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APPEAL PETITION No. P/089/2018
(Present: A.S. Dasappan)
Dated: 27th February 2019

Appellant : Smt. Shanima Ishak,
Managing Partner,
M.G. Roller Flour Mills,
Thevalakkara, Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Karunagappally South,
Kollam

ORDER

Background of the Case:

The appellant is the Managing partner of the M.G. Roller Flour Mill, an SSI Unit conducting flour making unit. The appellant is an HT consumer under Electrical Section, Thevalakara bearing customer No. LCN 16/7603 under HT 1(A) Industrial tariff with registered contract demand of 175 kVA. The inspecting authorities of TMR Thirumala conducted a field inspection in the Appellant's premises on 02.08.2017 and found that the PT Secondary RY and BY Voltages are low and hence the PT unit was suspected to be faulty. The Deputy Chief Engineer Electrical Circle Kollam has directed the Appellant to enhance the contract demand and to replace the PT unit with new PT of accuracy class 0.2 and to change CT with ratio 10/5 A to 15/5 A with accuracy Class 0.2S. The respondent has imposed penalty as 50% extra over the prevailing rate applicable both demand and energy for two months during which the complainant failed to replace the faulty metering component, and one month thereafter. The appellant has challenged the bill and filed an appeal before Consumer Grievance Redressal Forum Vydhyuthi Bhavanam, Kottarakkara as O.P. No. 94/2018. The CGRF,

Kottarakkara, dismissed the petition vide order No.94/2018 dated 05-11-2018.

Aggrieved by the order of the CGRF, the appellant has submitted this appeal petition before this Forum.

Arguments of the appellant:

1. On 2.8.2017, the officials of the Board have conducted an inspection and informed that the PT secondary of RY and BY Voltages are low and on further inspection it was informed that the appellant's PT unit was faulty from 20.05.2017.
2. As per the notice dated 10-08-2017, the respondent has directed the appellant to replace the PT unit with new PT of accuracy class 0.2. The respondent further directed to enhance the contract load of the appellant from the present contract demand of 175 kVA. Accordingly the appellant has purchased the meter on 09.10.2017. On 10.10.2017 the appellant has approached the Electrical Section, Thevalakara for remitting the fees for testing the meter and submitted application for enhancing the contract load. But the Assistant Engineer was on leave and no other person in the said office accepted the fees and directed to contact Assistant Engineer after he returns from leave. Subsequently the appellant has paid the fee on 21.10.2017, that is before two months from the date of receipt of notice and the meter was installed on 09.11.2017. The appellant has submitted the meter for testing before the completion of two months.
3. Even though the appellant has purchased and submitted the meter for testing before the expiry of sixty days, the respondent has imposed penalty as 50% extra over the prevailing rate applicable both demand and energy for two months during which the appellant failed to replace the faulty metering component, and one month thereafter. The appellant has challenged the illegal bill caused by no fault of the appellant and filed an appeal before Consumer Grievance Redressal Forum Vydhyuthi Bhavanam, Kottarakkara as O.P. No. 94/2018. On 05.11.2018 the Redressal Forum found that the faulty meter should have been replaced before the expiry of two months from date of receipt of intimation letter of licensee and confirmed the demand raised by the respondent.

The appellant is disputing the findings of the Deputy Chief Engineer Kollam for the reason that the case of the respondent Board is that, on inspection on 20.5.2017 found that PT unit is suspected to be faulty. The respondent has not examined the PT unit by removing the

same from the premises. Mere examination of PT Unit and the finding that the PT Unit is suspected to be faulty is incorrect. In order to ascertain whether the PT meter is faulty, it has to be removed from the premises and undergone various test in the lab. But in the case of the appellant, the mere examination of the PT meter by the respondent alone was conducted and come to a conclusion that, the unit was faulty from 20.05.2017 such a finding of the Board was incorrect and denied.

The appellant has replaced the PT unit was only at the instance of the respondents allegation to enhance the contract demand to change the CT Ratio from 10/5A to 15/5A with accuracy 0.25. In the letter dated 18.08.2017, the respondent Board has not given a cut of date for replacing the meter unit. On receipt of the letter on 22.08.2017 the appellant has made arrangements to purchase the new meter and on 09.10.2017, the appellant purchased the meter.

