

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/078/2019  
(Present: A.S. Dasappan)  
Dated: 10<sup>th</sup> December 2019

Appellant : Sri Sanjith Sreeba  
Flat No.3C, Aleta Olive Kalista,  
Edachira, Kakkanad,  
Ernakulam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSEBL, Vyttila,  
Ernakulam

### **ORDER**

#### **Background of the case:**

Consumer No. 1155578050664 is registered at Electrical Section Thrikkakara in the name of M/s Olive Builders and Developers P Ltd., Olive Kalista, Aleta-3C, Edachira with a connected load 6929 Watts in LT 1-A tariff from 19-12-2016. The appellant is the owner and occupier of the apartment having the said consumer number. A bi-monthly bill for Rs. 90,360/- was received by the appellant even though the flat was vacant as the appellant and family out of station during the period from 25<sup>th</sup> August, 2018 to 27<sup>th</sup> November 2018. The reading on 5<sup>th</sup> December 2018 for a period of 2 months showed consumption of 10738 units. The appellant has submitted a complaint to Assistant Engineer and a parallel meter installed which confirmed that the existing meter was not faulty. Later on testing the meter at Meter Testing Laboratory at Angamaly on the request of the appellant, a magnetic tampering on energy meter was proved indubitably and the Assistant Engineer, Thrikkakara issued a notice in this regard to the appellant to remit the bill amount or to inform their objections if any. Aggrieved by this, the appellant approached CGRF (Central Region) who dismissed the petition of the appellant vide Order in OP No:132/2018-19 dated 16-10-2019, due to lack of jurisdiction. Aggrieved by the decision of CGRF, the appellant has submitted this Appeal petition before this Authority on 17-10-2019.

**Arguments of the appellant:**

The appellant is the registered owner of the flat with KSEB No. 1155578050664. The appellant works for a private company in Bangalore and stay in the flat only for a few days in two or three months. The appellant keeps the main switch off in his flat when not in station. On 05-12-2018, he got a bill from KSEB amounting to Rs. 90,360/-. The appellant was out of town from August 23<sup>rd</sup> to November 27<sup>th</sup>. With these details the appellant gave a complaint in KSEB Office, Thrikkakara to get the meter checked.

A parallel meter was installed and informed the current meter was not faulty. Further, the appellant gave a request on 18-12-2018 to download the data from this meter. The result of analysis of data was obtained on 27-03-2019. The result showed that there was magnetic tampering done on the meter from 19-10-2018 to 31-10-2018. Also, the same period showed high electric current consumption.

The tampered meter is placed in a common electrical room of the apartment complex. The room is not accessible to appellant, but only for a selected staff of the builder maintenance team. The appellant suspect conspiracy behind this act of tampering on the meter by the electrician of the maintenance staff of the builder.

Further, filed a petition before CGRF, Kalamassery to revise the bill amount on 28-03-2019. Hearing of the case was done and an order was issued on 16-10-2019, saying that the petition is dismissed due to lack of jurisdiction.

The appellant requests a revision of high monthly usage in December 2018 with average usage in previous months.

**Arguments of the respondent:**

The appellant Sri. Sanjith Sleeba is the registered owner of the apartment land hence the authorized user of the said connection. The usage of energy was less at the premises of the service connection 1155578050664 and he had been paid the current bills without fail till the month of October 2018. While taking reading for the month December 2018 the consumption was very high and the regular current bill for that month was Rs 90021/-. Subsequent to the bill served on 05/12/2018, the consumer requested to check the meter with a parallel meter. Meter checked but no abnormality was detected and then the appellant given an application stated that they were used electricity only for 8 days for the period and requested to download the data from the disputed meter and assured that they are ready to pay the full amount if the data shows regular and consistent usage on a daily basis. As per the request the Assistant Engineer, Electrical Section Thrikkakara collected testing fee from the applicant replaced the disputed meter by a new one after preparing a site mahazar in the presence of the appellant and sent the meter to the authorized Meter Testing Laboratory at Angamaly. Test

reports clearly conforms the accuracy and proper working of the meter but the testing laboratory particularly observed that there was a magnetic tampering on the meter occurred from 19-10-2018 to 31-10-2018 and hence huge consumption recorded in the said period. Since the reason for high consumption during the month December 2018 was thereby scientifically revealed, the Assistant Engineer issued a notice to the appellant to remit the bill amount within a stipulated time, otherwise he would be compelled to take legal proceedings in this regard. So, the appellant approached this Forum and hence the statements of facts.

