

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/082/2019  
(Present: A.S. Dasappan)  
Dated:17<sup>th</sup> December 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**

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, Eranhikkal. 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, Eranhikkal. 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, Eranhikkal, 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 instalments. Still aggrieved by the said order, the appellant has filed the Appeal Petition before this Authority. The appeal was dismissed as it lacks merits and the respondent was directed to correct an error in the calculation statement regarding the consumption during the normal period from 01-07-2018 to 01-08-2018 and to revise the bill accordingly, vide order No. P/24/2019 dated 24-05-2019. The appellant then filed WP (C) 15474/2019 before the Hon'ble High Court challenging the orders rendered by the Ombudsman. The Hon'ble High Court, in its judgment dated 03-07-

2019, set aside the orders dated 24-05-2019, not because the Honourable Court found it to be conclusively in error, but so as to facilitate a fresh consideration based on the observations and remanded the matter to this Authority for disposal of the case after affording fresh opportunity of personal hearing to the parties concerned. The Assistant Executive Engineer, Electrical Sub Division, West Hill forwarded a copy of the judgment to this Authority and the same received on 29-10-2019.

Accordingly, the appellant was directed to submit if anything more to offer in addition what is already stated in his appeal petition, vide letter dated 29-10-2019. In reply to this letter, the appellant has stated that he would like to adopt the contentions and grounds raised in the complaint filed before this Authority and in the writ petition before the Honourable High Court of Kerala.

The main contentions raised by the appellant in his statement of facts filed before the Hon'ble High Court of Kerala are the following.

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 wing 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 petitioner who is a layman. The Petitioner does not know whether the said meter was really faulty and whether the calculations made by KSEBL is correct. Non-adherence to the procedures prescribed in the Regulations vitiates short assessment bill 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 based on previous consumption data. There has been a severe slump in the Fishing Industry and Ice plants have suffered huge losses over the past two years. This has not been taken into account. This is arbitrary especially when there is a clear 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 clearly proven. It is unfair, unjust and arbitrary to demand an exorbitant amount of Rs. 4,41,504/- from the Petitioner who will then be forced to close down the ice plant managed by him. Best judgment assessments are normally made when there is a case of fraud or tampering. The Respondents have all concluded that 'the faulty connection of one phase of the meter was caused on account of rusting.

The tariff which has been calculated and fixed by the KSEBL per unit normally includes inspection and administrative charges of the Board and not generation and supply charges alone. Hence, the Board was duty bound to discharge its duties and responsibilities regarding proper inspection and maintenance of their equipment installed at the consumer's (the Petitioner herein) premises. Hence the abdication of that duty by the officers of KSEBL should not result in mulcting the said alleged liability on to the Petitioner. 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 bills from the Petitioner, the KSEBL should not penalize the Petitioner for their mistake.

It is procedurally incorrect for the Electricity Ombudsman to direct the respondent to revise and increase the Petitioner's bill amount, that too in an appeal preferred by the petitioner against the order of the CGRF. The Respondent did not have a case that the order of the CGRF was bad and that the calculation therein was incorrect. The Electricity Ombudsman has now substituted his calculations in place of the calculations of the CGRF and directed Respondent to revise and increase the bill amount. This is total miscarriage of justice, and highly irregular and illegal.

The exhibit relied on by the Respondent when they filed Ext P5 reply was not provided to the counsel for the Petitioner. This is a procedural irregularity that prevented the Petitioner from effectively defending his case.

The observations of the Hon'ble Court in the judgment in the writ petition are reproduced below.

“Even when I hear the learned standing counsel for the KSEB as afore, the fact remains that the learned Ombudsman has, in Ext. P10, found that had the meter been inspected as soon as there was a dip in its consumption, then all these controversies could have been avoided. This stand obviously is justified and there is nothing in Ext. P10 in terms of any explanation from the KSEB as to why there was no inspection in the premises of the petitioner's Unit until 01.09.2018, even though it is alleged that the meter was defective from 25.07.2017. Admittedly, the sole reason for the KSEB to find that there was an error in the meter was when the data was downloaded during the inspection on 24.09.2018 and therefore, even when regular readings were taken, there was no imputation made against the petitioner, based on the drop in consumption, that the metre was defective or otherwise. I am therefore, certainly of the view that these aspects will have to be specifically considered by the concerned officials before Ext. P10 can be allowed to operate.

I am consequently, of the opinion that unless it is clearly established that the consumption, which is now alleged against the petitioner, is proven beyond the preponderance of possibilities, it would be unjustified to mulct him with huge liability, particularly when there is no allegation that he had tampered with the meter or that the fault therein was on account of anything that can be attributed to him. This is a case where the petitioner is also victim, since the responsibility of maintaining the meter is solely with the KSEB and it is only the diligence to be shown by its officers, who are entrusted with the recording of metres, will ensure that such instances do not occur in the future.

