

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.kerala.org Ph.0484 2346488 Mob: +91 9567414885
Email:ombudsman.electricity@gmail.com

Appeal Petition No: P/188/2011.

Appellant : The Secretary,
Gramapanchayath, Alathur, Palakkad (DT).

Respondent : The Assistant Executive Engineer
Electrical Sub Division, KSEBoard,
Alathur, Palakkad.

ORDER.**Background of the Case.**

The Anti Power Theft Squad (APTS) of KSEB had conducted an Inspection on 17.11.2009, in the premises of consumer No.1246, Edamparambu Drinking water scheme, under Electrical Section, Alathur. The connection stands in the name of Alathur Grama Panchayath, and is used for Pumping Water for Distribution among people and is given under LT- IV tariff. The inspection revealed that Y and B phases of the Meter installed in the premises were not registering the energy consumed due to missing of 'Current' from 2 CTs installed for the metering purpose. Based on the APTS findings, the consumer (Panchayath) was served with a short assessment demand dtd.18.11.2009 for Rs.5,29,571/= pertaining to the period from 4/2008 to 10/2009. Aggrieved by the demand, objection was filed before the Assistant Executive Engineer, Alathur, by the Secretary, Alathur Panchayath, which was rejected. After that, Petition dated 15.04.2010 was filed before CGRF, Kozhikode, by the consumer. The same was also dismissed after hearings, but with a little modification ordered in the reassessment billing, vide Order no.3080072/CGRF-KKD/2010-11/349 dtd.04.12.2010. The consumption recorded by the Meter for the months of 4/08 and 5/08 was accepted by the CGRF as it was found consistent with the earlier pattern and ordered to remove those two months from reassessment. But the Forum found the reassessment done for the latter period i.e. from 6/08 to 10/09, by the respondent, based on the non recording of Y & B phases, as correct. Aggrieved by the order of CGRF, the appellant has filed this Appeal Petition.

Argument of the Appellant:

The Appeal petition is for declaration that the order of the CGRF dated 04.12.2010, directing the respondent to reassess the consumer from 6/08 to 10/09, based on the non recording of the Y&B phases of the Energy Meter, is illegal, arbitrary and unsustainable.

Secondly, to set aside the demand dated 14.12.2010 issued by the Assistant Engineer, Alathur.

Thirdly, to declare the consumer is liable to be categorized only under LT 1(a) category and as a consequent to the new tariff, to refund the excess payment made by the consumer under LT IV category instead of LT1(a) , with due interest there on.

The other prayers of the appellant are to order interim stay of the orders issued by the CGRF dated 4/12/ 2010 and to direct the respondent to issue further bills to the consumer under LT 1 (a) category

The appellant has adduced the following arguments.

On 17.11.2009 an inspection is stated to have been conducted by the KSEB officials in the premises of the consumer No.1246 and it is alleged that the Y&B phases of the energy Meter installed there were not recording the energy consumed. No other irregularities or illegality apart from the above findings have been found. Based on the above findings, the consumer was served with a demand notice dated 18.11.2009 for Rs.5,29,571/=, being the short assessment on account of the non-recording of the two phases, for the period from 04/08 to 10/09. Objections raised by the consumer were rejected by the Assistant Executive Engineer and it was indicated that appeal would lie to the Appellate Authority against the said demand under section 127 of Electricity Act, 2003. Since there was no issue relating to theft of electrical energy or unauthorized use of electricity, the consumer approached the CGRF. The Hon: CGRF also rejected the Petition with minor modification in the demand notice, by reducing the period of reassessment instead of starting from 04/08 to 06/08. It is submitted that except for the unilateral statement of the Board, there is no evidence of the non-functioning of the two phases of the Meter.

Another allegation of the appellant is that since the meters are sealed and periodically inspected by the officers of the Board, the Licensee has only itself to blame for not maintaining the Meter and other apparatus belonging to it properly. As long as there is no allegation of wrong doing against the consumer it is unfair to visit the premises with the herein consequences of inspection and penalty in the matter.