In the complaint, the appellant states that all methods which have to be adopted to find out the accuracy of an energy meter were followed by KSEBL. Also, the disputed meter is placed in a common electrical room and it is accessible only for a select staff of the builder association group. He suspects a conspiracy behind this act of tampering on his meter and requested a detailed enquiry by appropriate agency.

Regulation 21 of Kerala State Electricity Supply Code 2014 says that; "It is the responsibility of the consumer to keep in safe custody, the meter and other equipment of the licensee and seals on the meter and associated equipment installed within the premises of the consumer."

From this regulation it is clear that the responsibility to keep the meter and other equipments in safe condition is vested with the consumer. Since it is a residential apartment and such equipments are located in a common electrical room, the builder or anyone engaged by the builder association group if any, will be the responsible person to keep the equipments safely. As it is a bimonthly consumer, meter reader, the representative of KSEBL once in two months inspects the premises and taking readings of the consumer. No any other person shall visit the premises unless it is required by the consumer. So, the responsibility to safe guard the meter and other things from such activities like tampering etc is belongs to the consumer.

Regulation 159 of Kerala State Electricity Supply Code 2014 describes the situations when prosecution for theft of electricity under Section 135 of Electricity Act 2003 shall be initiated.

Sub regulation (3) of this regulation says that: "Interference with the accurate registration of energy consumed by resorting to external methods involving remote control, high voltage injection etc., committed by the consumer or his employee or any other person acting on his behalf shall also constitute theft of electricity which may be established by analysis of metering data and by detailed testing of the meter in an accredited laboratory or in an approved laboratory."

In this case the magnetic tampering on energy meter is being proved indubitably, so legal proceedings under Section 135 may be initiated against the consumer. The Assistant Engineer, Thrikkakara issued a notice in this regard to the consumer to remit the bill amount or to inform their objections if any, against such legal proceedings. Anyhow KSEBL not interned to follow such procedure as it is a particular incident and not believe that the appellant

may be the part of this conspiracy. The low energy consumption pattern proves the statements of the appellant that they were being at Bangalore and not utilizing the connection for more than few days in a few months, However the huge energy consumption even due to magnetic tampering causes revenue loss to KSEBL, hence the appellant is liable to remit the disputed amount.

**Analysis and Findings: -**

The hearing of the case was conducted on 26-11-2019 in the chamber of Electricity Ombudsman at Edappally, Kochi. Sri Sanjith Sreeba, the appellant and Sri. Mahesh Kumar S, Assistant Executive Engineer, Electrical Sub Division, Vyttila, has appeared for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during 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 thereof.

The appellant's contention in the appeal is that they used electricity only for 8 days for the billing period of two months prior to 05-12-2018, but the regular current bill served for that bi-month was Rs. 90,360/- for 10738 units. The consumption of previous bi-months were 73 units and 160 units. Test reports clearly confirms the accuracy and proper working of the meter but the testing laboratory particularly observed that there was a magnetic tampering on the meter occurred from 19-10-2018 to 31-10-2018 and hence huge consumption recorded in the said period. The appellant has admitted the report of magnetic tampering in the meter. According to the appellant, the magnetic tampering itself is an illegal activity used to reduce or eliminate the high meter reading to reduce the bill amount. Since the usage of the energy by the appellant near minimum level, there is no motive on his part to do this magnetic tampering or get this done through someone else. Further it is argued that in this existing meter that any attempt of tampering will make it run at maximum capacity without any load connected to it and there is no real loss of revenue to KSEBL.

