

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/024/2019
(Present: A.S. Dasappan)
Dated: 24th May 2019

Appellant : Sri. Pradeepan M.P.,
Sincere Ice Plant,
Puthiyappa P.O.,
Kozhikode

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, West Hill,
Kozhikode

ORDER

Background of the Case:

The Appellant is running an ice factory under the name and style of M/s Sincere Ice Factory bearing consumer No.5754 under LT-IV A Tariff with a connected load of 37614 watts and contract demand of 38 kVA under Electrical Section, Eranhickal. The registered owner of the connection is Sri. M.P. Chandran. On 01-09-2018, while taking the reading, it was noticed that voltage in one phase was not getting recorded in the meter. Consequently, the premises of the consumer was inspected on 24-09-2018 by a team of KSEB Limited led by the Anti Power Theft Squad (APTS) of Kozhikode unit. A site mahazar was prepared by the Sub Engineer Sri. Illiyas of Electrical Section, Eranhickal. An irregularity of metering was detected as the B phase voltage connection to the energy meter was rusted and as a result the same got disconnected at the taping point and due to this reason B phase voltage was missing at the terminal of the energy meter. So as to compensate revenue loss to the Board for the unrecorded portion of energy, the Assistant Engineer, Electrical Section, Eranhickal, issued short assessment bill by directing the appellant to pay Rs 4,41,504/-. Aggrieved by the short assessment bill, the appellant filed petition before CGRF, Kozhikode requesting to quash the bill. The Consumer Grievance Redressal Forum disposed the OP No.116/2018-19 filed by the appellant and ordered on 11-02-2019 that the short assessment is limited to one year and the appellant is allowed to remit the amount assessed

in 20 installments. Still aggrieved by the said order, the appellant has filed the Appeal Petition before this Authority.

Arguments of the appellant:

The connection is registered in the name of the appellant's late uncle. The ice plant was jointly owned by the late father of the appellant, his two uncles and an aunt and is presently being managed by the appellant on behalf of the whole family as it is a Family business.

The appellant has been promptly and responsibly paying the monthly dues corresponding to Consumer No. 1166064005754 till date, in accordance with the monthly meter reading. However the findings of the APTS is that there is some defect in the phase connection at one of the terminals of the meter and that caused an incorrect reading, showing approximately a reduction of 33% in the power consumption. KSEBL has not alleged any tampering or manipulations from the side of the appellant. In fact it is alleged that the said possible faulty connection is a result of rusting.

The terminals are maintained under the seal of the KSEBL. It is unfair and arbitrary to recover any amount from the appellant when there is no mistake on his part. The Assistant Executive Engineer of the KSEBL thereafter raised a bill dated 14-11-2018 demanding a sum of Rs. 4,41,504 (Rs. Four Lakhs Forty One Thousand Five Hundred and Four only) on the appellant. The appellant will be forced to close down the ice plant if he is compelled to pay the amount that is now demanded to be recoverable from him by the KSEBL which is Rs. 4,41,504/-.

The CGRF thereafter issued an order stating that the appellant was undercharged and that an amount is recoverable from the appellant for the period of 2017 and partly of 2018. However, the CGRF also found that the appellant is innocent of any mistake on his part and that it is negligence on the part of the employees of the licensee that has caused the alleged inaccurate reading. The CGRF pointed out that as per Sections 104 and 113 it is the mandatory duty of the licensee, to supply electricity, only through a correct meter and measure the energy supplied to a consumer correctly.

However, the CGRF also stated that as per Section 152 (1 to 3) of the Supply Code, 2014, the licensee is entitled to recover electricity charges undercharged from the consumer if it is established and that it stands proved that the consumer was undercharged for the period of 2017 and 2018 partly.

The CGRF ought to have found that procedure under regulation 113 of the Kerala Electricity Supply Code, 2014 was not followed in examining the meter. The electricity meter was removed by the APTS of the KSEBL. However it has not been tested in any accredited laboratory or in an approved laboratory.

Procedures are prescribed in order to ensure that there is justice and fair play. Violation of such procedures infringes the rights of the appellant who is a layman. The appellant does not know whether the said meter was really faulty and whether the calculation made by KSEBL is correct. Non-adherence to the procedures prescribed in the Regulations vitiates Annexure -II and the same hence deserves to be quashed.

Further, it is admitted by the KSEBL that the alleged 33% reduction shown is an approximate value made in a Best-Judgment fashion. This is arbitrary especially when there is violation of procedures.

