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APPEAL PETITION No. P/100/2019
(Present: A.S. Dasappan)
Dated: 18th February 2020

Appellant : Sri. Jose P.A.
M/s Green Packs,
Panthakkal,
Karukutty P.O.
Ernakulam

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

ORDER

Background of the case:

Appellant is the Managing Partner of Green Packs, Panthakkal, Karukutty, a consumer of electricity with consumer No 1155819012993 in LTIV Tariff with a connected load of 53 kW and contract demand 52 kVA. under Electrical Section, Karukutty. The service connection was effected on 3.9.2016 for industrial purpose with connected load of 30 kW. The Anti Power Theft Squad, Trissur had conducted an inspection in the premises of the appellant along with the officials of section office on 20-12-2018 and detected that the all of the CTs having ratio 100/5 A for metering was wrongly connected. So as to compensate revenue loss to the Board for the unrecorded portion of energy, the Assistant Engineer, Electrical Section, Karukutty issued a provisional short assessment bill by directing the appellant to pay Rs 4,42,311/- for the period 10/2016 to 02/2019 on 21-03-2019. Against the short assessment bill, the appellant had approached the CGRF, Ernakulam by filing a petition No. OP No. 1/2019-20. The Forum disposed of the petition vide order dated 23-11-2019 by ordering that the bill issued for Rs.4,42,311/- is genuine and legally sustainable except for the correction in the MD readings pointed out by the respondent vide submission dated 6/11/2019 which needs to be corrected. Aggrieved against this, the appellant has submitted this appeal petition before this Authority on 23-12-2019.

Arguments of the appellant:

An inspection was conducted in the consumer premises by the Section Sub Engineer Shyju Chacko in the presence of the Anti-Power Theft Squad, Thrissur on 20/12/2018 and prepared a mahazar. According to the mahazar, the seals of the meter are intact. The sanctioned connected load is 53 kW and sanctioned contract demand is 52 kVA. On inspection, it was found that the S1 and S2 terminals of the current transformer are connected to the common neutral and that the two secondary terminals are connected to the meter as usual and these two terminals are connected to common neutral point with another wire and hence the normal usage was not found recorded in the meter. At the time of inspection recorded wattage was 0.21kW instantaneous power factor 0.99. It ought to have been 0.233 kW. Loss was caused to the KSEBL due to wrong connection of secondary terminals. The status quo of the meter was maintained as such. Meter sealed with Serial No 4272 on left side and with Serial No 4273 on the meter box.

Therefore, the finding in the mahazar is that the staff of the KSEBL has given wrong connection inside the sealed meter box and that wrong connection resulted in loss to the KSEBL. So, the responsibility of the wrong connection is admitted by the licensee. After one month of the above inspection and mahazar, a data report was taken using another equipment on 16/1/2019. These checking were followed by a provisional bill No BB/IB/18-19/Kkty/ 254/20/2/2019 under Regulation 134 of the Electricity Supply Code 2014 for anomaly in CT connection to the meter. According to that assessment it is stated that when the meter data was checked using meter testing equipment it was found that there was reduction of 31.73% and consequently a deficit of Rs. 44,2311/- was noticed and directed the consumer to pay that amount tentatively and to submit any objection within seven days. So, the Licensee unilaterally decided that there is deficit of 31.73% recording of electricity charges without satisfying the consumer about the same.

Appellant submitted objection dated 27/2/2019 to the above provisional short assessment. It was submitted that competent authorities of the Electricity Board have verified and given the connection in 2016 and there was no chance for any error in connection. It was submitted that in August 2018, there occurred a lightning in which connections to both meters were damaged and on the next date, the connections were corrected by the Board staff including Sub Engineer and Overseer. The consumer submitted that the Board has installed a parallel DRT meter along with consumer meter at the time of providing connection in the year 2016. The consumer is having an exclusive transformer for the purpose of this connection. The number of that DRT meter is 800199558 manufactured by Landys + Gyr Ltd in January 2016 Model E 650 with PT/CT ratio One. The readings in that meter and the consumer meter were correctly recorded by the Board. The appellant made several requests to the Board to furnish the readings in that meter. But the Engineers of the Board refused to give it. A perusal of the readings in that meter will bring out the false case raised by the Board. It was further submitted that the KSEBL went wrong in demanding arrears for the additional 0.31 units against each 1 unit of recorded consumption during the