In the afore circumstances and for the reasons above, I set aside Ext. P10, not because I have found its contents to be conclusively in error, but so as to facilitate a fresh consideration based on the afore factors, which the

competent Authority shall do, after affording an opportunity of being heard to the petitioner as well as to the concerned officials of the KSEB; and he will then endeavour to establish the actual consumption based on the consumption patterns with respect to the petitioner's Unit in the past and in the future and then make consequential orders in terms of law, as expeditiously as is possible but not later than two months from the date of receipt of a copy of this judgment.”

The Hearing of the case was conducted on 03-12-2019, 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 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 decisions thereof.

The APTS has inspected the consumer's premises on 24-09-2018 and found that B phase voltage was missing at the terminal of the energy meter, thus resulting in the recording of a lower consumption than what is actually consumed. Hence, the appellant was issued a short assessment bill to recover the energy escaped from billing due to 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 first argument of the appellant is that the procedure under Regulation 113 of the Kerala Electricity Supply Code, 2014 was not followed in examining the meter. In this regard, this Authority has examined this allegation and the following observation has been made in the order dated 24-05-2019 in Appeal petition No. P/024/2019. “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.” Hence this Authority has admitted negligence on the part of respondent. But at the same time, there is ample proof that actual consumption was not recorded in the meter during the faulty period which is proved by downloading data from the meter.

Another contention of the appellant is that the KSEBL has admitted that the alleged 33% reduction shown is an approximate value made in a Best Judgment fashion based on previous consumption data. This is not correct. The 1/3<sup>rd</sup> reduction is proved by taking the down loaded data from the meter,

but not based on the previous consumption data. The average consumption for three months prior to the defect is 19027 units and the average consumption after the rectification, the average consumption for three months is 18187 units. But the average consumption in the faulty period is only 12033 units. By taking the average consumption @ of 33.33% for calculation of the short assessment, the assessed average monthly consumption for the defective period is 18050 units which is beneficial to the appellant when compared with the other two figures, viz 19027 and 18187 units.

The meter provided in the appellant's premises is the Genus company meter and it has the facility for downloading data from the meter. The meter will record the time and date of tampers and the same can be downloaded using MRI/Laptop and can be analysed. Date of occurrence of CT open/bypass/short, voltage missing/low voltage/unbalance etc can easily be found out by using downloaded data. This is the scientifically proved method to detect the reasons for the dip in the consumption of a consumer during a disputed period. It is the responsibility of the respondent to give a copy of the downloaded data to the consumer in the case of a dispute. The period during which the defect caused the reduction in the meter consumption reading is clearly proved from the downloaded data. As per the downloaded data, the meter had been recording consumption without one phase voltage from 25-07-2017, the short assessment was limited for one year for the period from 10/2017 to 09/2018.

The short assessment amount was calculated as per the prevailing tariff order issued by the KSEERC. This Authority and CGRF have no powers to deal with the Licensees employees for their negligence and lapses. In this case, the short assessment bill raised is only for the electricity consumed by the appellant and it is the responsibility of the appellant to pay electricity charges for the energy he has used and the same is issued without any interest. The appellant was also allowed 20 instalments for remitting the short assessed amount.

The provisions made under, Clause 22 (d) of the Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, restricts the maintainability of the petition before this Authority where a representation for the same grievance by the complainant is pending in any proceedings before any Court, tribunal or arbitrator or any other authority or a decree or award or a final order has already been passed by any such Court, tribunal, arbitrator or authority. Here in this case, the appellant has furnished a declaration stating that no case is pending in any proceedings before any Court. But on filing a writ petition before the Hon'ble High Court on the same subject matter, the fact has not been declared in due course by the appellant.

Another allegation raised by the appellant is that this Authority directed the respondent to revise and increase the petitioner's bill amount, that too in an appeal preferred by the petitioner against the order of the CGRF. The appellant has mistaken or not correctly conceived the gist of the order issued in the appeal petition. This Authority has found an error in the calculation and directed the respondent to correct it which is beneficial to the appellant.

The consumption for the period from 01-07-2018 to 01-8-2018 is to be corrected as 7150 units instead of 10450 units. This Authority has issued the orders in the appeal petition on 24-05-2019 and the alleged revised bills referred by the appellant were seen issued on 02-04-2019 and 06-05-2019 and these bills are not the revised bills. It is pertinent to note that these bills are regular monthly energy bills of the appellant containing also the pending short assessment amount of Rs. 4,41,505/-. The statement of facts to the appeal petition submitted by the respondent was given to the appellant on 16.04.2019 for offering further remarks. Hence the contention of the appellant in this regard is also not sustainable.

As per Regulation 134(1) Kerala Electricity Supply Code 2014, if the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.

As directed by the Hon. High Court of Kerala, the subject case is re-examined and found that no revision in the order in Appeal Petition No. P/024/2019 is required considering the facts analysed as above. But the respondent is directed to issue a revised bill correcting the error in the calculation statement and the respondent shall give a copy of the calculation statement and downloaded data to the appellant within 15 days of receipt of this order.

## **ELECTRICITY OMBUDSMAN**

P/082/2019/ \_\_\_\_\_ /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, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode