

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P 74/09

Appellant : M/s Ashyana Greens
Mill Road Kannur 670001

Respondent: Kerala State Electricity Board
Represented by
The Executive Engineer
Electrical Division Mananthavady

ORDER

M/s Ashyana Greens, Mill Road, Kannur submitted a representation on 20.5.2009 seeking the following relief :

Cancel the demand to remit Rs 1,78,840/- issued by The Assistant Engineer of KSEB Thavinhal

The Appellant pointed out that even though the CGRF Kozhikode had heard the case on 24.4.2009 orders had not been issued by the them till date .

In accordance with the Section (22) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 this representation to the Ombudsman shall be maintainable since the Complainant is aggrieved on account of his complaint being not redressed by the Forum within *the period and manner* specified in the Regulations.

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 13.8.2009.

The Appellant had an LT Industrial connection for a Tea Factory at Varayal Wayanad with connected load 45.4KW and Consumer Number 940. According to the Respondent the meter installed in the premises became faulty during 3/99. The meter was replaced on 4.11.2000 and the CT was replaced on 6.1.2001 after which the consumption was recorded correctly. Even though the consumer was billed for 'average' assessed by the Section staff for the various periods the Audit party observed in February 2003 that these assessments were not correct. They directed to issue bills taking the consumption of three months prior to the meter becoming faulty and directed to compute 3668 units as average.

The Appellant was served with an invoice for Rs 1,78,840/- being the short assessment charges for the period from 3/99 to 11/2000 at an average per month consumption of 3668 units during August 2005. Since the consumer did not pay the charges in time the connection was dismantled and Revenue Recovery proceedings initiated. The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation and during the hearing are summarized below:

1. The tea factory was leased out for the period from 10.6.1998 to 30.4.2000 and from 4.9.2000 to 30.9.2002 and there was no work in the period in between .
2. The intimation on the short assessment had been received only July 2005 after 6 years of alleged short assessment. The invoice was received only by March 2007.
3. The consumption in the factory normally vary widely in accordance with the availability of raw materials, consumption needs etc.
4. The KSEB had intimated that due to variations in consumption it can be reasonably believed that the power meter was faulty. This is not an acceptable conclusion.
5. No intimation had been given to the Appellant that the meter was faulty from March 1999. There had been undue delay in replacing the meter. The Meter was replaced only to establish that it was faulty. The concept that the meter was faulty was developed based on the suspicion in the audit report.
6. The low consumption shown in some months were due to the factory having been shut down or having minimal works. The KSEB Meter reading register and other records themselves prove that the factory was not working for different periods. The letter dated 28.10.2004 by the Assistant Engineer Mananthavady clearly states that the factory was not working for the period from 1.4.2000 to 4.11.2000
7. Readings were regularly taken and bills issued every month and hence there is no justification for issuing bill based on average consumption after a period of 6 years.
8. Even after changing the meter it can be seen that consumption was very low and high in certain months due to the working nature of the factory.
9. KSEB had already issued short assessment bill amounting to Rs 11083/-for the period 8/99 to 1/2000 and it was paid. Hence the KSEB demand for the period from 3/99 to 11/2000 amounts to over lapping and duplication.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

1. A steep fall in power meter reading is seen from 3/99 but the light meter consumption continues to be very high. Hence it can be concluded that higher rate of consumption was going on through the period.

2. Average was calculated based upon 3 immediate preceding months consumption. It can be seen that the average taken for re-assessment was much lesser than the actual consumption recorded for different periods before meter becoming faulty and after meter and CT were changed.
3. The fact that the meter was faulty was well aware to the consumer since the bills were issued based upon computed averages for the period. The Appellant had not disputed such bills nor did he dispute the matter at that time. Hence the faulty meter was not sent for any statutory tests nor was it stocked in the office for future testing.
4. No penalty or surcharge has been included in the invoice under dispute. It is only an invoice for the short assessment.

Discussion and Findings:

Since the matter is being reviewed after a long period of around 10 years the only authentic record to be relied upon shall be the Meter Reading register of the KSEB .