last several years. It was informed that the cost of the industrial unit was calculated and paid on the basis of the periodical electricity charges, labour charges etc. and that cannot be recaptured for paying to the KSEBL. It is further stated in the objection dated 27/2/2019 that even after two months of inspection, the KSEBL failed to correct the meter connections. The appellant also submitted that the punishment imposed only on the consumer and the Board staff who have done the wrong connection and who has delayed rectification of connection are free from any action. In such circumstances the appellant requested the Board to withdraw and cancel the short assessment demand for Rs. 442311/- and save the industrial unit from closure.

Thereafter the Assistant Engineer finalized the bill as such without considering any of the objections raised by the appellant as per final order and demand dated-20/3/2019 for Rs. 4,42,311/-

Before the CGRF, the specific contention put forward by the appellant was that there was no fault to the meter connections in the consumer meter and also the parallel meter installed by the KSE Board with number 800199558 which is even now present in the consumer premises. He specifically requested the CGRF to direct the Board to produce the readings in the two meters for verification by the appellant and the CGRF. On 2/11/2019, the CGRF directed the Board to produce the data from two meters and agreed to inform the next hearing date for verifying the data from both meters. However, to the surprise of the appellant, no further hearing date was informed and the appellant received an Order No CGRF-CR/OP No 1/2019-20 dated 23/11/2019 upholding the demand of Rs. 4,42,311/- as such except correction in MD readings

The most interesting thing is that the CGRF has found with dismay that the Engineer refused/failed to produce the readings in the DRT meter which is fixed in the consumer premises for the exclusive transformer of the appellant. The CCRF conveniently avoided taking any action against the Engineer for not producing that crucial data before the Forum and danced in accordance with the tune of the Engineer for unilaterally crucifying the consumer and saving the Engineer. This conduct of the Engineer in not producing the DRT meter data reveals the fact that the consumer meter was recording correct consumption and there was no fault inside it. The Forum remarked that had the DRT readings been made available the matter could have been appraised more convincingly as the distribution transformer is installed exclusively for the consumer. So, there is foul play on the part of KSEBL engineers in imposing this huge liability of more than Rs. Four lakhs on the shoulders of the appellant for no fault on his part.

The Forum ought to have found that the Licensee was bound to periodically maintain correct 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.

The inspection and mahazar was in December 2018. According to the Engineer, there was fault in the connection. A studious officer who finds

defect in the electricity connection causing loss to the KSE Board will take immediate steps to correct the connection rectify the mistake and avoid future loss to the KSEBL. Here the engineer waited from 20/12/2018 till 16/1/2019 to conduct the accuracy checking of the meter and even thereafter wrong connection was not corrected. No mahazar was prepared on 16/1/2019.'This shows that there was no fault with regard to the connection. The meters in the premises of the consumer were recording correct consumption and the alleged wrong connection is a drama played by the engineer to make the consumer pay huge amounts to the Board.

Regulation 134 says 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. Establishment of undercharging is to be done in a manner known to law. Unilateral conduct of an inspection, allegation of wrong connection, making an accuracy checking after one month of inspection without any mahazar, issuing an accuracy checking report stating 31.1% reduction in consumption and even then, not correcting the wrong connection are all doubtful circumstances so far as a genuine consumer is concerned. The consumer genuinely doubts that the wrong connection if any in the meter was done by the inspection team itself at the time of inspection dated 20/12/2018 with the ulterior motive of grabbing money from the genuine consumer.

The irresponsible engineers and staff of the Electricity Board waited for three months from 20-12-2018 till 19-03-2019 for rectifying an alleged wrong connection. It may be noted that the accuracy check was on 16-1-2019 for which also there was no mahazar or evidence. The alleged rectification of connection was done after two months of alleged accuracy checking. So, it can be concluded that the Board officers and staff were knowingly contributing to the loss of the KSEBL.

The engineer has also stated in his statement dated 3/5/2019 that the connection was obtained on 3/9/2016 with a sanctioned load of 30KW and that the load was enhanced on 10/2017 to 53 KW and contract demand of 52 KVA. When connected load is so increased, there is chance for change in distribution system at that point of time also.

