

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/049/2018  
(Present: A.S. Dasappan)  
Dated: 8<sup>th</sup> October 2018

Appellant : Sri. Muhammed T.M.  
Thottathil House, M.S. Medicals,  
South Vazhakulam P.O., Aluva,  
Perumbavoor, Ernakulam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd., Perumbavoor,  
Ernakulam

### **ORDER**

#### **Background of the Case:**

The appellant is a commercial consumer under Electrical Section, Vazhakulam having Con. No. 11113 and an occupier of the premises and energy used for running a medical shop. The connection is registered in the name of Sri. Kochubava, Nayathu, South Vazhakulam and the appellant is the occupant of the building at present. It is observed by the RAO wing in its audit report on 31.12.2016 that meter of the premises was sluggish during the period from 11/2014 to 05/2015.

Based on the above findings the Assistant Engineer, Electrical Section, Vazhakulam issued a short assessed the appellant for the period from 05/2015 to 03/2017 and issued a bill amounting to Rs. 2,714/-. Aggrieved against this, the appellant filed a complaint before the CGRF (Central Region), Ernakulam. The Forum dismissed the petition vide order No. 158/2017-18 dated 30-06-2018 by holding that the case is not maintainable as the appellant is not a consumer. Against the decisions of the CGRF, the appellant has approached this Authority with this appeal petition.

#### **Arguments of the appellant:**

The appellant is a commercial consumer under Electrical Section, Vazhakulam having Consumer No. 11113 and an occupier of this premises and energy used for running a medical shop.

The Assistant Engineer, Vazhakulam has issued a short assessment bill for the period from 7/14 to 3/17 amounting to R. 2,714/- alleging the meter was faulty during that period. A complaint was given to the Assistant Engineer for cancellation of the short assessment bill based on the Supply Code 2014 Regulation 115 (9). But there is no reply given by the respondent.

Then appellant approached the CGRF for the cancellation of the short assessment bill and the Forum conducted a hearing on 25.6.2018. In the hearing, appellant pointed out the Regulation 115(9) of Supply Code 2014. The Forum not considered appellant's argument and only considered the statement of the respondent i.e. Regulation 125(1) of Supply Code 2014. The CGRF also considered the Regulation 2(26) of the Supply Code 2014. Then the Forum decided to dismiss the case and the Order is received on 6.7.2018.

As per the Regulation 115(9) the Licensee has no right to issue a short assessment bill for the meter faulty period from 7/2014 to 3/2017 ie 32 months. Regulation 125(1) and 134(1) will not stand regarding this short assessment bill. As per Section 43 of Electricity Act 2003, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.

The term 'occupier' is defined vide Regulation 2(60) of the Kerala Electricity Supply Code, 2014, as the owner or person in occupation of the premises where energy is used or proposed to be used. Regulation 45 of the Supply Code allows an applicant, who is not an owner; but an occupier of the premises to avail a Service Connection. Regulation 146 of the Supply Code states supply of electricity not to be disconnected when utilized and paid for by a lawful occupier of the premises. In case the consumer requests for disconnection of supply or for dismantling of service, while the supply is being utilized and paid for by a lawful occupier of the premises, the supply shall not be disconnected and service shall not be dismantled.

All the above substantiate the fact that not only the consumer (registered owner ) but the lawful occupier of the premises, who happens to be the receiver of supply to the premises, has every right to be considered as a consumer and to approach the Forum for redressal of his grievances. Instead of analyzing the veracity in the appellant's grievances on its merits, the Forum has gone into the other aspects of the case, totally failing to understand the very fact that the Forum has been constituted to redress the genuine complaints of the consumers. Nothing in rules in force, as such prevents a user of electricity to present his case before an appellate authority to get his grievances, redressed.

**Arguments of the respondent:**

The complainant with Consumer number 1155841011113 is a commercial consumer under LT VIIB tariff of Electrical Section, Vazhakulam. This service connection is in the name of Sri. Kochubava. Nayathu. South Vazhakulam. As per

the audit report on 31.12.2016 by the RAO wing it is observed that meter was sluggish during the bills on 11/2014, 01/2015, 03/2015 and 05/2015 and the consumer was billed from 07/2015 to 09/2016 (8 Bills) for a misappropriate average consumption of 60 units since the meter was declared faulty on 20.07.2015. So RAO wing short assessed for a period from 11/2014 to 09/2016.

By observing the consumption history, the Section officials found that consumer's meter was sluggish during the period from 07/2014 to 03/2017. So short assessed for the period from 05/2015 to 03/2017 (limited to 12 Bills) and a short assessment bill was issued to the consumer for an amount of Rs. 2714/- by taking an average consumption of 3 bills of 01/2014, 03/2014 and 05/2014 which is 101 units.

Consumption details for calculating average for short assessment.

