

THE STATE ELECTRICITY OMBUDSMAN

D.H. Road & Foreshore Road Junction, Near Gandhi Square,
Ernakulam, Kerala-682 016

Ph: 0484 2346488, Mob: 8714356488

www.keralaeo.org Email: ombudsman.electricity@gmail.com

**Appeal Petition No. P/024/2024
(Present A. Chandrakumaran Nair)
Dated: June-27-2024**

Appellant : Sri. Antony Michael Fernandez,
St. Antony's Plastic Plot No. 39,
Mundakkal Industrial, Estate,
Kollam Dist., Pin- 691001.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSE Board Limited,
Kollam, Kollam Dist.

ORDER

Background of the case

The appellant Sri. Antony Michael Fernandez is the consumer of the licensee KSEBL under the Kollam Cantonment Electrical Section with consumer no. 1145580016056. The connection is an LT, 3 phase connection with connected load 70 kw under LT 4 A tariff. The 3 phase meter is connected with CT with ration 200/5 and the hence multiplication factor is 40. The new meter was installed for this service connection on 13/03/2019 as the old meter was faulty. The APTS team of Kollam conducted a surprise inspection on 27/10/2023 and found that CT terminals are wrongly connected to the meter. R phase terminal of CT is connected to the B phase of the meter and that of B phase connected to R phase. Further inspection they found that 73.54% of the consumption only recorded and 26.46% of consumption is unrecorded. This wrong connection has happened during the installation of this meter on 13/03/2019. The under charged bill amount from 11/2019 to 10/2023 was prepared for Rs. 5,37,224/- and send as a demand notice to the appellant. Appellant had contented that the meter was connected by the licensee and the consumer is not responsible. The appellant filed the petition to CGRF and CGRF issued order dated 27/04/2024 stating that the appellant is liable to pay the undercharged amount for a period of two years. Aggrieved by the order of CGRF, this petition was filed by the appellant.

Arguments of the Appellant

ഞാൻ സെന്റ് ആന്റണീസ് പ്ലാസ്റ്റിക് എന്ന സ്ഥാപനം നടത്തുന്ന വ്യക്തിയാണ്. എനിക്ക് 27-10-2023 ൽ APTS നടത്തിയ പരസ്പരശോധനയിൽ 5,37,224/- രൂപ 03-11-2023 ൽ ബില്ലായി വന്നിരിക്കുകയാണ്. 2019 മുതൽ 2023 വരെയുള്ള കാലയളവിലെ എല്ലാ റീഡിങ്ങും ഒരുമിച്ചെടുത്ത് ഭീമമായ ഒരു തുക ഞങ്ങളിൽ ചുമത്തി ഇരിക്കുകയാണ്. Meter reading officers ഈ നാല് വർഷക്കാലയളവിൽ ഒരിക്കലേങ്കിലും മീറ്റർ പരിശോധിക്കാനോ അതിലെ വീഴ്ച കണ്ടുപിടിക്കാനോ ശ്രമിക്കാതെ ഒരു സാധാരണ ഉപഭോക്താവായ എന്നിൽ മാത്രം കുറ്റം ചുമത്തി പിഴ അടയ്ക്കാൻ നിർബന്ധിതനാക്കിയിരിക്കുകയാണ്.

