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REPRESENTATION No: P 87/09

Appellant : Sri D . Sebastian S/o T.T.Devasia
Thakadiyil House,PALA

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Sub Division PALA

ORDER

Sri D . Sebastian S/o T.T.Devasia, Thakadiyil House,PALA submitted a representation on 17.8.2009 seeking the following relief:

1. *Cancel the Bill no:81194 dated 20.2.2009 for Rs 120036/- issued by KSEB*
2. *Allow cost and expenses to the Appellant incurred for filing the petition*

Counterstatement of the Respondent was obtained and hearing was conducted on 28.10.2009 and 7.11.2009 .

The Appellant has an LT 3 phase connection vide number 10884 under LT VIIA tariff under Electrical section Pala . A 3 phase static meter was installed in his premises during 12/05 replacing the old electro-mechanical meter. The APTS during an inspection on 22.01.2009 found that the meter was not working properly and also that the consumer had connected up an additional load of 10KW .

The APTS noted the following points, as per the scene mahazar, during inspection:

1. Meter terminal cover had melted near the 2nd phase terminal
2. Consumption was not recorded on the 2nd (Y) phase and was not properly recorded on the other two phases.
3. Meter is recording 83% less on comparing with the standard reference meter, that is, only 17 units are recorded while 100 units are consumed.
4. The insulated copper wire from the Y phase terminal to the Printed Circuit Board (PCB) inside the meter carrying the voltage had lost continuity due to burning on short circuit.
5. The components inside the meter such as oscillator etc had been exposed to over heat and lost the color.

It was also reported that the short circuit on the meter terminal cover had been noticed both by the consumer and the Board staff shortly after installing the new meter in 2005. The Respondent concluded that 'the meter might have turned faulty from the month of installation itself' and reassessed for short fall in recorded consumption for the whole period at 4.8 times the actual recordings. The invoice was for an amount of Rs 12,00,036/-

The penal bill towards unauthorized additional load was issued separately and this issue is not coming before the undersigned.

The Appellant had been agitating against the short assessment bill for Rs 1200036/- .The CGRF also upheld the demand.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation, argument notes and during the hearing are summarized below:

1. Clause 24 of the Supply Code is on the Disputes in bill and Clause 24(5) do not authorize KSEB to charge a consumer based on error report and upon non accuracy of meter. Meter accuracy might have been tested and found out. But neither Electricity Act 2003 nor any subsequent regulations and rules permits KSEB to raise a bill upon error value. The percentage error of (-)83% do not have any significance other than to prove that the meter is faulty. The meter and its accuracy is dealt with in Clause 19(2) .So the consumer can be assessed based upon 6 months average when the meter was correct. and the connected load was 18 KW. There is no provision for generation of an invoice based on percentage error.
2. When the faulty meter was changed on 22.1.2009 there was an additional load of 10KW and hence subsequent reading can not be considered for finding out the average. The consumption of 18KW and 28 KW can not be compared.
3. No assessments can be done taking the average for 9 days as done by the Respondent.
4. The consumption is related to marriage and other social functions and hence the consumption pattern varies according to seasons.
5. KSEB have violated Section 55 of the Electricity Act 2003 by providing supply through a faulty meter. KSEB should be proceeded against for non compliance of the Act and harassment of the consumer.
6. The date on which the meter became defective is not known , nor has it been reasonably established by the Respondent.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

1. The Appellant himself had signed the scene mahazar as witness and all the details furnished in the mahazar were explained to him in detail at the time of preparation of it.
2. The meter was damaged due to over load and unbalanced load in the premises.
3. The actual consumption of the consumer was 4.8 times the recorded consumption. This has been substantiated by the actual consumption for the short period in 12/05 before the meter becoming faulty. The average consumption for 9 days in 12/05 was 92 units per day. So also the average consumption for 7 days in 1/2009 was 93 units per day.