It is also admitted that the period during which the alleged defect caused the alleged reduction in the meter consumption reading, is not clearly known. When neither the defect, nor the period during which the alleged defect existed has been proven, it is unfair, unjust and arbitrary to demand an exorbitant amount of Rs. 4,41,504/- from the appellant who will then be forced to close down the ice plant managed by him.

The tariff which has been calculated and fixed by KSEBL per unit normally includes inspection and administrative charges of KSEBL and not generation and supply charges alone. Hence, KSEBL was duty bound to discharge its duties and responsibilities regarding proper inspection and maintenance of their equipment installed at the consumer's (the appellant herein) premises. Hence the abdication of that duty by the officers of KSEBL should not result in mulcting the liability on to the appellant. As rightly observed by the CGRF in its order the concerned employees of the KSEBL who are duty bound to periodically inspect and maintain meters provided to consumers must be penalized for their negligence. After accepting the prompt payment of all the bill from the appellant, the KSEBL should not penalize the appellant for their mistake.

Such, arbitrary Demands will break the back of small establishments such as the appellant's which totally depend on the volatile, unpredictable and unreliable trends prevalent in the Fishing Industry for their survival.

The order of the CGRF, Northern Region does not take note of the above aspects and hence deserves to be interfered with.

Relief sought for:

- a) The above arbitrary and unjust order of the CGRF, Northern Region be quashed and set aside.
- b) The bill dated 14-11-2018 be quashed thereby exempting the appellant from paying any amount as demanded by KSEBL.

Arguments of the respondent:

This appellant has filed a writ petition (WPC no.9794/2019) before the Hon'ble High Court of Kerala for the same relief as the one he has sought in this petition. The appellant has impleaded the Ombudsman as 3rd Respondent in the said writ petition. This has created a situation where the same kind of petition has been filed before two different Fora and this is against the basic norms of law. Besides the above, the appellant has submitted a declaration before this Ombudsman which is a part of the petition that "The subject matter of the present complaint has not been pending/decided by any Forum/Court/Arbitrator/any other authority". By this declaration the appellant has made a perjury before this Ombudsman on the basis of which alone this petition is liable to be dismissed in limine.

(2) The appellant has submitted the petition before this Ombudsman not as a registered consumer. The appellant has been using an electric connection bearing consumer No. 5754 which is registered in the name of one Mr. Chandran M.P., Managing Partner, Sincere Ice Factory under Electrical Section, Eranhickal, West Hill Sub Division, Kozhikode.

(3) While taking monthly reading of the meter attached to the above consumer number on 01-09-2018 it was found that one phase voltage was not getting recorded in the meter. The meter was scrolled for getting details such as kVAh, kWh, RMD etc and the omission of one phase voltage in the meter was discerned by the Board official, concerned. The matter was passed over to APTS Wing, Kozhikode for a detailed examination and APTS conducted a detailed testing of the metering equipments on 24-09-2018. During the testing the APTS could find that the B phase voltage connection to the energy meter, was rusted and as a result the same got disconnected at the taping point and due to this reason B phase voltage was missing at the terminal of the energy meter. The defect on B phase voltage connection was rectified and the metering system was tested at site for its proper functioning on 24-09-2018 itself.

(4) The average monthly consumption recorded for the period from Aug 2016 to May 2017 excluding June 2017 and July 2017 is 19704 units. Here the average consumption has been assessed by excluding consumption for the month of June 2017 and July 2017 because during the said period there had been trolling ban in the sea which invariably leads to low consumption by ice factories as production of ice cubes depends on fishing. The average kVAh for the above months is 21676 and maximum demand is 44 kW.

(5) The average monthly consumption for the following 8 months (excluding trolling period) spreading from October 2017 to May 2018 is 12810 units. The

average kVAh for the said period is 13255 with Maximum Demand at 24 kW. This is the period when one phase of voltage is seen missing.

(6) The defect was rectified on 24-9-2018 and the meter readings taken after the short assessed period substantiates the faulty recording of consumption. Accordingly the consumption recorded in October 2018 is 17760 units and in November 2018 it is 18640 units which show a jump in the consumption pattern compared to the proceeding months. The kVAh and RMD for 10/2018 is 18360 units & 39 kW respectively and those for 11/2018 are 19440 units and 38 kW.

(7) Going by the consumption pattern of the said consumer it can be noted that there had been normal consumption before 6/2017 and after that (i.e., up to 24-09-2018) there was a sudden dip in the consumption and it again took momentum after the defect in the metering system was rectified.

(8) The fault record of the above meter was down loaded on 15-12-2018 and as per which the meter started to record consumption without one phase voltage from 25-7-2017 onwards i.e., from 25-7-2017 to 24-9-2018 (the date on which the defect is rectified) and during that period the meter had been recording consumption without one phase voltage.