On 09.10.2017 the appellant purchased the meter only to replace the same as directed by the respondent. But nobody in the office of the respondent was accepted the fee to testing the meter unit and only on 22.10.2017 the respondent has accepted the fee for testing the meter unit. On 09-11-2017 PT meter was installed, this being the real facts, the findings of the Forum that, the appellant has replaced meter after sixty days and liable to pay penalty is without any bonafides and without appreciating the fact and evidence in the above matter.

Reliefs Sought for:

The appellant has prayed to set aside the order dated 05.11.2018 of the Consumer Grievance Redressal Forum in O.P. No. 94 of 2018 and to declare that the penalty amount illegally deducted from monthly regular energy charges are illegal and void.

Arguments of the respondent:

1. The Assistant Engineer Electrical Section, Thevalakkara while recording the monthly reading on 01.08.2017 detected certain anomalies in the HT reading of the appellant consumer and brought the same immediately to the notice of the Executive Engineer, TMR Thirumala. The inspecting authorities of TMR Thirumala conducted a field inspection in the Appellant's premises on 02.08.2017 and found that the PT Secondary RY and BY Voltages are low and hence the PT unit was suspected to be faulty. Consequently, data from the energy meter was downloaded which revealed that Appellant's PT unit is faulty from 20.05.2017. Further, it was detected that the current recorded in the Energy meter has exceeded several times the maximum loading current of the CT. Furthermore, the

MD recorded in the meter also exceeded the contract demand which is 175 kVA.

The chronological sequences of all events are detailed hereunder.

TABLE-1

Sl. No.	Particulars	Date
1	The detection of dysfunctional parts of the metering system and reporting the same to TMR, Thirumala by the AE, ES, Thevalakkara.	01-08-17
2	Field inspection of the complainant's HT meter by the TMR wing	02-08-17
3	Inspection report of TMR wing communicated to the Deputy Chief Engineer, Electrical Circle, Kollam	08-08-17
4	Letter addressed to the Appellant for replacement of faulty PT and capacity enhancement of CT and allied works with copy to Executive Engineer, TMR, Special Officer (Revenue), Executive Engineer, Karunagappally Assistant Executive Engineer, Electrical Sub Division, Karunagappally and Assistant Engineer, Electrical Section, Thevalakkara	10-08-17
5	Despatch of the letter under item (4) above to the Appellant	11-08-17
6	Return of the unserved letter under item (4) above	18-08-17
7	Remittance of testing fee by the Appellant at Electrical Section Thevalakkara	21-10-17
8	The replacement of faulty components of the HT metering communicated by the Executive Engineer TMR, Thirumala	09-11-17
9	Technical specification and installation details of the metering components communicated by the Executive Engineer TMR, Thirumala	20-11-17

02. Despite the AE was on training at PETARC, Moolamattam from 9.10.2017 to 13.10.17, Sri. Madhusoodhanan Pillai, Sub Engineer was given the charge of the Assistant Engineer. Therefore no service to the consumers or applicants was affected during the period of absence of the Assistant Engineer. The Appellant reached the section office to remit the testing fee only on 21.10.2017 after a lapse of 2 months and the meter was installed on 9.11.2017. The delay in remitting the fee for testing, if any, is not caused by any deficiency from any one of the employees of the licensee. The allegation made by the Appellant is to justify the inordinate

delay caused by her in replacing the faulty metering components within the prescribed period and hence the contention of the Appellant is bereft of bonafides. It is stated by the Appellant that he was directed to contact the Assistant Engineer when she returns from leave. But the Appellant has failed to place on record or name the official who had given such a direction. Therefore the averments of the Appellant are fabricated and have no direct bearing on the facts being considered and hence the same can't be sustained.

The general conditions for HT and EHT tariff under para 4 (d) of part B provides that "if any existing consumer, having elected to purchase and supply the meter for replacement of the defective meter in his premises, fails to do so within two months, such consumer will, be charged 50% extra over the prevailing rates applicable to him for both demand and energy for the said two months and one month thereafter." It is therefore obvious that the aforesaid tariff condition stipulates replacement of defective meter and not the mere remittance of the testing fee within the two months.

3. 50% extra over the prevailing rates for both demand and energy for the prescribed period was raised by the Special Officer Revenue, KSEB Ltd. strictly in adherence with the general conditions for HT and EHT tariff under para 4 (d) of part B. Further the complaint OP No. 94/2018 made by the Appellant against the said invoice was dismissed by the CGRF (South) on the ground that the faulty meter should have been replaced before the expiry of two months from the date of receipt of intimation from the Licensee which is 22.08.2017.

The Appellant is disputing the finding of the Deputy Chief Engineer as to the "PT unit is suspected to be faulty" without having subjected the PT to various testing. In this context, it is submitted that while downloading tamper events from the energy meter after detecting low PT secondary voltages, it was obtained that voltage failure R phase as per sequential storage for events on occurred at 21:52:57 hours on 20.05.2017 and its duration was 70 days 23 hours 5 minutes and 45 seconds. From the duration of the voltage failure, it would be evident that the R phase voltage is missing from 20.05.2017 onwards and it persisted during the inspections of the Assistant Engineer, Electrical Section, Thevalakkara on 01.08.2017 and TMR Thirumala on the next day. This is the circumstance leading to the issuance of the letter seeking replacement of faulty PT unit to the Appellant. At the same time the energy meter, CT and PT are owned by the Appellant and the appellant can request the licensee to inspect and test the meter installed in his premises if he doubts its accuracy by applying to the licensee in the format given in Annexure 15 to the Reg. 116(4) Supply Code 2014 along with the requisite testing fee. In the case at hand, the appellant never sought to get the PT tested at accredited or approved lab by remitting the requisite fee.

By virtue of the para 4 of the HT agreement No. 18/2015-16 dt. 8.1.2016 entered into between the K S EB Ltd and consumer, the CT/PT unit and ToD meter conforming to the specification of the Central Electricity Authority and the licensee shall be installed and maintained by the licensee unless the consumer opts to purchase his meter. The maintenance of meters and associated equipment and the replacement of defective meters and associated equipment shall be done as per the provisions of the Supply Code 2014 as amended from time to time. In the case at hand, the appellant has elected to purchase the meter and the meter was tested, calibrated, sealed, installed and maintained by the licensee. The consumer hasn't made any representation for the purchase of the meter by the licensee yet. Further, as per clause 9 (b) of the said agreement, the tariff notification issued by the KSEERC for the Licensee from time to time shall form part of this agreement and this agreement shall stand modified to that extent.

It is obvious from the above set of events under TABLE -1 that the complainant has failed to replace the faulty PT within two months of its communication from the office of the Deputy Chief Engineer, Electrical Circle, Kollam. The metering components were replaced on 9.11.2017, ie, 90 days after the intimation to the complainant. Therefore the appellant is liable to pay the 50% extra charges in compliance the general conditions for HT and EHT tariff under para 4 (d) of part B.

The Appellant's meter is faulty with effect from May 2017 due to the failure of PT and hence the licensee is entitled to recover the amount undercharged to the tune of Rs. 10,86,969/- on account of the PT failure for the period from 05/2017 to 10/2017, in consonance with Reg. 134 (1) of the Supply Code 2014. The consumer has filed a writ petition WP C No. 39115/2018 before the Hon'ble High Court of Kerala challenging the invoice for Rs.10,86,969/- and the Hon'ble Court has disposed the matter on 03.12.2018 directing the appellant to approach the competent appellate authorities and the consumer preferred another complaint OP 154/2018 challenging the said short assessment bill. The appellant is also liable to pay 50 % extra over the prevailing rates applicable to him for both demand and energy for the two months during which the appellant failed to replace the faulty metering component and one month thereafter as per condition 4(d) under PART B of the extra ordinary gazette dated 21.04.2017. -

Analysis and findings:

The hearing of the case was conducted on 18-01-2019 in the CGRF Court Hall, Kottarakkara and Sri. P.R. Milton, Advocate represented for the appellant's side and Smt Sheeja Beegom K.B., Assistant Executive

Engineer, Electrical Sub Division, Karunagappally appeared for the respondent's side. A second hearing was conducted on 26-02-2019 in the Court hall of CGRF, Kottarakkara and Sri. P.R. Milton, Advocate represented for the appellant's side and Smt Sheeja Beegom K.B., Assistant Executive Engineer, Electrical Sub Division, Karunagappally, Sei. P. Pradeep, Supdt., office of the SOR, and Sri. Noushad, Assistant Executive Engineer, Nodal Officer, (Litigation), Electrical Circle, Kollam 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 Appellant's meter is faulty with effect from May 2017 due to the failure of PT and hence the respondent has issued a short assessment bill to recover the amount undercharged to the tune of Rs. 10,86,969/-. The respondent has clarified that the said amount includes the bill of the faulty period of metering system and the penalty of non-installation of PT (part of the metering system) within the prescribed period. The appellant preferred another complaint OP 154/2018 before the CGRF challenging the said short assessment bill.