According to the appellant, as per the meter reading register there is a consistent pattern of consumption right from the inception. The readings as recorded in the register show that the normal monthly consumption for the previous months prior to June 2008 was 8000 units per month. It is only from June 2008 that there is marked difference in the pattern of consumption to about 4000 units per month. The pattern of consumption therefore does not suggest the non recording of Y and B phases and if at all, there was only one phase that was not being recorded. The assumption therefore that two out of the three phases were not working is not justified factually.

Further, it is alleged that the pump operator who was a daily wage employee recently posted was not competent to consent to the situation claimed to have been noticed at the time of inspection and he was obviously overawed by the presence of the members of the squad and it was only the situation that has coerced him into signing the mahazhar.

Another argument was the allegations that only 1/3 of the energy consumption is recorded in the meter during the period from 4/08 to 10/09 is not correct. The assumption of hours during which the pumps are operative shown in the mahazhar is also erroneous and excessive. During the summer months the pumping hours are 8 hours and the remaining months the pump is operative only for 5 hours. The statement given by the daily wages employee is wrong.

The appellant argues that the utilization of power is for water supply for domestic purposes solely. Around 2520 numbers of domestic consumers are supplied with drinking water from the 25 HP pump.

Hence they are eligible to be categorized under LT I (a) category and the appellant has requested to reimburse the excess amount paid by them under LT -IV category.

Apart from the merits of the case, the appellants submits that even assuming that any amount is due from the consumer in so far as the short assessment is not due to any willful default of the consumer and therefore the Board is bound to grant 19 monthly installments without interest for payment owing to short assessment.

It is argued that all amounts due to the Licensee are covered by section 56 (2) Electricity Act 2003 as a safeguard to the consumer by a claim by a licensee after a lengthy lapse of time. The appellant says that the claim now made by the KSEB is hit by Section 56 (2) and it is not justified.

Argument of the Respondent:-

The respondent denies all the averments and allegations contained in the Appeal Petition filed by the consumer except to the extent he expressly admitted here under.

The averment furnished by the appellant in the first para of the Appeal Petition is admitted. The APTS wing of KSEB inspected the premises of the consumer on 17.11.09 and it has identified that two phases (Y and B) are not working in the Meter. On verifying the consumption pattern it is clear that one phase was out of recording during 4/08 and 5/08 i.e. only 2/3 reading was recording for these two months and from 6/08 to 10/09, two phases were out of recording and hence only 1/3 consumption was recording during the period. Hence as per the direction of APTS a short assessment invoice for the non recorded portion of energy has been issued and is not a penal bill.

Another contention of the respondent is that the average recorded consumption from 4/08 to 10/09 as per Meter reading register was only 4551 units per month where as the average consumption from 4/07 to 3/08 was 8228 units per month. On 28.01.10, a parallel CT operated energy Meter was installed to check the actual consumption. As per this new meter the average consumption was 22538 units per month (during the period from 2/2010 to 1/2011.)

In reply to the allegations in the 3rd para, the respondent states that the Sub Engineer has been taking the meter readings of the energy consumption from the premises of the consumer periodically, but a substantive diminish in consumption pattern came to notice only from 4/08 onwards, followed by a surprise inspection conducted by APTS, and using sophisticated equipment for testing the Meter. The parallel CT operated Meter installed later, revealed that the true consumption was three times more than that of the existing Meter in the premises. Monthly invoices were being issued on the basis of recorded consumption from the parallel CT operated meter and the Panchayath has not raised any objection against these invoices issued. It is obvious that the consumption recorded in the existing meter for the period from 4/08 to 10/09 was wrong.

According to the respondent the contention of the appellant that the poor consumption was the cause for the low consumption recorded in the meter during the disputed period is wrong and misleading. After connecting the parallel CT meter, the Board had taken the reading of actual consumption which recorded an average of 22820 units per month.

The respondent argues that the objection raised in para 5 of the Petition is irrelevant and factually wrong. As alleged by the appellant there is no question of overawe or coercions on the pump operator.

The Board prepared the site mahazar based on actual facts, and got it witnessed. The pump operator who is competent to operate a pump house can understand the working of the meter also.

The respondent further has submitted that the averments furnished in para 6 are completely false. It is clear from the recorded actual consumption statements from 4/08 to 10/09, that one phase was out during 4/08 and 5/08 and two phases were out from 6/08 to 10/09 and accordingly the invoices had been prepared for short assessment of the lost energy. The hours taken for the calculation of short assessment bill are neither erroneous nor excessive. They were taken into consideration as told by the pump operator and was an objective finding.

