

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/035/2019
(Present: A.S. Dasappan)
Dated: 4th July 2019

Appellant : Sri. Ajayakumar K.M.,
Managing Partner, Zeal Wood,
Pattuvam P.O., Kannur

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Taliparamba,
Kannur

ORDER

Background of the case:

M/S Zeal Wood Industries is a LT-IV A 3 phase industrial consumer, under Electrical Section, Taliparamba, Kannur, having consumer No.24969. The registered connected load in the premises is 81755 watts. The consumer is running a wood industry registered in the name of Sri. Ajayakumar K.M., the Managing Partner, the appellant. The said service connection was effected on 28-03-2008. The Regional Audit Officer of Kerala State Electricity Board conducted inspection at Electrical Section, Taliparamba on 09-10-2018, and noticed an error that though the Current Transformer (CT) ratio of the metering circuit is 150/5, the multiplication factor (MF) is taken as 20 instead of the 30. On verifying the regular energy bills issued to the consumer, it was found that the bills were issued wrongly taken as MF as 20 instead of 30 from 21-10-2016 onwards. Hence a short assessment bill to recover the loss, amounting to Rs.623446/- was served to the consumer on 22-10-2018. Against this, the consumer had filed a complaint before the CGRF in Op No.119/2018-19. This was disposed of the CGRF by allowing 24 monthly equal instalments. Aggrieved by this order, the appellant preferred this appeal before this Authority.

Arguments of the appellant:

The appellant was served with a letter on 22.10.2018 demanding him to pay an amount of Rs. 6,23,446.00 (six lakhs twenty three thousand four hundred and forty six rupees) due to wrong calculation of multiplying factor by the officials of the KSEB.

As per the demand notice an inspection was conducted on 9/10/2018 by a team comprising Assistant Accounts Officer, Regional Audit Office, Sreekandapuram. It is stated in the notice that upon the inspection the 3 phase 4 wire CT meter of L & T make with serial No. 11533620 of 0.55 was verified and CT of PGR power tech with No. 1/9672 ratio 150/5 VA 10 , class 0.5 (2) , 1/9670 ratio 150/5 VA 10 class 0.5 (3) and 1/9671 ratio 150/5 VA 10 class 0.5 and the existing meter was fixed on 21.10.2016.

According to the findings, instead of calculating the multiplying factor viz, 30, 20 was taken and the bill was calculated and eventually the notice demanded to remit an amount of Rs. 6,23,446.00 (six lakhs twenty three thousand four hundred and forty six rupees) within 30 days on account of the mistaken calculation from 21.10.2016 to 09.2018 .

The authority has not considered the illegality imbedded in the demand notice. It is an undisputed fact that the equipments installed in the premise of this appellant is well within the supervision of the Board and the officers of the Board have been conducting regular inspection before issuing bill for each month. The Officers are supposed to check the equipments as well as its functioning and supposed to bring the notice regarding any sort of discrepancies at the earliest to the appellant and the licensee authority. The officers cannot blame the appellant highlighting the fact that there is a mistake in the calculation due to the absence of appropriate multiplying factor so as to finalise the bill amount. Apart from aforesaid gross negligence as a matter of fact it is submitted that the appellant is running a wood industry. It is obvious to submit that the value of the product which was sold by the appellant in the market includes the power bill issued by the KSEBL. As such during the period for which the authority miscalculated the multiplying factor cannot be compensated or recovered from the customers to whom the products were sold. Above all, the authority has miserably failed to convince the appellant as to the yardstick employed in the instant notice in order to arrive the figure which is under challenge. Being highly aggrieved by the negligence of the officers of the KSEBL, the appellant preferred a deliberation before Assistant Executive Engineer, Taliparamba to redress the grievance. Unfortunately the Assistant Executive Engineer followed the findings of the Assistant Engineer and eventually dismissed the deliberations of the appellant.

It is very explicit from the proceedings initiated by the authority against the appellant that the same will not fall within the frame work of S.126 of the Electricity Act. It is very apparent from the notice itself that the authority is having no allegation of malpractice as well as unauthorized use of electricity. The finding of the authority

to the effect that the KSEBL sustained heavy loss on account of this appellant is far away from reality. Huge liability inflicted on the appellant only on the wrong assumption of the authority.

The appellant has requested to set aside the orders of the Consumer Grievance Redressal Forum Northern Region, Kozhikode in O.P.119/2018-19 dated 28.02.2019 and allow the petition.

Arguments of the respondent:

The C.T of the appellant's service connection was in the Ratio of 150/5 i.e. Multiplication Factor 30. The energy bills have computed and served accordingly till 21-10-2016. The Energy Meter was replaced on 21-10-2016 as it was found faulty by the Assistant Engineer. After replacement of the new meter, however, the multiplication factor was wrongly said in the meter and also entered in the computer as 20 instead of 30. This mistake regarding the multiplication factor was noticed and convinced the matter to the consumer. Inspection Team of KSEB Ltd. visited on 9-10-2018 to the premises of the Consumer, had inspected the meter and other equipment and confirmed the multiplication factor is 30. The consumer Mr. Ajayakumar convinced and signed in the Mahassar. On 22-10-2018 the final bill (Short assessment) for Rs. 6,23,446 (Rupees Six Lakh Twenty Three Thousand Four Hundred and Forty Six only) for the period from 21-10-2016 to 01-09-2018 was served to the consumer.

