

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/172/2010.

(Present T.P.Vivekanandan)

Appellant : Sri.Mohankumar,
Proprietor, M/S Krishna Fuels, Thaikkad P.O, Guruvayoor, Thrissur.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard, Guruvayoor, Thrissur.

ORDER.

Background of the Case:

The Appellant is the proprietor of a Petrol Pump named M/S KrishnaFuels,Thaikkad, Guruvayoor. He is the consumer of a 3-phase Electric connection no: 13333 of electrical Sub Division, Guruvayoor, given under LT VII (A) tariff. On 8.2.08, the Respondent issued a short assessment bill (Demand) amounting to Rs.78, 744/=, describing it as a shortage on the electricity charges, as per the Internal Audit report of Regional Audit Officer (RAO), KSEB. Thereafter, disconnection notice (D/C) was also served on the consumer, for the nonpayment of the said demand. Aggrieved by the said demand bill and the D/C notice, the Appellant filed Petition before CGRF, Central, Ernakulum. The Hon: CGRF, after hearing both sides, disposed of the Petition on 12.10.2010, directing the Respondent to revise the demand with an average energy consumption of 1683 units per month. Accordingly a revised bill for Rs.55, 712/= was served to the Appellant on 06.11.2010. Still aggrieved by the decision of CGRF, the consumer preferred the Appeal Petition before this Authority.

Arguments of the Appellant:-

The Appellant has adduced the following arguments;

He is the consumer of the Respondent vide consumer no. 13333 under LT VII A tariff. The Electric connection was granted to his Petrol pump in June, 2006. From the date of the electric connection till this date, the officials of KSEB monthly inspects the Meter and takes out the reading of consumption of electricity and issues the bill thereof to the Appellant. As such, he is making payment of the monthly bill due to Respondent promptly and regularly without any default. Before the replacement with a new Energy Meter on 10.05.2007, the average electric consumption was 660 units and thereafter it was 2106 units. The impugned bill amount corresponds to the period of the past 6 months just before 10.05.2007 i.e. from 17.11.2006 to 17.04.2007.

The Appellant argues that the Meter is in the custody of the Respondent and the Respondent is having absolute control and authority over the same and if at all any defect was detected in the working of the Meter, it is the duty of the Respondent to cure the defect and rectify the same. The Appellant submits that he is an illiterate person without any technical expertise in the field and he is unable to detect such a defect in the Meter. Hence sluggishness of Meter cannot be noticed and understood by him. As no complaint had arisen about the deficiency of the Meter till 17.04.2007, the Appellant submits that there is no defect in the electric Meter till that day.

Another argument adduced by the Appellant is that, on 11.11.2006, he made a complaint before the Respondent regarding the low voltage problem, as there was only 180 volts of electricity through one of the three phases of supply provided to his Unit. On 16.11.2006, based on the above said complaint, the Sub Engineer and Lineman from Electric Sub Division, Guruvayoor, came to the Appellant's Petrol pump and inspected the electric Meter and the electric service connection and they submitted a report to the KSEB and a copy of the same was also given to the Appellant. At this time, the KSEB officials neither detected any defect in the Energy Meter nor did they report any defect before the Respondent. In the said report, there is no mention of any electric Meter's complaint.

The Appellant further submits that his Petrol pump runs under the Reliance management. The petrol and diesel of the Petrol pump unit (under the Reliance management) was 3 or 4 times higher than the price of petrol and diesel of other Petrol pump units. Hence the business of the Appellant's Firm was dull for more than one year. At that time, the number of staff was less and Petrol pump was closed during night time. Hence the electrical energy consumption was less. The Appellant was using two motors for pumping water out during the rainy season which resulted in excess consumption. This was done after the Meter change. Hence the reading after the Meter replacement was correct and the reading before replacing was also correct and the variation after Meter was replaced cannot be said to be due to faulty Meter. The consumption of electrical energy after the Meter change was very much increased due to the change of business as Reliance management during this period has followed the same price for the petrol and diesel of other corporate units. According to the Appellant, the Respondent's finding that the old Meter was faulty or sluggish in working is not correct.

Another argument advanced by the Appellant is that the provision of the Regulation 42 (3) of KSEB Terms and Conditions of supply, 2005, is not applicable in this case because the Meter was on working conditions. The Meter was replaced with a new one by the only reason of less consumption of electricity at the time of Meter reading. Appellant submits that, it means the Meter was in working condition at the time of replacement with a new Meter. Due to the dullness of business, the electric consumption has decreased. The Appellant's another contention is that there is no case of non-reading and malfunctioning of Meter in which case Regulation 33 (2) of KSEB Terms and Conditions of supply, 2005, shall apply. In case (1) if the Board is unable to raise a bill on Meter reading due to its non-recording (2) or malfunctions, the Board shall issue a bill based on the previous 6 months average consumption.

The Appellant says that all the detailed calculations as per which the Respondent have reached the huge bill amount of Rs.78, 744/= were made without any basis. The impugned bill does not disclose the criteria and method adopted by the Respondent in calculating the monthly electrical consumption and the bill is also silent about the reason to calculate the consumption at the rate of 2106 units per month. Appellant further argues that subsequent electric connected load more than 2 years later will not become as a mandate for considering past consumption bills. The Respondent without the basis of any complaint had inspected the place even though there was no Meter fault detected at that time which is the violations of section 28 of the Kerala Electricity Supply Code, 2005. The Appellant also cited the observation of Hon: High Court held in George Joseph and another Vs KSEB and others in 2208 (4) KHC 676 that the consumer is entitled to take the stand that unless the Licensee gets the dispute resolved and the charges assessed by the Electrical Inspector by reference under section 26 (6), he is liable to pay only for the energy as recorded in the Meter.

It was also submitted that the assessment of 1683 units of energy as the true average consumption of the consumer, by the Hon: CGRF is baseless, illogical and unreasonable. The Appellant has requested to make necessary order directing the Respondent from initiating any action on the basis of impugned bill bearing no:043764 dated 08.02.2008 and on the subsequent revised bill and from disconnecting the electric connection of the Appellant's Petrol pump namely M/S Krishna Fuels, Guruvayoor, in pursuant of the afore said bill.

Arguments of the Respondent:-

The Respondent denies all the averments contained in the Petition except to the extent they are expressly admitted in the statement of facts submitted before this Authority.

The Respondent has admitted that a demand cum disconnection notice was served to the consumer on 08.02.2008. The demand was for Rs.78, 744/= pertaining to the period 11/06 to 04/07 during which the Energy Meter installed for the Appellant was found sluggish in working that caused for recording a lesser consumption than the actual. The basis for Demand was the report of the Regional audit officer, calculating the average energy consumption of the consumer as 2106 units/ month for the same period.

The Respondent submits that since 7/06, the reading of the Meter showed almost steady up to February, 2007. The Meter showed continuously a trend of decrease in reading (consumption) since February 2007, before it was completely dead during May 2007, which is a typical characteristic of sluggish Meters. The new Meter installed in 5/07

was showing an increased and steady reading since then. Hence it was confirmed that the old Meter was sluggish in working and a short assessment bill was issued to the consumer based on the new average consumption. This is completely legal and as per Regulation 33 (2) of the Terms and Condition of supply, 2005. The reassessment of energy of sluggish Meters can only be computed using the average reading after the new Meter is installed. This is because the Meter ceased to record the consumption before its replacement and the reassessment is absolutely legal as per clause 42(3) of Terms and Conditions of supply, 2005.

The Respondent has denied the argument that the Petrol pump was closed during night time. They argue that the pump is situated on the main road leading to Guruvayoor Temple. Normally, the season from August to May becomes very crowd there due to several festivals and functions related to temple, marriages and Sabarimala pilgrimage etc. In connection with this, lakhs of devotees with thousands of vehicles will reach the Temple during these seasons. So it is unbelievable that the business was dull during the period under dispute.

According to the Respondent, the argument of the Appellant that he used two motor-pump sets to bail out water to avoid mixing water and fuel during rainy season is not true. As per the records of Meter reading taken after changing the Meter, for the period of 06/07 to 02/08, the consumption of energy for every month was high and almost steady irrespective of climatic conditions. No dewatering system of that much capacity is seen erected there so as to cause for such a huge variation in energy consumption. Instead, only a single phase 1HP (746 W) motor pump set is seen installed in their premises for the dewatering purpose. It is well known that a 750 watts pump set consume only 0.75 units per hour. If the motor works for 2 hours a day, the daily consumption shall be 1.5 units i.e. 45 units in a month. The motor pump set needs working only intermittently as the premise is not a water logged area.