2019-ൽ APTS നടത്തിയ പരിശോധനയിൽ 76,676/-രൂപ പിഴയായി അടച്ചു മീറ്ററിലുള്ള സകല കേടുപാടുകളും മാറ്റി verifying officers നേരിട്ട് ഘടിപ്പിച്ച പാനലുകൾ ആണ് പിന്നീട് phase മാറ്റം എന്നു പറഞ്ഞ് വീണ്ടും ഇത്രയും വലിയ തുക പിഴയായി വന്നിരിക്കുന്നത്. ഞാൻ എല്ലാ മാസവും കുടിശ്ശികയില്ലാതെ ബില്ല് അടച്ചു പോകുന്ന വ്യക്തിയാണ്. അതിനാൽ തന്നെ ഈ ബിൽ ഉപഭോക്താവായ എന്നെ സംബന്ധിച്ചിടത്തോളം വളരെ വലിയ ബാധ്യതയും മാനസിക ബുദ്ധിമുട്ടും ഉണ്ടാക്കുന്നു. ഈ മീറ്ററിൽ കുടി എത്ര കറണ്ട് പാസ് ചെയ്യുന്നതോ അതിലെ phase നെക്കുറിച്ചു ഉപഭോക്താവായ എനിക്ക് ഒരു ടെക്നിക്കൽ നോളജ് ഇല്ല. അതെല്ലാം കെഎസ്ഇബി ഉദ്യോഗസ്ഥരാണ് ചെയ്യേണ്ടത്. അവരുടെ ഭാഗത്തുള്ള വീഴ്ചയായി ആണ് ഇതിനെ മനസ്സിലാക്കേണ്ടത്.

കൊറോണ കാലഘട്ടമായ 2019 മുതൽ 2021 വരെ ഫാക്ടറിയുടെ മൂക്കാൽ ഭാഗവും അടച്ചിട്ട നിലയിൽ ആയിരിക്കുകയും അന്യദേശക്കാരായ തൊഴിലാളികൾക്ക് താമസവും ഭക്ഷണവും സൗജന്യമായി എത്തിച്ചുകൊടുത്തുകൊണ്ടിരുന്ന സമയത്തും KSEB ഇത്രയും വലിയ ഒരു ബാധ്യത ഞങ്ങളുടെ മേൽ അടിച്ചേൽപ്പിക്കാതെ മൊത്തം തുകയും പൂർണ്ണമായി റദ്ദാക്കണമെന്ന് അങ്ങയുടെ സമക്ഷത്തിൽ താഴ്ന്നോടെ അപേക്ഷിക്കുന്നു.

ഇപ്രകാരം ഞാൻ Kottarakkara CGRF-ൽ പരാതി നൽകുകയും അതിന്റെ അടിസ്ഥാനത്തിൽ 14-3-2024 ആം തീയതി വിചാരണയ്ക്ക് പോകുകയും എന്റെ ഭാഗത്തുള്ള നിഷ്കഷതയും ദയനീയ അവസ്ഥയും പരിഗണിച്ച് ഓഫീസർമാർ ഈ

പിഴ രണ്ട് വർഷക്കാലമായി ചുരുക്കി തന്നിരുന്നു. പക്ഷേ എന്റെ പക്കൽ ഇത്രയും തുക അടയ്ക്കാനുള്ള ഒരു സ്ഥിതിയും ഇല്ലാത്തതിനാൽ ഈ സ്ഥാപനം എന്നേക്കും അടച്ചുപൂട്ടേണ്ട ഒരു അവസ്ഥ വന്നിരിക്കുകയാണ്. എന്തേതല്ലാത്ത കുറ്റം ആയതിനാൽ പിഴ പൂർണ്ണമായും ഒഴിവാക്കി തരണമെന്ന് താഴ്ന്നയോടെ അപേക്ഷിക്കുന്നു.