4. It has been recorded in the scene mahazar that a short circuit was noticed in the meter during 12/05 itself. More over the consumption pattern of the consumer shows a noticeable reduction in monthly recorded consumption from 12/05 onwards. Hence the short assessment from 12/05 is justified.
5. The consumer intentionally limited the consumption after 3 months from the installation of the new meter in 1/2009 by running the Generator to manipulate the average value. The sub Engineer of the area has submitted this in writing. This is clear from the average consumption noted for 7 days in 1/09 initially.
6. The unauthorized additional load was regularized by the Appellant in 4/09 only.
7. The KSEB has a right to recover the under assessed current charges as envisaged in Section 24(5) of Supply Code. The section 24(5) empowers the Licensee to recover the amounts under charged provided the under assessment is established. The regulations do not specify any time limit for assessment under Section 24(5). The Hon: High Court has upheld this right on several occasions. Section 56(2) of the Electricity Act 2003 do not provide any limitation on recovery as per the above Section of the Supply Code.

Discussion and Findings:

There is no dispute on the question whether the meter was faulty or not. The issues to be decided in this case are:

- A. Whether any assessment is justifiable?
 - B. What should be the mode of assessment?
 - C. What should be the period for assessment?
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- A. The Appellant has sought for complete withdrawal of the short assessment bill in his revised plea even though he was agreeable to pay some amounts as per the original representation. Hence the first issue is to be discussed.
 1. The Appellant has vehemently argued that the Licensee can not supply electricity 'except through installation of a correct meter' as per Section 55 of the Electricity Act 2003. He also argues that the Licensee have violated the above Section 55 because they admitted that they have been providing electricity through a faulty meter and demands action against the KSEB for non-compliance of the Act. Here the most pertinent question is whether KSEB had allowed the consumer to use power *after recognizing* the meter to be faulty. They had found out that the meter was faulty only on 22.1.2009. They had changed the meter with a good one on the same day. The cause of action under Section 55 comes up only when either the consumer or the Licensee recognizes the fact the meter is incorrect. Hence by no stretch of imagination the violation of Section 55 of the Act can be attributed to this situation.
 2. Here the relevant question is whether the Licensee had incurred any loss and the consumer had gained undue advantage by using electricity through a meter which was found to be faulty later. If the meter had recorded the consumption with negative error the answer could only be affirmative. The nature of the fault of the meter in the present case being undisputed, it follows that the assessment of under charged amount is justifiable.

B . The methodology of re-assessment shall be looked into now.

1. KSEB has resorted to assessing the short recovery by computing the percentage of error. They have compared the consumption recorded in the premises-meter with a standard meter on 22.01.2009 and reached the conclusion that the error percentage is (-) 83%. This error percentage, noted for some time on 22.01.2009 only, was mechanically made applicable for around 36 months and the short assessment bill was prepared by multiplying the recorded consumption by 4.8. How could they assume that the error percentage will be constant and stable for the whole period? The Respondent herself has stated that 'since the load is not in the balanced condition the error may vary'. Due to the nature of the load of photo color lab and associated equipments perfect balancing of loads is practically impossible. The level of unbalancing shall also be varying from time to time. The error will also depend upon the variations in loading of each of the 3 phases. Hence KSEB has committed a serious mistake in assuming that the error percentage shall be (-)83% for the whole period.
2. So also, the respondent had produced the recorded consumption from April 2005 to October 2009. The average monthly consumption recorded for the year 2006, 2007 and 2008 was around 723 units, the maximum and minimum being 964 and 422 units per month respectively. The monthly consumption figures produced before me have never touched 3468 units (723×4.8) in any month from 4/05 to 10/09. The monthly consumption figures are nearer to 2025 (Minimum Value 422×4.8) after changing the meter in 1/2009. Hence it is obvious that the Respondent has erred in computing the consumption for the meter faulty months. The whole exercise is marked by arbitrariness.
3. Precisely to avoid such arbitrary assessments, the regulations specify that re-assessments on meter-faulty situations shall be based upon averages recorded in a good meter.
4. The Supply Code deals with the issue in the following Sections:

19.(2) If Licensee is unable to base a bill on meter reading due to its non-recording or malfunctioning, the Licensee shall issue a bill based on the previous six months average consumption. In such cases the meter shall be replaced within one month.