(9) It is clear from the consumer profile that even if the consumption in the trolling ban period which is comparatively less is taken in to account the RMD is seen to be 42 kW in 6/2016, 43kW in 7/2016, 38kW in 6/2017 and 35 kW in 7/2017. But the RMD during the period from 8/2017 to 8/2018 is seen to be 2/3rd of the previously recorded RMD. The RMD is raised to normal value after rectifying the defect, i.e., 36kW to 39kW for the period 9/2018 to 11/2018.

(10) As one phase of voltage out of three phase was missing, the meter could record only 2/3rd of actual consumption or in other words 33.33% of the consumption were not recorded during the period from 25-7-2017 to 24-9-2018 i.e. for fourteen months. From the reading details of the consumer for the past 2 year period it is obvious that the recorded consumption is only 2/3rd from October/2017 to Sept/ 2018. The Maximum Demand recorded during this period is only 24kW (i.e., 2/3rd of Contract Demand) and for the period before that was 44kW and after the error was rectified the RMD was 39 kW.

(11) In the light of the above facts a short assessment bill for Rs 4,41,504/- has been raised for the period from 10/2017 to 9/2018 (for 12 months) in order to make good the loss incurred to KSEBL. Here when the above short assessment bill was raised (i.e., on 14-11-2018) the actual period for which the meter was recording consumption without one phase voltage could, not be ascertained and hence a period of 12 months was taken for raising that assessment bill. However on 15-12-2018 the fault record of the meter was

down loaded as per which the actual period from which the meter recorded consumption without one phase voltage was determined. As per the down loaded data the error occurred from 25-7-2017 to 24-9-2018 i.e., for 14 months. In the light of the above the short assessment bill for Rs 4,41,504/- which was raised for 12 months only should be revised and the respondent may be permitted to issue a revised short assessment bill for Rs 5,23,599/-. Otherwise the respondent would have to suffer revenue loss to the tune of Rs. 5,23,599/-

(12) As per Regulation 134 (1) Kerala Electricity Supply Code 2014, Kerala State Electricity Board Limited has the statutory right to recover the aforesaid undercharged amount from the consumer.

(13) The short assessment bill raised is only for the electricity consumed by the appellant and it is the responsibility of the consumer to pay electricity charges for the energy he has used. Moreover, the aforesaid short assessment is only for the electricity used by the consumer and the same is issued without any interest.

The respondent requests to dismiss the petition filed by the appellant and direct the consumer in respect of Consumer No. 5754 under Electrical Section, Eranhikkal to pay Rs 5,23,599/-, being the short assessment bill for the period from 25-7-2017 to 24-9-2018.

Analysis and Findings: -

The Hearing of the case was conducted on 02-05-2019, in my chamber at Edappally. Smt. Niharika Hema Raj, Advocate represented the appellant's side and Sri. A. Vijayakumar, Assistant Executive Engineer, Electrical Sub Division, West Hill, Kozhikode, 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 respondent has challenged the maintainability of the appeal petition on the following grounds. Firstly the appellant has filed a writ petition (WP(C) No. 9794/2019 before the Hon. High Court of Kerala for the same relief as the one he has sought in this petition and secondly the appellant is not the registered consumer. It is found that the writ petition was filed by the appellant on 29-03-2019 with a request to prevent the respondent from taking coercive steps like disconnection of supply etc. and the Hon. High Court of Kerala disposed of the writ on the strength of the affidavit of KSEBL that no action will be taken by them till the disposal of the case by the Ombudsman. Hence this objection of the respondent is not sustainable. The second point relates to the

maintainability as registered consumer, the appellant has stated that the registered consumer was expired and the appellant is the present consumer. He is remitting the bills and the arrear bill is seen issued to him.

As per Regulation 2.1 (e) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a complainant is defined as

- (i) any consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;
- (iii) the Central Government or State Government - who or which makes the complaint
- (iv) in case of death of a consumer, his legal heirs or representatives.

Here in this case, the appellant, Sri Pradeepan M.P. comes under the definition of 'Complainant' and hence the petition is maintainable.