ഞാൻ ഈ വർഷക്കാലയളവിൽ എല്ലാം Sales Rate നിശ്ചയിക്കുന്നത് Electricity Bill-ന്റെയും labour cost ന്റെയും അടിസ്ഥാനത്തിൽ തുച്ഛമായ ലാഭമെടുത്ത് കച്ചവടം ചെയ്തു വരികയായിരുന്നു. Plastic Recycling & Reprocessing (Waste management & Disposal) ഫാക്ടറി നടത്തിവരുന്ന എനിക്ക് ഒരു ആനുകൂല്യങ്ങളോ, subsidy-യോ ഗവൺമെന്റിലൂടെ ലഭിക്കുന്നില്ല. Plastic melting, grading, compressing, powdering, washing എന്നീ കഠിനമായ ജോലികളാണ് ഇവിടെ നടത്തി വരുന്നത്. അതിനൊത്ത പ്രതിഫലം നമുക്ക് ലഭിക്കുന്നില്ല. തുച്ഛമായ ലാഭത്തിനുവേണ്ടി ഞങ്ങൾ ഇനിയും ഇങ്ങനെ KSEB-ക്ക് പിഴ അടയ്ക്കാൻ പറഞ്ഞാൽ ഫാക്ടറി അടച്ചിടുകയും കുറെയേറെ തൊഴിലാളികൾക്ക് ജോലി നഷ്ടപ്പെടുകയും ചെയ്യും. അതിനാൽ ഇതൊരു താഴ്ന്നയായ അപേക്ഷയായി കരുതി എന്നെയും തൊഴിലാളികളെയും കരകയറ്റണമെന്ന് അപേക്ഷിക്കുന്നു.

Arguments of the Respondent

It is admitted that the APTS wing of KSEB, Kollam conducted a surprise inspection in the premises of the petitioner on 27.10.2023 at 2pm and found that phase terminals of the CT meter was wrongly connected. During inspection the following facts were noticed. The Voltage and Current displayed by the energy in R,Y & B phase, when the said premises is functional during the inspection were 236V/1.22 Amps, 236 V/1.37 Amps and 238 V/ 1.49 Amps respectively. It is evident that R phase Voltage connection is connected to B phase terminal of meter and B phase voltage connection is connected to R phase terminal of meter. Hence due to wrong connection 73.54% of the total consumption is only recorded in the meter. Remaining energy consumption in the premises is left unrecorded. It is evident from the meter reading during inspections and from downloaded data of the "Zera meter", that there was an under billing of 26.45% from 2019 onwards due to wrong phase connection.

Also it is submitted that APTS wing, Kollam conducted inspection on the said premises earlier on 13.03.2019 and found that one phase was not recorded in the meter. Hence short assessment amount of RS.73,523/- was

assessed and remitted consumer in 9 installments and closed on 27.01.2020. After that a new meter was installed on 13.03.2019. The inspection details on 27.10.2023 were brought to the notice of the petitioner, who was present in the premises during the entire inspection of APTS team and he had affixed his signature on the site mahazar and copy of the site mahazar was handed over to him.

It is submitted that the said meter installed in the said premises on 13.03.2019 as a part of meter change. The downloaded data shows that CT reversal has happened from the date of installation of meter. As per Regulation 134(1) of Kerala Electricity Supply Code 2014, which forms an integral part of service connection agreement executed by the consumer with KSEB Ltd the petitioner is liable to pay the undercharged portion of bill issued by Board. The new meter installed in the premises was on 03/2019 and hence the period of assessment has taken from 04/2019 to 10/2023. Accordingly the petitioner was served with an under charged bill amounting to Rs. 5,37,224/- (Rupees Five Lakhs Thirty Seven Thousand Two Hundred and Twenty Four Only). Since the energy meter recorded only 2/3 of actual consumption, 1/3 of the actual consumption had been lost due to wrong phase connection.

It is submitted that the petitioner approached Hon'ble Consumer Grievance Redressal Forum (South), Kottarakkara vide OP No. 03/2024 against the assessment and vide order dtd 27.04.2024, Hon'ble CGRF ordered to limit the period of assessment to 2 years and suitable installment shall be made if petitioner desires. The said order of the Hon'ble Consumer Grievance Redressal Forum (South), Kottarakkara vide OP No. 03/2024 has been examined thoroughly by the KSEB Ltd and decided to challenge the order by filing Writ Petition before the Hon'ble High Court of Kerala. The KSEB Ltd is a licensee empowered under Section 134(1) of Kerala Electricity Supply Code 2014 to realize the under charged amount for the energy consumed in the premises of the petitioner. Further Regulation 152 also provides that in the event of anomalies attributable to the licensee which are detected at the premises of the consumer, the amount of electricity charges short collected by the licensee shall be realized from the consumer. The contentions raised by the petitioner against the issuance of the undercharged bill is baseless and he is liable to pay the demand for actual consumption of energy from 03/2019 to 10/2023. Installment facility will be open to the petitioner for payment if desired.

