

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/093/2019
(Present: A.S. Dasappan)
Dated: 31st January 2020

Appellant : Sri. Shibu A.G.
St. George Industries,
Industries Development Area,
Edayar, Binanipuram,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Aluva Town,
Ernakulam

ORDER

Background of the case:

The Appellant bearing consumer No.6692 is an industrial consumer under LT-IV A Tariff with a connected load 32000 watts and contract demand 36 kVA under Electrical Section, Edayar. The premises of the consumer was inspected on 27-03-2019 by a team of KSEB Limited led by the Anti Power Theft Squad (APTS) of Ernakulam unit. An irregularity of metering was detected as the meter was not recording R phase consumption. So as to compensate revenue loss to the Board for the unrecorded portion of energy, the Assistant Engineer, Electrical Section, Edayar, issued short assessment bill by directing the appellant to pay Rs 8,75,599/- on 20-04-2019. Aggrieved by the short assessment bill, the appellant filed petition before CGRF, Ernakulam requesting to quash the bill. The Consumer Grievance Redressal Forum disposed the OP No.38/2019-20 filed by the appellant and ordered on 03-10-2019 that the bill issued, limiting the period of short assessment to two years by directing to reassess the bill by taking recorded reading x 1.5 times. Still aggrieved by the said order, the appellant has filed the Appeal Petition before this Authority on 28-11-2019.

Arguments of the appellant:

An inspection was conducted by the Section Sub Engineer on 27/3/2019 in the presence of Anti Power Theft Squad Ernakulam and prepared a mahazar. According to the mahazar, it is stated that security seals of the meter are intact, that R phase current is not recording in the meter. It is further stated in the mahazar that consumer fuse unit is receiving 231V, 234V and 237V respectively in RYB phases and is using electricity at 52A, 41A and 31A respectively. But consumer meter is recording in Y and B phases only. On examination using reference meter it is found that when consumer uses 1283.81 wh, the meter is recording 800 wh. On examining meter data with software, it is found that variation in electricity is noticed from 19/03/2017.

This mahazar was followed by a Short assessment demand No DB/APTS/2019-20 dated 20/4/2019 for an amount of Rs. 8,75,599/- under Regulation 152 of the Electricity Supply Code 2014.

On receipt of that order the appellant submitted petition dated 7/5/2019 requesting to supply details of the demand and other details. In response to that letter the Assistant Engineer of the Section office issued letter No. DB/EDYR/2019-20/39 dated 29/05/2019 wherein it is stated that R Phase CT circuit error is the reason why R phase current not recorded in the meter. It may be opening of CT internally or fail of connection of the terminals of CT etc. After changing the CT, meter shows R phase current. Therefore, it is crystal clear that the inspection team as well as the officer who issued the short assessment are not certain regarding the actual issue involved and what is the reason for non-recording of R phase.

Thereafter the appellant submitted a petition dated 4/6/2019 before the Assistant Executive Engineer, Electrical Sub Division, Aluva Town. He sought reason for non recording of R Phase, and also complained regarding the manner of short assessment. In his reply No DB24/complaint/ESD-ALV/2019-20/120 dated 12/6/2019 the Assistant executive Engineer says that the CT energy meter was faulty and hence anomaly occurred and short assessed from 4/2017 to 17/4/2019. These vague replies cannot establish any legal liability on the consumer.

Thereafter the appellant filed Complaint dated 29/6/2019 before the CGRF Ernakulam. The Order dated 3/10/2019 issued by the CGRF in OP No 38/2019 and the short assessment order No DB/APTS/2019-20 dated 20/4/2019 for an amount of Rs. 875599/- to consumer no 1157124006692 St George industries, IDA, Edayar are illegal on the following grounds

Regulation 2 (57) of the Electricity Supply Code 2014 defines meter as follows " meter means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system and shall include wherever applicable other equipment such as Current Transformer (CT), Voltage Transformer (VT),or Capacitance Voltage Transformer (CVT) necessary for the purpose.

In this case the KSEBL and its engineers have a case that the Current Transformer meter placed by them in the consumer premises was faulty and hence there was a shortage in recording the consumption. The case of the appellant is that the CT meter installed in his premise was correct. In such a situation where the Board/licensee alone finds that the meter was faulty, Regulation 116 (6) says that the licensee/Board shall follow the procedure as detailed in regulation 115 above. Regulation 115 says that the meter shall be tested in the laboratory of the licensee, approved by commission. In case the licensee does not have a testing facility approved by the Commission, or if so desired by the consumer the meter shall be tested at any other laboratory accredited by the National Accreditation Board for testing and calibration Laboratories. Regulation 115(8) of Code says that when consumer disputes the test result in licensee lab, the meter shall be tested in other NABL accredited labs.