Regarding the complaint of low voltage problem, the Respondent admits that a complaint was received from the Appellant on 11.11.2006. In response to it, the Sub Engineer inspected the premises of the Petitioner and checked the supply voltage of each phase and prepared a site mahazar on 16.11.2006 at 7.15 p.m. (Night peak time). Even at the time of night peak, the supply voltage level of each phase was found to be 203 Volts, 207Volts and 224 Volts respectively, which is within limits. The Appellant's claim that the voltage has dropped to 180 volts is therefore found not true.

The Appellant's argument that no defect was detected in the Meter by the Sub Engineer during his inspection is accepted by the Respondent, but at that time of inspection the Appellant was not taking supply from KSEB but was using supply from his Generator set. As such nobody could detect the fault on the Meter without the flow of energy through the Meter. In the mahazar, the Sub Engineer had clearly recorded this point. The Respondent states that the Appellant's Petrol pump is situated near the 110 KV Substation, Guruvayoor, and another fuel station is also working close to this firm without any voltage complaint. Further, the Appellant has not turned up in the Voltage Adalath conducted by KSEB for the specific purpose of redressing the grievances of low voltage complaints of consumers. It is also stated that there was not even a single complaint reported from this area to them about low voltage problem.

Analysis and findings:-

The case was posted for Hearing on 16.3.2011, and 03.06.2011. The Appellant was represented by his counsel Sri TM Abdul Salam and submitted the detailed argument note on 29.6.2011. The Respondent was represented by Sri D Prasad, Assistant Executive Engineer, Guruvayoor, and they presented the case on the lines stated above. On perusal of the Appeal petition filed by the consumer, the counter of the Respondent, argument notes submitted by the Appellant, and examining the documents of both sides and considering all the facts and circumstances of the case, this Forum comes to the following Findings and Conclusions leading to the Decisions thereof.

After considering the Appellant's arguments and the Respondent's contentions, this Forum framed the following issues to be answered.

(1). whether the old Meter existed at the consumer's unit was faulty or sluggish in working showing a lesser consumption than the actual or whether due to the dullness of business of the consumer, the energy consumption was low during the disputed period? If so what is the period during which the Meter was sluggish in its working?

(2). whether the short assessment bill issued by the Respondent or the reassessment bill as per CGRF order is correct and justifiable or whether a different assessment of bill is required, based on the allegation that the Meter was sluggish in working? If so what is the true average energy consumption of the consumer during that period?

The Appellant argues that the Energy Meter was in the custody of the Licensee and having absolute control and authority over the same, if at all any defects were noticed in the working of the Meter, it is the duty of the Respondent to rectify such defects. Further, since the Respondent takes the Meter reading every month to know the consumption of electricity and issues the bill thereof, the person who takes the Meter reading can specify if there is any defect, argues the consumer. But the Respondent states that, they noticed a decline in the consumption recorded in the Meter from 2/07 onwards and at the time of taking Meter reading in May 2007, the sluggishness of the Meter was confirmed and immediate action was taken to replace the Energy Meter. Thus a new Meter was installed to the consumer on 10.05.07 replacing the sluggishly operating Meter.

As per regulation 43(1) of KSEB terms and conditions of supply 2005, a consumer shall provide and maintain sufficient protection to Metering and associated equipment to the satisfaction of the Board. Regulation 42 (3), reads "the consumer may report any complaint regarding Meter to the concerned Electrical Section". In case the Meter slows down in working, there are chances that the consumer may not be aware of it or even if aware, he may report it or may not report it since it is beneficial to him. The Meter readers who visit the consumer's premises regularly for taking the Meter readings are supposed to note down any discrepancy in Meter reading or its working and should bring to the attention of his Superiors. Meter readers are not authorized to check the accuracy of the Meters. If in doubt about the accuracy of the Meter or any anomaly is noticed, the Meter Readers should report to the Assistant Engineer and he can take further action like Checking the Meter and its replacement etc, if necessary. In this case there is no complaint from the consumer regarding the Meter's performance in working. Hence the case under dispute will not attract the clause 42(3) of the Terms and Conditions of Supply, 2005.