The Hon'ble Apex Court in Civil Appeal No 7235 of 2009 M/s Prem Cottex Vs Uttar Hariyana Bijli Vitran Nigam Ltd & Others has unambiguously upheld the right of respondent in raising of an additional demand in the form of Short Assessment notice on the ground that in the bills raised during a particular period of time for unrecorded portion cannot tantamount to deficiency in service. Here the licensee found 26.46% of consumption had been unrecorded from 2019 onwards from the meter installed in the

petitioner's premises with the support of 'Zera meter' and issued a Short Assessment bill. The amount demanded is legal in all respects and the petitioner is liable to pay it. It is pertinent to note that after the APTS inspection the said meter was corrected and has been functioning in the same premises and the demands derived from this meter has been paid by the petitioner without any hesitation. Also the petitioner has not challenged the correctness of the meter. For these and other reasons to be urged at the time of hearing, it is humbly prayed that the Hon'ble Ombudsman may dismiss the petition with cost this respondent and also direct the petitioner to pay the short assessed bill without further delay.

Counter Arguments of the appellant

The claim raised in the version that the alleged fault in the meter installed by the respondent was discovered only when the APTS wing of KSEB, Kollam conducted a surprised inspection in my premises on 27/10/2023 at 2 p.m. is a misleading statement. The Asst. Executive Engineer of the respondent had visited and inspected the factory and premises of the petitioners more than 56 times between 13/3/2019 and 27/10/2023 for billing and other purposes. During such visits he never stated that there was any fault with the meter at all. In fact there was no fault with the meter. The alleged under billing on account of the claimed reversal of B & R Phased voltage is not correct and there was no such reversal, if there was a reversal of such nature then the Engineer who visited the premises right from the time when the meter was installed would have easily detected the error and since he had not noticed such an error, it is evident that the present claim is absolutely baseless and false. I am therefore not liable to pay any amount as alleged by the respondent as no such under-charging or under billing has occurred.

It is respectfully submitted that it is obligatory for the meter reading Engineer, Regulatory Meter Inspector and related staff of the respondent to conduct annual inspections to ensure proper and correct functioning of the meter and readings. This is a legal obligation on the part of the respondent and its staff. The responsibility lies totally upon the respondent and its staff and if there has been any failure on the part of the employees of the respondent to discharge their duties properly, then I cannot be mulcted with the liability as it is a direct result of the negligence of the respondent. I cannot be held liable for failure of the employees to perform their duties as expected.

The allegation that the petitioner was present at the premises of the factory on 27/10/2023 when the inspection was conducted by the APTS Team is false and hence denied. I was not present on that particular date at the factory and had no occasion to witness or verify the alleged cross connection made by the respondent. I was called to the factory after the alleged inspection and the officers of the respondent requested me to sign certain

documents written in Malayalam, stating that the document is only to verify and acknowledge that they had visited the premises. I cannot properly read Malayalam and therefore since I had no reason to suspect the bonafides of the officers of the respondent, my signatures were obtained by the officers of the respondent without actually disclosing the contents of any of the said documents. In fact I suspect that the mahazzar allegedly prepared has been concocted and fabricated by the respondents in the signed papers obtained from me by them. It is pertinent to note that as far as I was concerned, on the alleged date of inspection, there were no arrears in electricity charges and there were no disputes with the respondent and therefore, I had no reason to suspect the bonafides of the officers of the respondent. Therefore, the allegation that I affixed my signature on the mahazzar and that a copy of the same was handed over to me is false and I vehemently deny the said allegation.