1. The served bill is simple and without any complexity. From the beginning till 21-10-2016 the multiplication factor has been 30 and the bills were served and paid accordingly.
2. From 21-10-2016 when the faulty meter was replaced, due to typographical error, the multiplication factor was incorrectly noted as 20 instead of 30.
3. On perusal of subsequent bills the appellant himself can very well verify and understand that the monthly energy bills have subsequent come down. And during this period the energy rate was never being revised downward by the KSEB Ltd. It appears that the Appellant has conveniently overlooked the fact.
4. After preparation of the Mahassar on 10-09-2018 the Appellant appeared and convinced the mistake and in addition another hearing was held to redress the grievance on the part of the Appellant.
5. Consumer himself has verified and satisfied by himself that charges have enormously come down from 21-10-2016. Also he has paid energy bills from the month of October 2018 with multiplication factor 30 by understanding the real fact. He has not raise any objection regarding these bills and paid without any hesitation.

6. This being a case of short assessment, affecting Government Revenue needs immediate rectification. Hence, the present bills were served. There is no overcharge, penalty, interest etc.... demanded as such the bill issued is reasonable and protection of natural justice.

The appeal is not maintainable either in law or facts, because the CGRF property adjudicated the matter by verifying all the relevant documents and based upon settled provisions. Moreover, the appellant has obtained a chance to file review petition before the CGRF. The order of the CGRF clearly stated that the appellant does not provide any additional fact. And in that order the CGRF again stated that the appellant had reproduced the previous version.

The Honourable High Court of Kerala had occasion to look into similar issue in WP(C) No.90/2009 (P. Sundardas v/s KSEB) and the Honourable High Court of Jharkhand in LPA No.665/2015(M/S Shee Shakti Cement Industries v/s Jharkhand Urja Vikas Nigam Ltd.) and categorically asserted that licensee is empowered to realize the short assessment amount even at a later stage which is not at all hit by Section 56(2) of the Act. Besides, Regulation 134 of the code empowers the licensee Board with blanket provision to recover the undercharged amount".

Analysis and findings:

Hearing of the case was conducted on 20-06-2019 in the Office of the State Electricity Ombudsman, Edappally, Kochi. Sri. Gireesh G, Advocate representing the appellant appeared and Sri. P. Jyotheendranath, Assistant Executive Engineer, Electrical Sub Division, Taliparamba appeared for the respondent. Both sides have presented their arguments on the lines as stated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The argument of the appellant is that the consumer is penalized for the mistake of the KSEB authorities. As per the appellant, the charge of electricity is a part of the cost of the product and the present short assessment will cause revenue loss to him. The average energy charge per month at that time is below one lakh rupees. The industry engaged in the manufacturing of plywood from wood and making doors, windows, cupboards etc. using plywood. The appellant has not produced any substantiating evidence to prove that the charge of electricity is a part of the cost of the product in every month. The appeal petition pertains to the reassessment due to wrong Multiplication Factor calculated by the respondent. Though it was a fault on the part of the KSEBL, it cannot be ignored that the party has actually consumed the energy and he is liable to pay for it. He is required to pay the charges only and not any penal amount. But the consumer can be allowed to remit the amount in monthly equal instalments eligible for him. Regarding the contentions of the appellant, it poses no weightage, since the bills were issued for the

actual energy used and there is no relevance regarding the industrial activity or recession in the industrial establishment.

There occurs a mistake in the billing (calculation) due to wrong application of MF or may be due to some oversight. Amounts of short payments became due only after realization of mistake.

During the hearing of the case, the consumer does not dispute the error in the Multiplication Factor (MF) occurred to KSEB in raising his monthly bills nor its period of assessment. The consumer is bound to pay the charges for the electricity he has consumed. As per clause 134 (1) of Electricity Supply Code, 2014, if the Licensee establishes that it has under charged the consumer, by review or otherwise, it is open to the Licensee to recover the amount so undercharged from the consumer by issuing a bill. In this case, the respondent has only done that and so it is found that the consumer is liable to honour the bill dated 22-10-2018 for Rs. 6,23,446/-, issued to him.

Regulation 152 of the Supply Code 2014 is also relevant in this case.

152. Anomalies attributable to the licensee which are detected at the premises of the consumer.-

(1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months: Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.

(4) The consumer may be given instalment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of instalment.

The above provision permits the licensee to collect the amount of electricity charges short collected for the entire period during which such anomalies persisted without any interest: Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months. In this case, the disputed period is from 21-10-2016 to 01-09-2018 and hence allowable to collect as per law. The CGRF has allowed 24 instalments for remittance the short assessed amount. Since this is a clear laxity or oversight occurred on the part of the licensee for which the consumer cannot be overburdened.

Decision

For the reasons detailed above, the appeal Petition No. P/035/2019, filed by the appellant stands dismissed as it lacks merit. The order dated 28-02-2019 in OP No. 119/2018-19 of CGRF, Northern Region, Kozhikode is upheld. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/035/2019/ _____ /Dated: _____

Delivered to:

1. Sri. Ajayakumar K.M., Managing Partner, Zeal Wood, Pattuvam P.O., Kannur
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Taliparamba, Kannur

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