On examining the complaint of low voltage problem at consumer's premises, it is seen that the Sub Engineer had inspected the premises of the petitioner and measured the voltage of each phases and prepared a site mahazar regarding the findings, on 16.11.2006 at 07.15 p.m. (Night peak). Copy of the site mahazar submitted by the petitioner itself shows the voltage of the three phases as 203 Volts, 207 Volts, and 224 Volts respectively. In the instant case, the Respondent's version seems to be as more convincing since the consumer's site is very near to the Guruvayoor Substation, the chances for low voltage problem is remote. Further the Respondent swears that another fuel station is working very close to the Appellant's unit without any voltage complaint raised at that time. Moreover, nobody else in the vicinity has reported any low voltage complaint during the said period. The above facts disapprove the allegation of low voltage problem at the local area including the consumer's Unit. Hence the consumer's allegation of low voltage of 180 Volts in one phase may be of short duration and of local nature confined to his Unit, may be due to looseness of wire or blown out fuse etc. only.

Section 26(6) of Indian Electricity Act 1910, is not relevant now, as the new act namely 'The Electricity Act, 2003' came into force on 10th day of June, 2003, and the cause of action in the case under dispute has occurred in the year 2007 and hence the case has to be settled as per the new Electricity Act, 2003, only.

Issue No.1 :-

The Appellant's Petrol pump is working under the Reliance Management. The Appellant states that the price of petrol and diesel etc. of his unit was 3 or 4 times higher than the value of petrol and diesel of other Corporate Petrol pump units. Due to this his business was dull and he runs no night time business, argues the Appellant. The Respondent challenges this argument on the ground that the said Petrol pump is situated on the main road leading to Guruvayoor temple. The Appellant's claim that Reliance's fuel cost was 3 to 4 times higher than other's fuel cost is difficult to accept. It is gathered that there was only marginal difference in the price of fuels in Reliance Pumps when compared with other corporate fuel Pumps and not 3 or 4 times the rate as argued by the consumer. The Appellant has not produced any

documents to prove his claim of high cost of fuel attributed for the dull business. Hence the Appellant's claim that, the dullness in business was the main cause for low energy consumption before 5/07 is not appear to be true.

The Meter reading of the consumer taken for the month of 3/07 shows a consumption of 597 units, for 4/07 it was 183 units and for 5/07 it was 24 units. This indicated that the energy Meter installed for the Appellant's unit was going sluggish in working or malfunctioning and does not indicate the correct energy consumption commensurate with his usage. This fact is confirmed since the energy consumption before 2/07 was almost around an average of 660 units per month and after the Meter change took place, the energy consumption rose considerably. Actually the Meter Readers, while taking the Meter readings, should compare the consumption with the previous spells and report to the Assistant Engineer the anomalies, if any, noticed during the site visit for a detailed checking of the Meter by the AE to ascertain its accuracy. Here in this case also, that may be the reason why the Asst. Engineer changed the Meter of the consumer in 5/07 itself, may be on getting information from the Meter reader, and upon checking and finding the Meter as sluggish in working. Hence the action of Assistant Engineer in changing the Meter of the consumer was in order.

The increase in consumption of energy, after the Meter change according to the Appellant, is due to frequent usage of energy for dewatering of rain water collected in his Unit in the rainy season and also due to the slashing of price of fuel under Reliance Management which resulted in increase of business. The Respondent, on other hand states that, only a single phase motor pump set with 1 HP(750 W) capacity is seen kept in the consumer's premises for dewatering. Since the premises is not a water logged area, the motor needs working only intermittently and for that purpose, at the most, the energy consumption will come to a maximum of 45 units only in a month. So the high variation of energy consumption before and after the Meter change is not at all due to the use of dewatering pump alone. Moreover the Respondent questions the dull in business strongly. The arguments of the Appellant about the dullness in business and the dewatering pump's usage are not convincing. The Respondent states that these points were not raised in the Petition filed before the Hon: CDRF, Trissur. Hence the rise in the recording of energy consumption after the Meter was changed, suggests me that the old Meter was sluggish in working. The averment that the Reliance Management slashed the fuel price and thereby the business increased during 5/07, at a time coincident with the Meter change, is also difficult to believe. It remained a fact that the Meter reading showed a gradual decline for the months of 2/07, 3/07 and 4/07, when the energy consumption recorded in old Meter was 597 units, 183 units and 24 units respectively. After the Meter was replaced in 5/07, there was a sharp rise in energy consumption to the level of 2226 units, 1956 units and 1526 units respectively for the succeeding three months and the Appellant has asserted that the energy consumption after the Meter change was correct. In these circumstances, I see no reason to disbelieve the version of Respondent that the old Meter was sluggish in working leading to a lesser recording of energy consumption. But I assess the period of the faulty Meter due to sluggishness as from 2/07 to 4/07 only (including both).