It is humbly submitted that earlier, on 13/03/2019, the APTS Kollam claimed that one phase was not recorded and that there was a short assessment amount of Rs.76,676/-. Immediately after that a new meter was installed, now they have claimed further malfunction of the newly installed meter, beginning immediately in the same year and from the very next bill dated 13/04/2019. It is claimed that there has been an under-billing of Rs. 5,37,224/- due to the fault of the staff of the respondent and their failure to rectify the alleged defects in the meter. This claim is totally unfair, illegal and unjust. I operate the factory on a tight budget and costing is done on the basis of the estimated future expenses. When out of the blue such a huge amount is demanded, I will not be able to sustain the loss. It will cause irreparable injury to my liquidity. It is humbly submitted that if at all there has been any loss caused to the respondent on account of the failure of its staff or employees who failed to properly install the electrical facilities, then I cannot be mulcted with any liability in that regard. The claim presently raised is absolutely illegal and the random calculation carried out by the respondent is also not sustainable. It is relevant to note that the period that has been assessed as under billed includes the COVID 19 period also. It is an acknowledged fact that for nearly two years my factory was not functioning and therefore during the period of COVID19 it was impossible for me to consume the same amount of electricity as consumed at present. Therefore, without prejudice to my other contentions, it is submitted that the calculation now made by the respondent is absolutely wrong and illegal.

It is humbly submitted that the judgment cited by the respondent namely M/s. Prem Cottex - Civil Appeal) No. 7235/2009 is not applicable to the facts of the case. The said judgment does not enable the respondent to act illegally and to charge exorbitant amounts from me. There has been a clear deficiency of service committed by the respondent and the respondent has to be held liable for such deficiency. Without prejudice to the other contentions of the petitioner, it is submitted that it is not clear from any of the documents given by the respondent as to how the respondent came to a

conclusion that 26.46% consumed has been unrecorded from 2019 onwards. The calculations made by the respondent are wrong and even if it is assumed without admitting that there has been under billing then the manner in which the quantum of the amount has been calculated is wrong.

It is respectfully submitted, there has been a clear deficiency of service by the respondent and the alleged unrecorded portion or under charged amount cannot be recovered from me as the same cannot be attributed to any fault committed by me and particularly because I have not violated any provision of law.

Analysis and findings

The hearing of this appeal petition was conducted on 13/06/2024 at 03:30 p.m. in the KSEBL IB, Paruthippara, Thiruvananthapuram. The hearing was attended by the appellant Sri. Antony Fernandez and the respondent Sri. Reji S. Nair., Assistant Executive Engineer, Electrical Sub Division, Kollam.

The appellant is having a plastic recycling unit under the name St. Antony's Plastics. Where the activities such as plastic, melting, grading, compressing, powdering and washing etc are carried out to recycle the waste plastics. This is a waste management & disposal activity and functioning without any aids from any side. This service connection is availed for the purpose of this industry in LT 3 phase with tariff LT IVA (industrial tariff) with CT connected meter. During the inspection of APTS on 13/03/2019, it is found that one phase was not recorded by the meter and a short assessment amount of Rs. 76,676/- have been paid by the appellant. Then the meter was replaced on 13/03/2019.

Now on the inspection of APTS on 27/10/2023 it is found that the meter was connected wrongly by the officials of the licensee and the reading of this meter was 26.46% less than the actual reading. The under charged amount of Rs. 5,37,224/- has been raised to the appellant as per the regulation 134 of the Kerala Electricity Supply Code 2014. The meter reading would have been less after the installation of the new meter.

There is a circular issued to notice the consumption if it is $\pm 20\%$ of the previous values, the licensee has to cross check again. This is also not happened. This mistake of the wrong connection has happened from the officials of the licensee while connecting the new meter on 13/03/2019. The regulation 109 describes about the supply and installation of meter and circuit Breakers.