The Terms & Conditions of Supply of KSEB provides the following Section:

33(2) If the Board is unable to raise a bill on meter reading due to its non recording or malfunctioning, the Board shall issue a bill based on the previous six months average consumption. In such cases the meter shall be replaced within one month. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding three months after replacement of meter.

Section 42 quoted by the Appellant is not relevant here as it relates to situations when the consumer disputes the correctness of the meter.

5. The Appellant has questioned the concept of computing the consumption and calculation of short assessment based upon that. But the Respondent argues that the

computation of error in meter shall be used for establishing the under charging as per Section 24(5) of the Supply Code. The relevant Section reads as follows:

24 (5) If the Licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the Licensee shall specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account.

6. There is no doubt that the licensee has under charged the consumer; this has been established by appropriate review, i.e., on finding the meter faulty. The assessment and the mode of calculation of the under charged amount can not be arbitrary. The Licensee should be able to establish the correctness of the assessment made. The methodology adopted by the KSEB is not justifiable in the instant case , as explained above.
7. Hence I conclude that only average consumption as provided in the regulations shall be taken for reassessment.

C . The period of assessment shall be examined now:

1. On a review of the consumption figures it can be seen that the consumption has appreciably came down from 12/05 onwards. It had been consistently below 1000 for 3 years till the meter was changed. The Appellant has not claimed that there was any particular reason for such a short fall. In view of the above facts and the reasons noted during the APTS inspection I am inclined to approve the period adopted by the Respondent for the short assessment , i.e., the short assessment shall be for the period from 1/06 to 12/08.
2. The APTS had found out an unauthorized additional load of 10KW in the premises on inspection making the total load as 28KW.Hence the average for 6 months prior to 12/05 can not be taken for assessment in accordance with the Terms& Conditions of Supply of KSEB. The Appellant has not informed the month in which the additional load was actually connected. The Appellant has not produced any evidence on the period for which the additional load had been used. The consumption figures from 4/05 do not show any gradual or sudden jump in consumption. Hence the period for which the additional load had been in use can not be found out. The contention that the meter became faulty due to over load/additional loads/unbalanced load in 2006 itself has not been refuted effectively. On the other hand the Appellant has claimed that the average for the 3 months after 1/09 has to be corrected for the additional load .This can not be accepted in view of the reasons noted above. Hence the actual average for 3 months after changing the meter as per Section 33(2) of the Terms& Conditions of Supply of KSEB shall be taken for re-assessment.
3. The Respondent has complained that the Appellant had used generator for purposefully reducing the recorded consumption after changing the meter. I am not entering to details of this objection as it will not stand the test of statutes.

Hence upon perusing the representation and associated documents and argument notes filed by the Appellant and the counter affidavit and other documents filed by the Respondent and upon hearing the arguments of both sides I conclude and decide as follows:

The Appellant consumer shall be reassessed for the period from 1/06 to 12/08 taking the averages of 3 months actual consumption after changing the meter in January 2009.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The Bill no:81194 dated 20.2.2009 for Rs 120036/- issued by KSEB to consumer number 10884 of Electrical Section Pala is quashed.*
2. *The Respondent shall issue a new short assessment bill as per the guide lines given above and take action to recover the amount as per rules.*
3. *Plea of the Appellant for cost and expenses incurred for filing the petition is without merits and hence disallowed.*

Dated this the 14th day of December 2009 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 87/09 /09/ 438 / dated 15.12.2009

Forwarded to: 1.Sri D . Sebastian S/o T.T.Devasia
Thakadiyil House, PALA

2. The Assistant Executive Engineer
Electrical Sub Division PALA

Copy to :

1. The Secretary,
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Thiruvananthapuram 695010
2. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,
VaidyuthiBhavanam KOTTARAKKARA

