

THE STATE ELECTRICITY OMBUDSMAN  
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,  
Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9539913269  
Email:ombudsman.electricity@gmail.com

---

APPEAL PETITION No. P/007/2019  
(Present: A.S. Dasappan)  
Dated: 26<sup>th</sup> March 2019

Appellant : Sri A.M. Mohammedali  
Managing Partner  
M/s. Mubaraq Granite Industries  
West Chathallur, Othayi  
Edayanna, Malappuram Dt

Respondent : The Assistant Executive Engineer  
Electrical Sub Division  
Kerala State Electricity Board  
Wandoor

### **ORDER**

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

The appellant is the Managing Partner of M/s. Mubarak Granite-Industries, West Chathalloor, Othayi, Edavanna in Malappuram Dt, was having a low tension three phase industrial service connection with consumer number 18078, under Electrical Section, Edavanna, Malappuram. The appellant has complained that the energy meter in his premises is over reading and requested that the same may be tested at TMR Division. The appellant remitted the fee for testing the meter on 12/7/2011 and the meter was tested on 22/10/2011 at TMR Division, Shornur and the test report revealed that the meter was faulty as it showed abnormal pulses on load. The appellant then represented KSEB to refund the overcharged amount from 11/2009 to 10/2011. The KSEB has prepared a calculation statement that an amount of Rs. 15,74,558/- is to be reimbursed to the appellant, as the amount collected during the meter faulty period was in excess. On 31/12/2013, the supply was dismantled due to the up gradation of the electrical connection to High Tension (HT) and thereafter the cash deposit was refunded in January 2014.

But no action was taken to refund the excess amount collected, the appellant is stated to have made complaints many times for the same before the KSEB authorities. Since no steps were taken to refund the excess amount collected,

the appellant filed a complaint before the CGRF which was dismissed, holding that no claim either due to the licensee or due to the consumer shall be raised after dismantling service connection, vide order O.P. No. 69/2018-19 dated 18-12-2018. Aggrieved by this order of the CGRF, the Appellant has submitted this appeal before this Forum.

**Arguments of the appellant:**

The appellant is the Managing Partner of M/s. Mubarak Granite-Industries, West Chathalloor, Othayi, Edavanna in Malappuram Dt. The crux of the complaint of the appellant is that the meter installed in the premises of the firm with consumer number 18078 was found faulty during the year of 2011 and the appellant alerted this issue to the respondent on several occasions initiating to test the meter before T M R Division, Shornur. The test report of the T M R division revealed that the meter was faulty as it showed abnormal pulses on load.

The appellant states that he cleared the bills without any default without knowing the fact that meter was faulty. The appellant brought the matter before the respondent again on 05.11.2011 and thereafter the respondent considered the request and follow up had been initiated to redress the grievances of the appellant herein. Thereafter the respondent had decided to test the meter at T M R Division, Shornur. The test results showed that the meter was faulty. It is intimated by the respondent that the meter had shown abnormal hike from 12.06.2009 to 01.10.2011 and after changing the meter, the consumption recorded reduced to 1/3 from 20.01.2011 onwards. In view of the assessment and calculation statement the respondent declared that an amount to the tune of Rs. 15,74,558/- is to be reimbursed to the appellant, as the amount collected by the respondent during the meter faulty period was in excess. It is alleged that the fact if the malfunctioning of the meter after the testing had been suppressed by the respondent for a long time without divulging the test result of the meter to the appellant.

Meanwhile the supply had been dismantled on 31/12/2013 in connection with up gradation of the electrical connection and thereafter the CD and the advance amount had been refunded to the appellant on the month of January 2014. During the time of dismantling the connection, the appellant had alerted the issue, but the respondent specifically instructed to file request excluding the excess amount remitted during the meter found faulty and further intimated to the appellant that the amount shall be refunded later after settling the C D and the advance amount. Thereafter the respondent had turned back. The respondent was reminded vide letters 07.03.2014, 11.06.2014, 18.09.2014, 07.01.2015, 18.06.2015 and on 02.03.2016 but the respondent discarded all the requested of the appellant. Fortunately, the last communication sent through registered post was responded by the respondent and taken stance that they could not admit the request as it was a dismantled connection and all the dues were already settled.