As per Regulation 159 (1) of Supply Code, 2014, "*The prosecution for theft of electricity under section 135 of the Act shall be initiated only in the cases where dishonest intention is evident from the relevant facts, records and other evidence of the case*". In this case the respondent has admitted that there is no dishonest intention on the part of the appellant and there is chances of a conspiracy against the appellant. Hence the respondent has not taken any action against the appellant under Section 135 of the Electricity Act 2003 for theft of electricity.

The appellant's apartment is in a high rise building and the registered owner of the connection is the builder. Since it is a residential apartment and such equipments are located in a common electrical room, the builder or anyone engaged by the builder association group if any, will be the responsible person to keep the equipments safely. In this case, actually the respondent is free to take action against the registered consumer and his employee under Section 135 for the magnetic tampering.

Regulation 164 of the Supply Code 2014 is also relevant in this issue which is reproduced below.

*164. Voluntary declaration of tampered meter.- In case a consumer voluntarily declares tampering of meter or seals:-*

- (i) The tampered meter shall immediately be replaced with a correct meter by the licensee at the cost of the consumer and the voluntary declaration shall be forwarded to the assessing officer for assessment of amount to be realized from the consumer;*
- (ii) (ii) The assessment of such amount shall be done by the assessing officer in accordance with the procedure specified in regulation 155;*
- (iii) (iii) The energy bill, for the period the meter is not replaced, shall be preferred by the licensee as per the procedure for preferring the bill as in the case of damaged meters under regulation 118 of the Code;*
- (iv) (iv) The licensee shall not initiate proceedings under Section 135 of the Act, in case the consumer who voluntarily declared the tampered meter pays the assessed amount within the time stipulated by the licensee;*
- (v) (v) In case of default in payment, the proceedings against theft under Section 135 of the Act, shall be initiated;*
- (vi) (vi) The opportunity for voluntary declaration of tampered meter shall be given only once to any consumer.*

The appellant has voluntarily declared the tampering of the meter by requesting to download the data from the meter even though he is not responsible for the tampering. In this case, no theft was committed, but an attempt for theft by magnetic tampering occurred and there was also a conspiracy. There was no usage of energy of 10738 units by the appellant during the disputed period because in the electronic meter that any attempt of tampering will make it run at maximum capacity without any load connected to it and this argument of the appellant is legally valid and sustainable.

However, the respondent has issued a notice dated 20-03-2019 to the appellant and the registered consumer M/s Olive Builders and Developers (P) Ltd under Section 126 of the Electricity Act 2003 by directing to remit the regular current bill amounting to Rs.90360/-. Since the bill raised under Section 126 based on allegation of unauthorized use of electricity falls under the exception clause 2 (f) (vii) of the Regulations, the CGRF / this Authority does not have any authority to entertain this complaint. The appellant's remedy was only to file an appeal before the Statutory Authority under Section 127 of the Act. Section 127 (I) of the Electricity Act, 2003 reads as follows:- "127. Appeal to appellate authority:- (1) Any person aggrieved by a final order made under Section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed."

The CGRF / Electricity Ombudsman has no jurisdiction to entertain complaints relating to unauthorized use of electricity as provided under

Section 126 of the Act, in view of the bar under Sub Clause (vii) (I) of Clause 2 (f) of the Regulations.

**Decision:**

From the findings and conclusions arrived at as detailed above, it is therefore held that the remedy available to the appellant is only an appeal before the Statutory Authority under Section 127 as ordered by the CGRF. The order of the CGRF is upheld. The appeal petition is rejected as not maintainable. The respondent is directed not to disconnect the connection till receipt of an order from the Kerala State Electricity Appellate Authority Vyttila, Kochi 19. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/078/2019/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri Sanjith Sleeba, Flat No.3C, Aleta Olive Kalista, Edachira, Kakkanad, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division KSEBL, Vyttila, Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.