In January 2014	-	117 unit
In March 2014	-	90 unit
In May 2014	-	95 units

Energy meter was declared faulty on 20.07.2015.

Aggrieved by this the consumer has filed a complaint before the Consumer Grievance Redressal Forum, Central Region. The Consumer Grievance Redressal Forum, Central Region observed that Sri. Kochubava, Nayathu, South Vazhakulam is the registered consumer of the electricity connection bearing consumer no. 1 155841011113 under Electrical Section, Vazhakulam. Sri. T.M Muhammed, Thottathil. M.S Medicals, South Vazhakulam is the petitioner in the complaint filed before that Forum. He had not produced any documents to show that he is the lawful occupier / tenant of the aforesaid premises. He had not submitted any authorization from Sri. Kochubava before CGRF.

As per Section 2 (15) of the Electricity Act 2003 (revised on 2007) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, the case may be.

Regarding the procedure for billing calculation of a average consumption Regulation 125(1) of the Supply Code 2014 states that in the case of defective or damaged meter, consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective, provided that, the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available.

As per the Regulation 134(1) 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.

As per the Regulation 136(1) the licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due. Regulation 125(1), 134(1) & 136(1) of Electricity Supply Code 2014 allows the licensee to recover the amount short assessed from the consumer. This demand is not a penalization but its only the demand for the electricity already consumed by the complainant.

### **Analysis and findings:**

The hearing of the case was conducted on 18-09-2018 in the Office of the State Electricity Ombudsman, Edappally, Kochi, and Sri. T.M. Muhammed represented for the appellant's side and Smt. Beevi Balker, Assistant Executive Engineer of Electrical Sub Division, Perumbavoor appeared for the respondent's side. 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 respondent has challenged the maintainability of the petition stating that the complainant has no manner of rights to file above complaint before the Ombudsman, as the appellant is not a consumer of electricity. One of the main arguments of the respondent is that the appellant is not the registered consumer and stranger to the respondent. It is pertinent to note that the short assessment bill was served to the appellant who is the present occupier of the building. As per Regulation 2.1 (e) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a complainant is defined as any consumer of electricity supplied by the licensee including applicants for new connections; a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers; the Central Government or State Government - who or which makes the complaint in case of death of a consumer, his legal heirs or representatives

In the Act a consumer is defined as "any person who is supplied with electricity for his own use by a licensee or the government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of the licensee, the government or such other person, as the case may be". Considering the above definition it is clear that petitioner is a consumer. In this case, the appellant is occupying the building as a tenant and he has produced the lease agreement as evidence. There is no dispute between the registered owner and the appellant in the

occupancy of the premises. The respondent has not challenged the statement of the appellant that he has been running the shop in the said premises for the last 20 years. These points establish the appellant's claim as a consumer of electricity. Hence, the argument of the respondent and the decision taken by the CGRF that the appellant is not a 'consumer' is found as not sustainable.

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. Based on the report of the audit party of KSEBL the short assessment bill was issued to the consumer on 12-02-2018. The respondent has declared the energy meter as faulty on 20-07-2015. But the respondent has failed to take proper and timely action as per the procedure stipulated in Supply Code 2014 in the case of meter faultiness or sluggishness of 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. No site mahazar is seen prepared and produced by the respondent. It would have been proper, had the respondent made a site mahazar of the above actions taken, in the presence of the consumer or his representative. There is patent illegality in issuing the short assessment bill to the appellant. The respondent has not established conclusively that he has undercharged the consumer. Without complying with the statutory formalities, the assessment made in this case is not sustainable before law and liable to be quashed.

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 faulty in 07/2014 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. It is the liability of the respondent that to prove the faultiness of meter and the appellant consumed the energy as claimed by the respondent during the disputed period by substantiating with evidences. The consumer was issued bills as per the readings recorded in the meter during the disputed period and the same was paid. KSEBL preferred the short assessment bill for the period in dispute based on audit report only. An Audit Officer is not competent to arrive in such an assumption of sluggishness of meter based on a dip in consumption, without testing the meter. There may be many reasons for reduction/excess in the consumption of a consumer. The negligence of the respondent to take timely action is the cause for the present dispute. Hence the charge against the consumer is not proved conclusively. 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.

### **Decision**

From the analysis done above, this Authority have reached to the conclusion that there is no need to reassess the appellant during the disputed period and hence

found the short assessment not to be maintainable. Similarly the CGRF order dated 30-06-2018 is not in order.

Considering the above facts, I decide to set aside the short assessment bill amounting to Rs. 2714/- issued to the appellant.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed. The order of CGRF, Central Range in Petition No. OP/158/2017-18/dated 30-06-2018 is set aside. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/049/2018/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Muhammed T.M., Thottathil House, M.S. Medicals, South Vazhakulam P.O. Aluva, Perumbavoor, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Perumbavoor, Ernakulam

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.