As per Regulation 154 of the Electricity supply Code, in case of anomalies attributable to the licensee including inaccuracies in metering, amount of electricity charges short collected by the licensee if any shall be realized from consumer only for maximum period of twenty-four months.

Reliefs sought for:

1. to set aside the Order dated 23/11/2019 in CGRF-CR/OP No 1/2019-20 issued by the CGRF Ernakulam,
2. to cancel the short assessment order dated 20/3/2019 to consumer No 1155819012993 and also disconnection notice dated 20/3/2019 issued by the Assistant Engineer, Electrical Section, KSEBL, Karukutty demanding payment of Rs.4,42,311/- and to allow this petition.

Arguments of the respondent:

The Anti Power Theft Squad, Trissur had conducted an inspection in the premises of the appellant along with the officials of section office on 20-12-2018 and detected that the all of the CTs having ratio 100/5 A for metering was wrongly connected. On the detailed inspection it is found that secondary terminals S1 & S2 of each CTs are connected to the meter properly and the same points are also connected to the common neutral using another wire), Since the Anti Power Theft Squad, Trissur have no Accu-check testing kit to ascertain the percentage error occurred due to wrong CT connection they maintained the status quo without altering the wiring and convinced the consumer representative present there during inspection for a detailed examination, The short assessment bill was prepared only after confirmation of the percentage of energy loss recorded in the meter due to this wrong connection.

Due to this improper connection of CTs KSEBL has loss in MD and energy measured to the tune of 31.73% which was confirmed by the APTS team Ernakulam with Accu- check testing kit. The connected load was enhanced to 53 kW on 10/2017 but there was no need of CT or meter change since the existing CT was 100/5A and meter was appropriate.

Hence a personal hearing was conducted by the AE with the consumer on 19.3.2019 and an undercharged bill amounting to Rs 4,42,311/- (Rupees Four lakhs forty-two thousand Three hundred and Eleven only) for the period from 10/16 to 2/19 was served to the consumer on 21-3-2019.

The argument raised by the consumer challenging the short assessment period is not sustainable due to the following reasons

The service connection effected in the premises of the consumer is 3 phase LT connection which do not need the presence of AE or AEE during the commissioning of CT/Meter. There is a chance for occurring mistake in CT connection while effecting service connection as it is the subject connection is using 3 CTs and 3 phase CT meter.

There is no physical or documentary evidence substantiating the damage to the metering facility installed at the premises of the consumer due to lightning as mentioned by the consumer. The meter downloaded data reveals the fact. The CT and meter is same as that installed on 3.9.2016.

The argument of the appellant is that the mistakes in the CT connection may have been occurred after the lightning and subsequent repair in the metering connection was done by the Board staff in presence of Sub Engineer and Overseer. But there are no office records substantiating such repair work conducted by the Board staff. There is no data missing during that period. (As per the consumer argument there was a full day shutdown work conducted for rectifying the complaint occurred to the wiring of the metering connection). No complaint was found in the CT or meter at the consumer premises. The down loaded data and billing data reveals these facts.

If error occurred after lightning (as per the argument of the consumer) during August, it will be reflected in the MD and consumption recorded. But there is no change in MD and consumption recorded from date of connection to date of rectification of mistakes in connection on 19.3.2019. Also, no such variation reflected in the MD and consumption before and after August 2018.

The wrong connection of the CT wiring was corrected on 19.3.2019. After the rectification of wrong metering connection, the MD and consumption recorded has increased even though they have tried to control the same.

The appellant is aware and admitted that there was a mistake in CT/Meter connection but their challenge is only for period taken for reassessment. Since the consumer has not submitted any valid evidence to establish the mistake which occurred during August 2018, the argument is not sustainable. In the subject case licensee has established by an inspection and detailed analysis using modern equipments that the premises had wrong metering connection and there was an error of 31.73% in the parameters recorded in the meter which were taken for billing, hence an undercharged bill amounting Rs 4.42.311/- (Rupees Four lakhs Forty Two thousand Three hundred and Eleven only) for the period from 10/16 to 2/19 was served to the appellant on 21-3-2019.

Since MD for which corrections required is below 75% of CD, it does not affect the short assessment bill. Hence the undercharged bill for Rs. 4,42,311/- is confirmed and again issued on 16-12-2019 as per the order of CGRF dated 23-11-2019.