The APTS has inspected the consumer's premises on 24-09-2018 and found missing of voltage in 'B' phase of the energy meter, thus resulting in the recording of a lower consumption than what is actually consumed. The connected load of the appellant in the premises is 38 kW and contract demand is 38 kVA. A site mahazar was prepared and meter data was downloaded. As per the data downloaded, the missing of voltage in one phase was from 25-07-2017 to 24-09-2018. The appellant was issued a short assessment bill for one year to recover the energy escaped from billing due to CT's fault in one phase. 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 appellant's contention is that he may not be burdened for the negligent act of the respondent who failed to perform its duty in ensuring that the meter was in proper working condition. Further it is submitted that the respondent has no case that the appellant manipulated the meter in any manner. The appellant has contended that if there was failure of the voltage connection as assumed by the licensee, it could be easily found out by the Sub Engineer who had taken the monthly readings regularly. Since it was not reported by the Sub Engineer during the meter reading, the period of failure cannot be established. Further the appellant contended that no scientific analysis was done by the respondents to find out the period for which the voltage in B phase was missing.

Normally, the respondent is bound to rectify the defect of the metering system, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 4,41,504/- for non-recording of energy due to defects of the B phase for one year, by taking the lost energy as 1/3rd of the actual energy. There was also three phase load connected. On perusing the mahazar, this Authority feels that the contention regarding the voltage missing in one phase noticed during inspection by APTS was correct, since the mahazar was duly witnessed and the appellant has not disputed the mahazar. Thus it is convinced that the energy recorded in the meter during the disputed period was not correct.

Refuting the above contentions, the respondent has averred that the defect of phase failure was detected by the meter reader while taking the monthly reading of the meter on 01-09-2018. The respondent relied upon the previous consumption pattern for establishing the period of phase failure. According to him, the dip in consumption for more than one year is the result of the voltage failure in the meter. It is submitted by the respondent that the meter installed in the premise is not reported as defective or damaged.

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. 4,41,504/- as per Regulation 134 of Supply Code, 2014, as claimed by the respondent.

Here in this case, the respondent declared that the voltage in B phase of the meter is detected as missing by the meter reader while taking the monthly reading of the meter on 01-09-2018 and on the basis of the inspection conducted in the premises on 24-09-2018. No data was downloaded during the inspection and the data was downloaded on 15-12-2018. As per the data downloaded the meter started to record consumption without voltage in one phase from 25-07-2017 onwards i.e., from 25-07-2017 to 24-09-2018 (the date on which the defect is rectified). It is also found that the consumption of the appellant before and after the disputed period and during the disputed period is not in a consisting pattern. The appellant's firm is Ice Plant and the consumption depends on seasonal business.

The site mahazar dated 24-09-2018 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 from 25-07-2017 to 24-09-2018.

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 fault in the meter and to avoid the loss if any occurred to the licensee. It is the responsibility of the respondent that meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter.

The respondent has issued the short assessment bill for a period of one year by taking 50% of the recorded consumption following the inspection conducted on 24-09-2018 and detecting of non-recording of energy in one phase.

The meter is not a recording or display unit only but as defined above all the components above including lead wires include a meter. Moreover, this is not a whole current meter but a CT operated meter, where external CT is connected with metering unit using lead wires and phase voltage from all three phases are tapped from the source of supply and then connected with the same metering unit. Thereby wiring is also there for this metering system. This coordinates for computing energy is lead to the processing unit of the meter unit from different components of the meter then various electrical quantities are processed then recorded cumulative or otherwise and displayed in the display unit. Any defect in any part or component of meter is defect in meter. The fact of the matter is, the metering system was defective since voltage in one phase was missing in the meter. 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 respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Hence revision of the bill on the basis of the test report is not possible in this case. Here in this case, the respondent confirmed the non recording of one phase on the basis of the inspection conducted in the premises and issued the short assessment bill for one year based on the dip in consumption during the disputed period. There is 3 phase load in the premises. The respondent has argued that the short assessment bill raised is only for the electricity consumed by the appellant and it is the responsibility of the consumer to pay electricity charges for the energy he has used and the same is issued without any interest.

There is no variation of connected load from 03/2016 to 09/2018. The average consumption for three months prior to the defect is 19027 units and after the rectification, the average consumption for three months is 18187 units. But the average consumption in the faulty period is only 12033 units. This clearly proves that the actual consumption was not recorded in the meter during the faulty period.

Decision:-

For the reasons detailed above, the appeal Petition No. P/024/2019, filed by the appellant stands dismissed as it lacks merits. The order dated 11-02-2019 in OP No116/2018-19 of CGRF, Kozhikode is upheld. But an error in the calculation statement regarding the consumption during the normal period from 1-7-2018 to 1-8-2018 is to be corrected by the respondent and to revise the bill accordingly. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/024/2019/_____ /Dated:_____

Delivered to:

1. Sri. Pradeepan M.P., Sincere Ice Plant, Puthiyappa P.O., Kozhikode
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, West Hill, Kozhikode

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