It is further stated in Regulation 115 (9) of the Supply Code 2014 that in case the meter is found faulty, revision of bill on the basis of the test report shall be done for a maximum period of six months or from date of last testing whichever is shorter. In this case the licensee failed to subject the alleged faulty CT meter for laboratory test. Instead they have unilaterally replaced the faulty meter by themselves and imposed huge financial liability of Rs, 679603/- on the consumer for a long period of twenty-four months. The licensee is bound to act in accordance with law. They cannot act arbitrarily as happened in this case. As per Rule 116 of Electricity supply Code, even if they replace the faulty meter, they have a statutory duty to get the faulty meter tested in an accredited laboratory. Since the licensee failed to follow the law in this case, the consumer is not liable to pay any amount to the licensee as demanded.

The CGRF approached the situation as if there is no fault in the meter. CGRF ought to have cancelled the assessment for the sole reason that-the - faulty meter was not tested in accordance with law.

The Forum ought to have found that the Licensee was bound to periodically check the meter as per Section 55 of the Electricity Act 2003 read with Regulation 114 of the Electricity Supply Code. The lethargy on the part of the Board in periodically checking and finding faults in the meter are matters for the Board to deal with their erring staff.

There is absolutely no legally convincing reason to believe that one phase of the CT meter was not recording consumption. There is no law which says that the downloaded data can be relied on to enter into such a finding without getting the faulty meter tested in an NABL accredited laboratory to the confidence of the consumer.

Reliefs sought for:

1. to set aside the Order dated 3/10/2019 in file No CGRF-CR/OP No 38/2019-20/299 issued by the CGRF Ernakulam

2. to cancel the short assessment order DB/APTS/2019-20 dated 20/4/2019 and also disconnection notice dated 1/11/2019 issued by the Assistant Engineer, Edayar demanding payment of Rs.679603/- issued by the Assistant Engineer, Electrical section office, KSEBL Edayar and to allow this petition,

Arguments of the respondent:

The consumption at the consumer installation was checked with a standard test meter. During the examination, the standard meter recorded 1283.8 Wh whereas the consumer meter recorded only 800 Wh. Thus, consumer meter was recording only 62% of the total consumption. In order to ascertain the date on which 'R' phase ceased to record consumption the data in the consumer meter was downloaded. The downloaded meter data clearly shows that from 19-3-2017, the meter was not recording R phase consumption. Hence a short assessment bill amounting Rs.8,75,599/. was issued to the consumer on 20-4-2019 under Regulation 152 of the Kerala Electricity Supply Code 2014.

The anomaly detected in the inspection at the premises of the consumer is inaccuracy in metering which clearly attracts Regulation 152 of the Kerala Electricity Supply Code, 2014. Hence the bill issued under this regulation is legally correct. Also, as per Regulation 152 (3) of the Supply Code, 2014, the chances of electricity short collected for the entire period during which such anomalies persisted may be realized without interest and the period of such assessment of short collected shall be limited to 12 months, if the period of short collection due to anomaly is not known or cannot be reliably assessed. In this case, the period of anomaly of short collection was clearly and accurately assessed from the data downloaded from the meter and hence the short collection can be for the entire period.

Regulation 134 of the Kerala Electricity Supply Code states that "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".

In the instant case, the licensee detected the anomaly on an inspection and from the downloaded data established the non recording of R phase consumption from 19-3-2017 onwards. Hence the licensee may recover the undercharged bill from the consumer. When the bill was issued, 30 days were not given for payment by mistake, later this was corrected in a letter issued to the consumer dated 12-6-2019 by Assistant Executive Engineer, Electrical Sub Division, Aluva. The downloaded data clearly reveals that the meter was not recording R phase consumption since 19-3-2017. Also on inspection in the premises of the consumer the non recording of R phase consumption is detected.

Hence licensee is entitled to realize the entire undercharged amount. In this case meter was not faulty. It is recording 62% of the consumption due to

fault in 'R' phase. Hence average consumption as in the case of faulty meter is not attracted in this case.

That, it is trite law that when parties to the service connection agreement executed with the licensee, commit any contravention to the agreement such cases are governed by the Electricity Act, 2003 and the Supply Code, 2014. The statute provides the power to recover charges from the consumer and the same is contained in Section 45 of the Electricity Act, 2003. (Power to recover charges): - Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licensee.

Analysis and Findings: -

The Hearing of the case was conducted on 21-01-2020, in my chamber at Edappally. Sri. Jose J. Matheikal, Advocate represented the appellant's side and Smt. Jessy Rose Chacko, Assistant Executive Engineer, Electrical Sub Division, Aluva Town and Smt. Sindu G, Assistant Engineer, Electrical Section, Kalamassery 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 APTS has inspected the consumer's premises on 27-03-2019 and found CT current in 'R' phase of the energy meter zero against the load current, thus resulting in the recording of a lower consumption than what is actually consumed. The connected load of the appellant in the premises is 32 kW and contract demand is 36 kVA and a three-phase connection having a ToD meter. The connected load of the appellant was enhanced to 53.79 kW on 18-11-2019. A site mahazar was prepared on 27-03-2019 and meter data was downloaded. As per data downloaded the appellant was issued a short assessment bill for Rs. 8,75,599/- for the period from 3/2017 to 17-04-2019 taking 60% of the recorded consumption in each zone in the said period to recover the energy escaped from billing due to CT's fault in one phase. The CGRF has modified the billing period for two years and escaped energy as 50% of the recorded consumption.