The appellant had approached the CGRF in OP No. 94/2018 against the billing 50% extra over the prevailing rate applicable both demand and energy charges for the two months and one month thereafter during which the appellant failed to replace the faulty metering component. Since the CGRF dismissed the petition, the appellant filed a writ petition No.39115 of 2018 before the Hon'ble High Court of Kerala on 03-12-2018 against the order of CGRF dated 5-11-2018. The Hon'ble Court not inclined to entertain the writ petition and directed the appellant to approach the competent Appellate Authority, vide judgment dated 03-12-2018. Accordingly the appellant filed this appeal petition No. P/89/2018 on 10-12-2018 against the orders of the CGRF. Hence this Authority has examined and taken the following decision on the subject matter dealt by the CGRF in OP No.94/2018.

The appellant's main argument is based on the fact that in the letter dated 10.08.2017 of the Deputy Chief Engineer, the respondent Board has not given a cut of date for replacing the meter unit and on receipt of the letter on 22.08.2017 the appellant has made arrangements to purchase the new meter and on 09.10.2017 the appellant purchased the meter.

The respondent has stated that 50% extra over the prevailing rates for both demand and energy for the prescribed period was raised by the Special Officer Revenue, KSEB Ltd. strictly in adherence with the general

conditions for HT and EHT tariff under para 4 (d) of part B. The metering components were replaced on 9.11.2017, i.e., 90 days after the intimation to the appellant and as per clause 9 (b) of the agreement executed between the respondent and the appellant, the tariff notification issued by the KSERC for the Licensee from time to time shall form part of the agreement and the agreement shall stand modified to that extent.

In this case, it is clearly proved from the records that the appellant has been received the letter issued by the Deputy Chief Engineer on 22-08-2017 only and it does not contain a definite instruction to replace the meter within the specific time span. The general conditions for HT and EHT tariff under para 4 (d) of part B provides that "if any existing consumer, having elected to purchase and supply the meter for replacement of the defective meter in his premises, fails to do so within two months, such consumer will, be charged 50% extra over the prevailing rates applicable to him for both demand and energy for the said two months and one month thereafter." This provision never insists the installation of the meter within two months from the date of receipt of the communication from the licensee, but the consumer has to purchase and supply the meter within two months. Any delay caused beyond the two months for testing, calibrating, sealing and installing the meter by the licensee is not the liability of the consumer. In this case the appellant purchased the meter on 09-10-2017 and she claimed that she produced it for testing in time but nobody in the office of the respondent was accepted the fee to testing the meter unit and only on 21.10.2017 the respondent has accepted the fee for testing the meter unit. Though this controversy exists, the appellant has produced the purchase bill dated 09-10-2017 of the meter and the fee remitted on 21-10-2017 for testing the meter. The letter dated 21-10- 2017 of Assistant Engineer, Thevalakkara is also confirmed this fact. Hence it is clearly proved that the appellant has produced three numbers of CT and one number of PT for testing and certification within the prescribed period.

Further it is mandatory to comply with the provisions relating to issue of Notice to the Consumer under Regulation 174 and 175 of the Supply Code, 2014. This was not seen done by the respondent.

Decision:

From the analysis done above and the conclusions arrived at, I take the following decision.

As the appellant produced the newly procured CT and PT units before the KSEBL within the prescribed time limit, there is no need to impose 50% extra as penalty. As such the 50% extra imposed for three

months over the prevailing rate applicable both demand and energy charge is quashed.

The respondent has also failed to take proper action as specified in the Kerala Electricity Supply Code, 2014, Regulations 174 and 175, by which it was required to issue notice detailing the time limit etc for replacement and a proper service of the notice.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having some merits and is allowed. The order of CGRF, Kottarakkara in Petition No. OP/94/2018 dated 05-11-2018 is set aside. No order on Costs.

ELECTRICITY OMBUDSMAN

P/089/2018/_____ /Dated:_____

Delivered to:

1. Smt. Shanima Ishak, Managing Partner, M.G. Roller Flour Mills, Thevalakkara, Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Karunagappally South, Kollam

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.