The consumption recorded in the above register from 10/98 to 2/99 varies between 1461 units to 10434 units.

The consumption recorded shows a marked fall from 3/99 onwards (458 units). In 4/99 and 5/99 it is shown as DL (Door Locked).In 6/99 and 7/99 the low consumption is recorded and from 8/99 the meter is noted as faulty. The power meter was changed on 4.11.2000.Even after that the consumption shown is less : in 12/2000 it is 528 units and in 1/01 it is 1550 units. But when the CT was changed on 6.1.2001 the consumption jumps to 9414 units, 14545 units,12631 units etc but falls to 1413 units in 9/2001.

Based upon the above data and the high level of consumption in light meter the audit party concluded that an average of 3668 units, computed from 3 months prior to meter becoming faulty, should be taken from 3/99 to 11/2000 for a reasonably correct assessment. The consumption of immediate 3 months is to be taken for assessing the average during the meter faulty periods in accordance with the Conditions of Supply regulations in vogue during the period. Hence the direction of the Audit party is correct as per the statutes.

The following facts come out of the analysis of the Meter Reading register from October 1998 to September 2001:

1. The monthly consumption has no definite patterns or levels either before 3/99 or after 1/2001
2. Consumption was not being recorded properly from 3/99 to 6.1.2001
3. The consumption recoded jumps to high levels after Meter and CT were changed.
4. The average for 5 months prior to March 2009 was 4730 units. The average for 8 months after January 2001 was 11405 units.

Hence it is concluded that the average of 3668 units computed for the intervening periods is reasonable.

Now the issue to be decided is whether the average could be applied for the whole period or the factory had actually been closed down as claimed by the Appellant for certain periods.

From the various documents produced by the Appellant it is seen that the factory was not leased out for the periods 1.5.2000 to 31.8.2000. The Respondent has also referred to a letter from the lessee about the closing down of the factory w.e.f. 30.4.2000. In the meter reading register there is a remark that the 'factory not functioning w.e.f. 1.4.2000'. The remarks that 'factory closed' appears for 6/2000 and 7/2000 also. Hence it can be reasonably concluded that the factory had not been working for the months 5/2000 to 8/2000, both included.

The contention of the Appellant that the KSEB had changed the meter to make 'evidence' for the faulty meter can not be accepted in view of the analysis given earlier. The jump in consumption after the meter and CT were changed can not go unnoticed. But the delay occurred in changing the meter and CT is deplorable.

Even though the statutes confer the right to demand the under-charged amounts from a consumer if it could be established and explained, without limitations of time, the delay of around one decade in this case, throws a very bad light upon the way things are managed. The Audit was during the month of February 2003 wherein the lapses were pointed out. The Respondent could issue the invoice only by August 2005. The details of the calculation were sent to the Appellant only by March 2007 and the matter was pursued only sometimes in 2007. Under these circumstances I conclude and decide that the Respondent *shall not be eligible for realizing any interest* from the consumer against this demand in view of such irresponsible attitudes.

Orders:

Under the circumstances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. The invoice issued towards short assessment to the Appellant shall be revised excluding the months from 5/2000 to 8/2000, both included. For these months only Fixed Charges shall be realized.
2. Interest shall be collected from the consumer only from the due date of the invoice revised as per the directions above.
3. The Respondent shall ensure that all the payments made against the monthly bills, adjustment bills, average assessment etc for the period from 3/99 to 11/2000 are given appropriate credits while preparing the revised invoice. A statement showing these details shall be handed over to the consumer along with the revised invoice.
4. The Respondent shall be free to realize the balance amount payable as per the details given above after providing one month's time for making payment.
5. No order on costs.

Dated this the 24th day of August 2009,

P.PARAMESWARAN
Electricity Ombudsman

No P 74 /09/ 333 / dated 26.08.2009

- Forwarded to:
1. M/s Ashyana Greens
Mill Road Kannur 670001
 2. The Executive Engineer
Electrical Division KSEB Mananthavady

Copy to :

1. The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,
VaidyuthiBhavanam ,Gandhi Road , Kozhikode 673032