Issue No.2:-

Regulation 42 (3) is applicable only when the consumer disputes the accuracy of the Meter or having complaint about the working of the Meter. Here there was no complaint from the consumer's side about the Meter. Hence the same clause is not applicable here.

The Regulation 33 (2) of KSEB Terms and Conditions of supply, 2005, reads as follows; "If the Board is unable to raise a bill on Meter reading due to its non-recording or malfunctioning, the Board shall issue a bill based on previous six months average consumption. In such cases the Meter shall be replaced with in one month. If the average for the previous six months cannot be taken due to the Meter ceasing to record consumption or for any other reason, the consumption will be determined based on the Meter reading in the succeeding three months after replacement of Meter". Hence in this case under dispute Regulation 33(2) is relevant.

The earlier assessment of 2106 units per month as the true average energy consumption of the consumer by the RAO, Thrissur, and issue of a demand bill for Rs 78,744/- dated 8.2.08 thereof, is found not justifiable, since the energy assessment was seen made taking two months average after changing the Meter, which is not supported by any Rules or Regulations existing in KSEB. Similarly the assessment of true average energy consumption of 1683 units per month by

the CGRF, Ernakulam, is also found not sustainable as it was computed as per Clause 42(3) of the Terms and Conditions of Supply, 2005, which is also found not applicable here, for the reason stated above. Hence I come to the conclusion that the consumer is required to be assessed as per Clause 33(2) of the Terms and Conditions of Supply, 2005

From what is stated above, I am convinced that the Meter was sluggish in working from the month of 2/07 onwards only and up to and including 4/07, that is for three months. Therefore the assessment of the consumer for the previous six months is not necessary as the Meter became sluggish in working during 2/07 to 4/07 only and there was loss to the Board on that account. Hence applying the Clause 33(2) of KSEB Terms and Conditions of Supply, 2005, for reassessment and calculating the average of the succeeding three months after Meter change, the true average energy consumption is found as $(2226 + 1956 + 1526) / 3 = 1903$ units per month and the period of reassessment shall be, as decided above, for the Meter sluggish period of 2/07 to 4/07.

The argument of violation of section 28 of Kerala Electricity Supply Code, 2005, by KSEB is not true. The Regulation (28) permits the licensee or any person duly authorized by the licensee with proper identification card may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is or has been supplied by him, of any premises or land, under, over, along, across in or on which the electric supply lines or other works have been lawfully placed by him for the purpose of taking Meter reading, inspecting, testing, repairing or altering the electric supply lines, Meters, works and apparatus for the supply of electricity belonging to the licensee. There was complaint from the consumer on 11.11.2006 regarding low voltage of 180 volts in one phase of electric supply and accordingly the Board staff visited the site for attending the complaint. This action of the Respondent is in order.

DECISION:-

From the analysis done as above, it is reasonably concluded and hence decided that the consumer's Meter was sluggish in working and caused to record a lesser consumption than the actual energy usage for the period of three months from 2/07 to 4/07 (both inclusive). As per clause 33(2) of KSEB Terms and Conditions of supply, 2005, the true average energy consumption of the consumer for the said period was determined, based on the average consumption of the succeeding three months after replacing the sluggish Meter with a good one. In this case it is assessed as 1903 units per month. Hence it is ordered that the Respondent shall revise the bills of 2/07 to 4/07 (three months) at the rate of 1903 units per month, after giving credit for the energy units already billed and paid by the consumer for the same period.

The consumer shall be allowed three installments, if he applies for the same, before the Respondent. The consumer shall pay the revised bill as per this order or the 1st installment within 30 days of the revised bill date without any interest or surcharge up to the due date, after which interest as per rules in KSEB shall apply. Having decided and ordered as above the Appeal Petition filed by the consumer Sri Mohankumar, of M/s Krishna fuels, Guruvayoor, stands disposed of accordingly. No order on costs. Dated the 14th of December, 2011.

ELECTRICITY OMBUDSMAN.

No:P/172/2010/ Dated 14.12.2011.

Forwarded to: (1). Sri.Mohankumar, Proprietor, M/S Krishna Fuels, Thaikkad P.O, Guruvayoor, Thrissur.
(2). The Assistant Executive Engineer, Electrical Sub Division, KSEBoard, Guruvayoor.

Copy to: (1). The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.

- (2). The Secretary, KSEBoard, Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
(3). The Chairperson, CGRF, KSEboard, Power House, Ernakulam-18.