The short assessment bill is legally due to Kerala State Electricity Board Limited and the consumer is bound to pay the amount due to Kerala State Electricity Board Limited for the electricity charges used by it.

Analysis and Findings:

The hearing of the case was conducted on 28-01-2020 in my chamber at Edappally and Sri. Jose j. Matheikel, Advocate represented the appellant's side and Sri Ashrafudeen J, Assistant Executive Engineer, Electrical Sub Division, Angamaly represented the respondent's side. On examining the petition, the counter statement of the respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The APTS has inspected the consumer's premises on 20-12-2018 and detected that all of the CTs for metering was wrongly connected, thus resulting in the recording of a lower consumption than what is actually consumed. A site mahazar was prepared on 20-12-2018, Accu-check testing done and meter data was downloaded on 16-01-2019. As per the data downloaded, the polarity reversal was from 16-09-2016 to 16-01-2019. The appellant was issued a short assessment bill from 10/2016 to 02/2019 to

recover the energy escaped from billing due to CT's wrong connection. 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 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 appellant has contended that if there was wrong connection as assumed by the licensee, it could be easily found out by the Sub Engineer who had taken the monthly readings regularly. Since it was not reported by the Sub Engineer during the meter reading, the period of failure cannot be established. Further the appellant contended that no scientific analysis was done by the respondents to find out the period for which the current was missing.

Normally, the respondent is bound to rectify the defect of the metering system, if it is found defective/faulty, after informing the consumer. The appellant was assessed for Rs. 4,42,311/- for non-recording of energy due to defects, by taking the lost energy as 31.73% of the actual energy. Another contention of the appellant is that he is having an exclusive transformer for the purpose of this connection. Though the appellant made several requests to the Board to furnish the readings in that meter, the Board refused to give it. A perusal of the readings in that meter will bring out the false case raised by the Board. Another point of the argument of the appellant is that the cost of the industrial unit was calculated and paid on the basis of the periodical electricity charges, labour charges etc. and that cannot be recaptured for paying to the KSEBL. The appellant also alleged that even after two months of inspection, the KSEBL failed to correct the meter connections. The appellant also contended that the mistakes in the CT connection might have been occurred after the lightning and subsequent repair in the metering connection was done by the Board staff in presence of Sub Engineer and Overseer.

Refuting the above contentions, the respondent has averred that due to this improper connection of CTs KSEBL has loss in MD and energy measured to the tune of 31.73% which was confirmed by the APTS team Thrissur with Accu-check testing kit. The connected load was enhanced to 53 kW on 10/2017 but there was no need of CT or meter change since the existing CT was 100/5A and meter was appropriate. According to the respondent, if error occurred after lightning during August, it will be reflected in the MD and consumption recorded. But there is no change in MD and consumption recorded from date of connection to date of rectification of mistakes in connection on 19.3.2019. Also, no such variation reflected in the MD and consumption before and after August 2018. The respondent has also submitted that the service connection effected in the premises of the consumer is 3 phase LT connection which do not need the presence of AE or AEE during the commissioning of CT/Meter. There is a chance for occurring mistake in CT connection while effecting service connection as it is the subject connection is using 3 CTs and 3 phase CT meter. It is submitted by the

respondent that the meter installed in the premise is not reported as defective or damaged.

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. 4,42,311/- as per Regulation 134 of Supply Code, 2014, as claimed by the respondent.

The appellant is a low-tension three phase consumer with three phase load and single-phase load only less than 1 kW, which is negligible compared to the three-phase load. A distribution transformer was erected near to the premises with metering facility and the appellant is the only consumer in the transformer. As such the consumption recorded in the transformer station will be the consumption of the appellant. The transformer meter was replaced with another one, but the recorded consumption of the old one not available. Moreover, the meter was damaged and not functional as reported by the respondent.