109(10) *“Initial installation as well as replacement of the meter shall be done by a qualified employee of the licensee duly authorised for this purpose, in the presence of the consumer or his representative”.*

109(11) *“The licensee shall adopt a format of meter particulars sheet for recording the particulars of the meter at the time of initial installation or replacement”.*

109(12) *“The licensee shall retain one copy of the meter particulars sheet and its second copy, duly signed by the authorised representative of the licensee, shall be given to the consumer under proper acknowledgment”.*

109(13) *“The consumer or his authorised representative shall also sign the meter particulars sheet”.*

109(14) *“Subsequently, details of any faults in the meter, repairs, replacements etc. shall be entered in the meter particulars sheet by the licensee or his authorised representative”.*

109(15) *“Whenever a new meter is installed, either for a new connection or for replacement, it shall be sealed in the presence of the consumer”.*

Here the meter would have installed by a qualified employee of the licensee and would have sealed in presence of the consumer. Then how the wrong connection have happened? The employers were not properly trained? Or the employers are purposely doing this? Or an error happened due to the carelessness? The licensee have not answered these questions properly.

Then the meters installed in the premises of the consumer is to be tested/inspected periodically. The regulation 113 states about the periodical testing of the meters.

113(1) *“It shall be the responsibility of the licensee to satisfy itself regarding the accuracy of the meter before it is installed and the licensee shall test them or get them tested in an accredited laboratory or in an approved laboratory”.*

113(2) *“The licensee shall also conduct periodical inspection or testing or both and calibration of the meters, as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time”.*

113(6) *“The licensee shall conduct periodical inspection or testing or both of the meters for LT 3-phase meters – once in three years”*

The licensee should ensure the accuracy of the meter before installing as well as through the periodical testing/ inspection. As this is an LT 3 phase connection, the meter would have tested once in every three years. This means that the meter at least would have tested on 13/03/2022. The

periodical testing ensure the accuracy of the meter is mandated only to arrest the revenue leakage of the licensee.

The regulation 134 of the supply code 2014 is briefed about the undercharged and over charged bills.

134(1) *“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”.*

The regulation 152 is about the anomalies attributable to the licensee which are detected at the premises of the consumer.

152(1) *“Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.”*

152(2) *“In such cases the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.”*

152(3) *“The amount of electricity charges short collected for the entire period during which such anomalies persisted, maybe realised by the licensee without any interest:*

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of 24 months, even if the period during which such anomaly persisted is found to be more than 24 months.”

152(4) *“The consumer may be given instalment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of installment”.*

Here the licensee has raised bill as per regulation 134, but the regulation applicable for this case is 152 as this is the issue of inaccuracies in metering. The limitation of calculation of short collected amount have been limited for

24 months, even if the period during which such anomaly persisted is beyond two years.

Then the licensee's argument is that the limitation is period is not applicable as per the order Hon'ble Supreme Court in the case of Civil Appeal No. 7235 of 2009 M/s Prem Cottex Vs Uttar Haryana Bijili Vitran Ltd and others. The court have given a proper definition of when the amount is first due. It is stated that amount is first due only when the mistake is discovered.

However in the case in hand, there is clear cut stipulation on the periodical inspection/testing of meters to avoid such type revenue misappropriation. This have been vividly violated by the licensee. The meter would have been at least tested on or before 13/03/2022. Then the short collected amount would have been due only from 13/03/2022 to 27/10/2023.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The licensee shall revise the demand for short collection from 13/03/2022 to 27/10/2023.
2. The appellant is liable to pay the short collected amount worked out as per 1. above.
3. The licensee has to fix the responsibility to the official who is responsible for this lapses & take action.
4. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/024/2024/_____ dated: 27-06-2024 .

Delivered to:

1. Sri. Antony Michael Fernandez, St. Antony's Plastic Plot No.39, Mundakkal Industrial, Estate, Kollam Dist., Pin- 691001.

2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Kollam, Kollam Dist.

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, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.