The respondent or his staff were reluctant to explain, why the claim was declined. However, realizing the plight of the appellant certain other employees co-operated with appellant and procured certain copies of the office communications with regard to the dismantling. The respondent further advised to take legal action against the respondent for reimbursing the amount remitted in excess. It is alleged that the respondents are totally insolent towards the demand and the right of the appellant herein and which can be treated as deficiency in service.

After hearing the Forum has declined the prayer of the appellant by stating that as per rules in force an electric connection cannot be dismantled without preparing the final bill and no claim either due, to the licensee or due to the consumer shall be raised after dismantling service connection and further observed by the lower Forum that the examination of documents, it is observed that the appellant failed to establish that he had continuously made requests to refund of excess amount within the time frame, thereby the lower Forum has dismissed the complaint of the appellant herein, hence this appeal.

The lower Forum below ought to have considered that the respondent had failed to consider the claim of the appellant while dismantling the electricity connection for up gradation and it will amount to gross misfeasance, dereliction of duty and deficiency of service on the part of the staff of the respondent herein. The lower Forum ought to have considered that the office documents supplied from the office of the respondent is relevant to the just decision of the complaint filed by the appellant herein. In addition, the lower Forum has failed to evaluate the suppression of true facts and deviation from the contents of documents supplied from the office of the respondent is against the natural justice. It is pertinent to note that the respondents herein have not denied any of the contents of the documents produced by the appellant.

The lower Forum has failed to consider the application of the appellant to examine the official witness to prove the contents of the documents produced by the appellant. The lower Forum ought to have considered that on several occasions the appellant had alerted the issue within the time frame before the respondent herein. The lower Forum has discarded the applications made by the appellant on several occasions before the respondent blindly, the reason best known to them only.

In the above circumstances, it is requested that this Appellate Forum may be pleased to:

- a. set aside the order in OP. 69/2018-19 dated 18.12.2018, and allow the appeal.

**Arguments of the respondent:**

The appellant has approached this Forum merely on experimental basis as there is no real cause of action as alleged by the appellant. The present claim is time

barred. Since it is raised after an indefinite period and it is a fictional claim. It is true that the appellant, the Managing partner of M/s Mubarak Granite Industries, West Chethallur, Othai, Edavanna, Malappuram (dist) was the registered owner of a three phase industrial connection under LT IV A tariff with Con. 18078 (with a connected load of 66840 watts) for running a crusher unit. The connection was effected on 18/02/2005 and the service was dismantled on 31/12/2013 after adjusting the cash deposit as per the request of the appellant for up gradation to HT connection.

Presently the appellant is an HT consumer of Edavanna Section, which shows that there was no decrease in consumption as stated by the appellant. The energy meter of Con. No. 18078 under the Electrical Section Edavanna was tested on 22/10/2011 at TMR Division Shornur and declared as faulty. The appellant paid Rs 10/- and Rs 50/- as Application fee and testing fee respectively on 12/07/2011 for testing the meter. The appellant has not made any dispute over the functioning of the meter prior to this date. The claim of the appellant for the reimbursement of payment already made for the consumption of power for the period from 11/2009 to 10/2011 is unsustainable. After consuming the power for his business purpose and he was also well aware of the fact that the payments made in commensuration with his power consumption for his business thereby not making any complaint as to the veracity of the meter for the above period, the claim made at present is imaginary, ill-motive and only on experimental basis. The appellant has not claimed reimbursement or any kind of claim before dismantling the LT connection and availing new HT connection.

It is not true that the appellant had remitted the charges without knowing that the meter is faulty. The appellant consumer remitted the demand raised without any hesitation/protest, which means that he was convinced of his true consumption.