The premise's meter data was downloaded on 16-01-2019 and the data shows polarity of all the CTs connected to R, Y, B phases of the meter as "Polarity Reversal" from 16-09-2016 and which was continued up to 16-01-2019. The date of service connection is 03-09-2016 and the first meter reading taken on 03-10-2016. From the above date it can be observed that the service connection was effected with incorrect CT connection. The CT connection is seen set right on 19-03-2019, after a period of three months from the date of inspection. The respondent could not explain the reason for the delay in rectifying the defects in the measuring circuit immediately after identifying the defect especially in a situation of any components of the metering system is not required. The above action of the respondent lead to the extension of short assessment period from 20-12-2018 to 19-03-2019 (3 months). Whenever a defect is noticed in the metering system, it is the responsibility of the Licensee to correct it at the earliest.

The metering system was tested on 16-01-2019 and found that the error is -31.73% and the respondent made the billing accordingly. The period of the defect from 9/16 to 1/2019 was taken from the downloaded data of the meter. The connected load at the time of effecting service connection on 03-09-2016 was 30 kW, which was enhanced to 53 kW on 02-10-2017. The connected load at the time of inspection is not seen taken and recorded in the site mahazar dated 20-12-2018. As such the consumption after the rectification of defect of the CTs connection is that of 53 kW and hence which cannot be taken for the reassessment prior to 02-10-2017.

In the site mahazar it is seen that the CT current to the meter measured on 20-12-2018 is not proportionate with the load current. The CT current in all the phases are less than the actual current to be shown. Definitely this led to the recording of low consumption than the actual consumption in the premises.

The respondent had not checked the metering system either at the time of effecting service connection or while enhancing the connected load. The

respondent had also not checked and entered the connected load in the site mahazar at the time of the inspection in the premises. The respondent only depends on the data received from the meter and the test report of the metering system. There was no inspection in the premises till 20-12-2018. At the same time, whatever be the laxity on the part of the respondent, the appellant is liable to compensate the revenue loss to a certain extent as per the scientific data available. As the appellant is using three phase load it is more proper to reassess the consumption @ 31.73% as done by the respondent than the consumption recorded after the rectification of metering system. As the defect in the meter connection was occurred on the date of connection itself, there is no previous average consumption.

This Authority is of the opinion that whenever a three-phase connection is given with or without external CTs, the appropriate authority has to inspect the premises and check the metering system and certify its correctness so as to avoid loss or undue gain of revenue to either parties. In this case the appellant is not responsible for the defect in the metering system from the date of connection and the appellant is not aware of his consumption, whether the recorded units is correct or not. No inspection is seen conducted by the Assistant Executive Engineer, the agreement authority, to ascertain the correctness of the metering system and hence grave lapses and dereliction of duty occurred on his part. Even on enhancing the connected load from 30kw to 53 kW on 10/2017, no inspection was conducted. If an inspection was done in the metering in 10/2017, the defect could have been detected and rectified in time. A delay in rectification of the defective metering was also occurred for 3 months after the inspection on 20-12-2018.

The monthly average of the recorded consumption from 10/2017 to 03/2019 in each zone is 3430 kwh in 'normal' period, 1163 kWh in 'peak' period and 1801 kwh in 'off peak' period, whereas the monthly average of consumption for 3 billing cycles after the rectification of the metering system is 4020 kwh, 703 kwh and 724 kWh respectively. The appellant is a consumer with three phase load and the percentage of the unrecorded energy might have been varied from 31.73%. The downloaded data not confirmed the error - 31.73% w.e.f. 09/2016, but the test report shows the error as -31.73% during the testing time of 3.57 minutes. Since the average consumption for 3 billing cycles after the rectification of the metering system is less than the disputed period, it is considered as not proper to assess the period of delay from 20-12-2018 to 19-03-2019 (3 months) for the calculation of short assessment. A wrong meter connection provided by the respondent cannot be treated as a defect occurred in the metering system which is in service. If the Licensee feels that the amount arrived at as above is insufficient to compensate the revenue loss, the balance amount from 09/2016 to 09/2017 can be realised from the responsible persons of KSEBL.

Decision

From the conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 4,42,311/- issued to the appellant. As the premises is with a load of three phase in nature, it is decided and directed

the respondent to revise the bill by taking 31.73% as the unrecorded consumption from 10/2017 to 20-12-2018 and to issue the revised bill to the appellant within fifteen days. The appellant is allowed 12 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. 01/2019-20 dated 23-11-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/100/2019/ _____ /Dated: _____

Delivered to:

1. Sri. Jose P.A., M/s Green Packs, Panthakkal, Karukutty P.O. Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Angamaly, 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.