter or renew the CTs or the CT meter itself, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 4,02,475/-, for non-recording of energy due to defects of the B phase, from 04/2014 to 10/2017, by taking the lost energy as half of the recorded energy (1/3rd of the actual consumption). On perusing the mahazar, this Authority feels that the contention regarding the low voltage in B phase of the meter noticed during the inspection by KSEBL was correct, since the mahazar was duly witnessed, but the appellant has disputed the mahazar, stating that the mahazar is conveniently manipulated and fabricated and cannot be relied upon. Regulation 173 (9) of the Supply Code, 2014 says, 'As far as possible, the officer authorized to inspect the premises of the consumer shall take two independent witnesses for the inspection of the premises and shall make such witnesses fully aware of the facts recorded on the mahazar and shall obtain their signature in the mahazar.' The findings in the mahazar were not challenged by the appellant. The appellant's representative had signed in the

mahazar without any objection. The manager of the hospital was present during the inspection and accepted a copy of the site mahazar.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. The appellant has also not raised any objection and not taken the opportunity to test the meter in a laboratory accredited by the NABL, by requesting the same remitting the required fees. Here in this case, the respondent confirmed the non recording of one phase on the basis of the inspection conducted in the premises and load survey/tamper report down loaded.

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. As per the site mahazar of the inspections dated 05-10-2017, the loss of energy detected by the respondent is -33% and the appellant was billed by taking 50% of the recorded consumption to compensate 33.33% of the actual consumption if all the phases are functioning properly. The site mahazar also justifies missing of voltage in one phase of the appellant's metering equipment in the appellant's premises. In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording in two phases of actual consumption more or less on the inspection date of 05-10-2017.

The respondent has assessed the consumer at 50% of the energy recorded, by the simple reason that one phase of the meter is not getting voltage. This method lacks fairness as there is single phase loads in the premise and all the phases are not balanced always. Major load in the premises is working with single phase supply and the testing of the meter was done by operating an Air Conditioner having 9 kW capacity working with 3 phase supply and found 33.16% less recording of consumption. The defect in the metering system was set right by cleaning contacts and attained the measuring voltage to the rated value.

Further this Authority is of the opinion that 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. 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.

The consumption recorded in the meter itself was taken for assessing the unrecorded portion of energy. The downloaded data clearly indicates and justifies the respondent's claim that the appellant was undercharged for the

period in dispute. So, a probable conclusion can be arrived at in this case is that the voltage in 'B' phase was missing from 04/2014 onwards as per the consumption pattern of the appellant.

On going through the 20 events in the data downloaded from the energy meter, it is seen that the voltage varies from 9.2 volts to 66.7 volts in a particular phase and never exceeds 66.7 volts and never reaches zero volt. In most of the events current without volt starts at 9.2 volts and ends at 23 volts. Normally the meter records zero in one phase when the voltage/CT current becomes zero in that phase. Here the voltage never comes to zero and at the same time never comes to the rated voltage. As such it cannot be predicted that the consumption recorded in the said phase is zero and hence 50% of the recorded consumption taken for the assessment is not correct. At the same time there was recording of lesser consumption than the actual and hence a revenue loss to the Licensee. Moreover the period of assessment is limited to 24 months as per Regulation 152 of Kerala Electricity Supply Code 2014 against the actual period of 43 months. On analysing the consumption pattern in the disputed period a dip in consumption is also noticed. Hence a portion of revenue loss to the Licensee has to be realised.

The site mahazar justifies missing of voltage in one phase of the appellant's metering equipment in the appellant's premises. In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording in two phases of actual consumption on the inspection date of 05-10-2017 as proved from the downloaded data, but not confirmed the missing of energy in one phase at the rate of 33.33% of the consumption. This estimation is true in the case of balanced load in all the 3 phases. But such a condition is rare and usually it is observed that there exists some unbalance in some premises where other single phase loads also exist. Another method of assessment is based on the average consumption of previous 3 billing cycles energy consumption obtained and if the average consumption for the previous 3 billing cycles 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 meter or rectification of defects in the metering system. This method is suggested under Regulation 125 of Kerala Electricity Supply Code, 2014.

Decision

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 2,04,170/- issued to the appellant. The respondent is directed to revise the bills for the consumption for the period of 24 months prior to 04/2014 by taking an average consumption of 2820 units i.e. the average consumption of 03/2014, 02/2014 and 01/2014. Accordingly the respondent shall raise a bill for the meter faulty

period from 11/2015 to 10/2017, with the difference of (67680-48040) = 19640 units and issue the revised bill to the consumer within fifteen days.

The appellant is also eligible for installments, if requested for, and the respondent shall issue the same. The consumer shall pay the whole amount or the 1st installment within 30 days of the revised bill date. The subsequent installments will bear interest from 30th day of the bill issued to the day of payment. No interest or surcharge is payable by the consumer for the Petition and Appeal pending period before the CGRF and this Authority up to 30th day of the revised bill date.

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 539/2017 dated 05-03-2018 is modified to this extent. No order on costs.

ELECTRICITY OMBUDSMAN

P/027/2018/ _____ /Dated: _____

Delivered to:

1. Smt. Lekshmi T., Sreekrishna, Punnathala North, Thirumullavaram P.O., Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Kollam, Kollam Dist.

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.