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 case of the appellant is that the CT meter installed in his premise was correct. In such a situation where the Board/licensee alone finds that the meter was faulty, Regulation 116 (6) says that the licensee/Board shall follow the procedure as detailed in regulation 115 of Supply Code, 2014. It is further stated in Regulation 115 (9) of the Supply Code 2014 that in case the meter is found faulty, revision of bill on the basis of the test report shall be done for a maximum period of six months or from date of last testing whichever is shorter. In this case the licensee failed to subject the alleged faulty CT meter

for laboratory test. As per Rule 116 of Electricity Supply Code, even if they replace the faulty meter, they have a statutory duty to get the faulty meter tested in an accredited laboratory. Since the licensee failed to follow the law in this case, the consumer is not liable to pay any amount to the licensee as demanded. Further the appellant contended that no scientific analysis was done by the respondents to find out the period for which the CT current in R phase was missing. The contention of the appellant is that the bill was issued after checking the meter in the premises and the consumption recorded in the consumer meter and in the parallel meter for a short duration. As per Section 45 95) of Electricity Act 2003, there is no provision to bill the consumer as done in this case.

Refuting the above contentions, the respondent has averred that the meter installed in the premise is not reported as defective or damaged. The respondent relied upon the previous consumption pattern and the downloaded data for establishing the period of phase failure. Besides Regulation 134 of the Code empowers the licensee with blanket provision to recover the undercharged amount.

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. 8,75,599/- (which was revised to Rs.6,79,603/- as per the order of CGRF) as per Regulations 134 and 152 of Supply Code, 2014, as claimed by the respondent. 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. 8,75,599/- for non-recording of energy due to defects of the R phase for 24 months, by taking the lost energy as 60% of the recorded energy. The industry is related to fabrication of aluminium materials having nature of load both single phase and three phase.

The appellant's escaped energy was assessed by the respondent based on the testing of his meter with a reference meter on the date of inspection. Extending the percentage of unrecorded portion of energy arrived at with the result of a test meter during a short duration to the past years is not proper. The appellant was given short assessment bill for Rs. 8,75,599/- on 20-04-2019 following the inspection on 27-03-2019 is only based on the above testing. The data of the meter is seen downloaded on 07-08-2019 as per the "Tamper Data Report" produced by the respondent. On going through the report one "current unbalance" is seen occurred on 19-03-2017 with a remark of "Not Restored". But at the same time, in the same report, "Occurrence of 'R' phase CT open" on 14-04-2018 with remarks "Not Restored" is also seen. From the above it can be confirmed that CT connected in 'R' phase of the meter was not failed from 19-03-2017 onwards but from 14-04-2018 onwards. As such the duration of short assessment taken by the respondent for more than two years is not at all correct.

The CT was replaced on 16-04-2019. Further this Authority is of the opinion that if the respondent had doubt of under recording of consumption, he 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 consumer's complaint pertaining to a meter.

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 CT current in one phase was not getting 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.

CT meter connections are prone to various errors caused by fault in CTs, corrosion in connecting points and voltage tapping side, mistake in wiring causing wrong phase association, voltage/current missing etc. as per IS 15707/2006, the maximum permissible error during site testing is +/- 2.5%. all most all CT meters being used in KSEBL are having data storage and downloading facility and using the downloaded data, actual date of voltage/current missing and wrong phase association can easily be determined. Neutral CT shall be provided in CT connections so as to get proper tamper logging in the meters. This fourth CT is useful for distinguishing CT open/Bypass/Short anomalies using downloaded data. Hence this is the proven method to detect voltage/current missing etc.

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. 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.

The monthly average of the recorded consumption in the meter, after the defect rectification, for three months from 10-05-2019 to 13-08-2019 is 8220 kWh in normal period, "2000 kWh in peak period" and 5893 kWh in "Off peak period". The monthly average of the total consumption is 16113 kWh. The average of the 12 months recorded consumption prior to the rectification of CT's defect is 5320 kWh in "normal period, 1515 kWh in "peak period" and 3575 units in "Off peak period", then it comes a total of 10410 kWh. This clearly proves that the actual consumption was not recorded in the meter during the faulty period.

On perusing the monthly average consumption prior and after the rectification of CT's defect, it is seen that the consumption in the defect rectified meter is slightly more than 1.5 times the consumption recorded in the faulty period.

Decision

From the conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 6,79,603/-issued to the appellant. As the premises with a major load of three phases in nature, it is decided and directed the respondent to revise the bill by taking the 50% of the recorded consumption for one year from 04/2018 to 03/2019 and to issue the revised bill to the appellant within fifteen days. The appellant is allowed 6 instalments without interest, to remit the revised short assessment bill, if he desires so.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant stands disposed of as such. The order of CGRF, Ernakulam in OP No.38/2019-20 dated 18-10-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/093/2019/_____ /Dated:_____

Delivered to:

1. Sri. Shibu A.G., St. George Industries, Industries Development Area, Edayar, Binanipuram, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Aluva Town, 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.