Moreover during those periods there were no restrictions in the business activities of the quarry industry. It is not true that after knowing the meter found scientifically faulty, the same had been suppressed by the opposite party for a long time without divulging the test result of the meter to the appellant. The appellant himself admits that he had alerted the issue in writing to the opposite party on 05/11/2011 along with the copy of the test report.

It is declared from the office of the opposite party that from 12/06/2009 to 01/10/2011, the meter had shown abnormal hike and after changing the meter the consumption rate recorded has come down is also not true. The hike and fall is observed even before and after the meter change. The hike and fall depends upon the connected load, additional load used, working hours of the equipments and utilization as per demand in the business. The appellant has not filed any application for refund other than security deposit at the time of dismantling of service connection on 31/12/2013.

It is not true that the opposite party specifically instructed to file request excluding the excess amount remitted during the meter faulty period and further

intimated that the amount shall be refunded later after settling the CD and advance amount and thereafter the opposite party had failed to consider refunding the above said amount. The very fact that the conversion of the connection from LT to HT itself proves that appellant requires more consumption of power for running his industry/business.

No communication from the appellant is received in this office on 07/03/2014, 11/06/2014, 18/09/2014, 07/01/2015 and 18/06/2015. A registered letter from the appellant is received on 02/03/2016 and a reply to the same has been sent to the address of appellant on 04/04/2016. The appellant has not approached the respondent after receiving the communication dated 04/04/2016 knowing the background of reason for rejecting the application of the claim of the appellant. The admission of the appellant that he has obtained certain copies of the office communications without proper channel and obtaining the same illegally proves his malafide intention.

Hence it is respectfully submitted that the appellant is not entitled for any relief as sought for in the above petition and prayed before the Forum to declare that the action of the Respondents are well within the purview of the prevailing rules and regulations and is in order and prayed to dismiss the petition with cost.

### **Analysis and Findings:-**

The hearing of the case was conducted on 14-03-2019, at the Office of the State Electricity Ombudsman and Sri. Pradeep P.S., Assistant Executive Engineer, Electrical Sub Division, Wandoor and Sri Usman P Assistant Engineer, Electrical Section, Edavanna, represented the responder side. The appellant was absent. A second hearing conducted on 25-03-2019 and Sri.M.M. Ashraf, advocate was present for the appellant. On examining the Petition, the argument note 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 point to be decided is

- 1). “Whether the request of the consumer to refund the excess energy charges paid to KSEB for the period from 11/2009 to 10/2011 is admissible?”

The grievance of the appellant is that the excess amount so far collected during the meter faulty period has not been refunded. The supply had been dismantled on 31/12/2013 and the CD was refunded to the appellant on the month of January 2014. According to the appellant, the respondent specifically instructed to file request excluding the excess amount remitted during the meter found faulty and further intimated to the appellant that the amount shall be refunded later after settling the CD. The respondent was reminded vide letters 07.03.2014, 11.06.2014, 18.09.2014, 07.01.2015, 18.06.2015 and on 02.03.2016. The respondent has stated that no

such letters were received by him and a registered letter was received on 02-03-2016. The respondent has given a reply to this registered letter on 04-04-2016 on rejecting the request of the appellant on the grounds that all the dues were already settled as it was a dismantled connection. On verifying the records furnished by the respondent, it is found that the respondent had sent a letter dated Nil, on the basis of an application from the consumer, to the Executive Engineer, Electrical Division, Nilambur and received in his office on 06-02-2014, requesting orders on refund of an amount of Rs. 15,74,558/- as excess amount collected from the appellant. Also it is found from the letter dated 02-07-2012 of the Assistant Engineer, Electrical Section, Edvanna to the Executive Engineer that recommendation was made for the refund of the excess amount collected from the appellant for the period from 11/2009 to 10/2011 on the strength of the calibration certificate of the energy meter issued by the TMR, division, Shornur and this letter was on the basis of the application dated 5-11-2011 submitted by the appellant. The Assistant Engineer had also reported that there was no connected load variation till the dismantling of LT service connection. The Executive Engineer, Nilambur had directed the Assistant Executive Engineer to clarify some points for taking the matter with higher ups, vide his letter dated 06-03-2014. Even- though this Authority directed to furnish a copy of the reply given to Executive Engineer by the respondent, it is submitted by the respondent that no such reply letter available in his office. Considering the above points, the respondent's version that the appellant had not requested for refund of excess amount is not believable and not correct.

In this case there is no dispute that the appellant's meter was faulty and it was clearly revealed from the test report. The respondent in his letter dated Nil addressed to the Executive Engineer has stated that 'the suspected meter sent to TMR Shornur for testing and certified that the meter was showing abnormal readings and declared faulty. After changing the meter on 20-10-2011 and on verification of previous readings and readings after, it is observed that the meter was showing abnormal readings from 04-11-2009 to 20-10-2011. This period can be taken as the faulty period and the consumption during this period can be taken according to the average readings received for six months after changing the meter'. Hence it is clearly proved that the meter was faulty and excess amount collected from the appellant during the period from 04-11-2009 to 20-10-2011. The objection raised by the respondent is that an electric connection cannot be dismantled without preparing the final bill and no claim either due to the licensee or due to the consumer shall be raised after dismantling service connection. The CGRF has also admitted this argument of the respondent and it is further stated in its order that the petitioner failed to establish that he had continuously made requests to the refund of the excess amount within the time frame. Once a request is made by the consumer, the respondent is duty bound to take proper action on that request. In the rules, there is no specification for a time frame to submit a request of the refund by the consumer. Regulation 145 of the Supply Code, 2014 specifies the claims due to the licensee only. The regulation reads as:

*"145. Dismantling on the request of the consumer.-*

- (1) *In case a consumer desires his service to be dismantled and the service connection agreement to be terminated, he shall apply for the same in the format specified in Annexure - 20 to the Code.*
- (2) *The licensee shall give a written acknowledgment of receipt of such request, on the spot.*
- (3) *The licensee shall, within ten days from receipt of the request, carry out a special reading and prepare a final bill including all arrears up to the date of such billing.*
- (4) *The licensee may disconnect the supply of electricity immediately after the special reading is taken.*
- (5) *On payment of all dues by the consumer, the licensee shall issue a No Dues Certificate and a receipt for the payment with the words 'Final Bill' stamped on it.*
- (6) *Thereafter, the licensee shall not have any right to recover any charge for any period prior to the date of final bill.*
- (7) *The licensee shall not raise any bill after dismantling."*

As per Regulation 24 (6) of the Supply Code, 2005, *"If it is established that after payment of the bill, the Licensee has overcharged the consumer, the excess amount shall be repaid within two months with interest at twice the bank rate"*. The regulation 134 (3) Of the Supply Code 2014 also says *"(3) The licensee may refund such overcharged amount along with interest at bank rate as on the date of remittance of such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque."*

The average consumption prior to the meter faulty period is more or less same as the average consumption fixed by the respondent after the faulty meter replacement.

The Clause 24 (5) of the Supply Code permit the licensee to recover the amount undercharged from the consumer and hence refund of the overcharged amount to the consumer is also natural if it were found as a bonafide one. The consumer has requested the refund of the overcharged amount during the period from 11/2009 to 10/2011. Considering facts of the case and the request seem to me as genuine, I am of the view that the request is reasonable.

**Decision:**

Considering facts of the case, as it was confirmed the excess billing and the request seem to me as genuine, and under the provisions of Regulation 24 (6) of Supply Code, 2005 and Regulations 134 (3) and 145 of Supply Code 2014, I am fully convinced that the request of the appellant is reasonable and justifiable. Hence I decide that the order of the CGRF stands quashed. The excess amount collected from

the appellant for the period from 11/2009 to 10/2011 shall be refunded by the respondent. The refund shall be made within 60 days of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is allowed and stands disposed of as such. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/007/2019/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri A.M. Mohammedali, Managing Partner, M/s. Mubaraq Granite Industries West Chathallur, Othayi, Edayanna, Malappuram.
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board, Wandoor

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, Gandhi Road, Kozhikode