The respondent has stated that the consumer no.1246 is not a seasonal consumer as it is a drinking water scheme of the Panchayath and the water is used by domestic and commercial consumers of a major portion under Alathur Grama Panchayath. The number of beneficiaries is increasing in each month under this unit. Hence the averments in para 7 is not admissible as it is purely lying.

As per the existing tariff rule, LT IA tariff is assigned only for the consumption of water supply for domestic purpose from Jalanidhi, Jaladhara, Swajaladhara run by Societies and are chargeable under domestic connection. But in this case, the consumers include other than domestic as well, therefore the tariff is correctly assigned as LT IV.

The respondent is agreeable to sanction the request for installment facilities for the short assessment bill in accordance with the existing provisions.

The respondent has argued that the provision of section 56 (2) of Electricity Act, 2003 is not applicable in this case since the period does not overcome beyond 2 years and it is not an arrear, but the charge for unrecorded portion of energy only.

Lastly the respondent argues that the short assessment bill issued, for the period from 04/08 to 10/09, is not in violation of any provisions of the Electricity Act 2003, as alleged in the Petition.

Analysis and Findings:-

The sitting for the 1st Hearing was arranged on 26.07.2011. Sri.N.Krishna Prasad, Advocate appeared on behalf of the appellant and Sri.C.R.Lalan, Assistant executive Engineer, Electrical Sub Division, KSEB, Alathur and Sri.P.Ramachandran, Senior Supdt: Electrical Section, Alathur, appeared for the opposite side. The case was adjourned for the 2nd week of August 2011, as the appellant has not received the counter statements of the Respondent. This case was posted on 18.08.2011, 19.09.2011 and 11.10.2011 for hearing. On a perusal of the Appeal Petition, the counter of the Respondent and the argument note filed by both, and on analyzing the facts and circumstances leading to the dispute, I come to the following conclusions leading to the decisions.

I have gone through the site mahazhar, inspection report of APTS, meter reading register from 03/1997 onwards, and the so called 'parallel meter' (Check Meter used for testing the accuracy of another meter, by connecting in tandem for recording the same energy consumed, for comparison of the recordings of both Meters) reading etc. The average consumption recorded by the energy Meter during the period 1997 to 2011, is tabulated below.

<u>Period</u>	<u>Average Energy consumption per month</u>	
	<u>Existing Meter</u>	<u>Check Meter put on 28.01.2010</u>
From 9/1997 to 8/1999	=14848 units	-----
“ “ 9/1999 to 2/2001	=11553 units	-----
“ “ 3/2001 to 4/2007	=09899 units	-----

“ “ 5/2007 to 5/2008	=08230 units	-----
“ “ 6/2008 to 11/2009	=04196 units	-----
“ “ 2/2010 to 01/2011	=07485 units	22538 units

From the above data, it is clear that the consumer had an energy consumption pattern of around 15000 units per month, during the period from 9/1997 to 8/1999 itself. The numbers of consumers were increasing gradually per year and normally their energy requirements would also increase, resulting in an upward trend in energy consumption from year to year. But this fact is not reflected in the energy consumption data listed above. The recordings of energy consumption in the Energy Meter during the period 9/1999 to 6/2008 shows a decreasing trend. This anomaly is probably due to the non-recording of one phase of the Meter as a result of one CT becoming non-functional, from 9/99 onwards. There was further shortfall in consumption of energy from 6/2008 to 11/2009, probably due to missing of two phases and the APTS during inspection in 11/2009, has established that it was due to the missing of supply from two phases of the CTs, connected to the Meter. That is to say two CTs are not feeding the 'current' to the Energy Meter and hence preventing the recording of energy consumption of those two phases and the remaining one phase only is recording the energy in the Meter. When a Check Meter (good Energy Meter) was installed in the Metering circuit additionally, to compare the readings recorded in both meters, it showed that the energy recorded in the Check Meter is 3 times that of the existing Meter. This test supported the findings of APTS on its inspection done on 17.11.2009 that two phases are missing in the Meter. Further, the Check Meter recorded the actual consumption and the rise in energy consumption accounts for the increase in consumer strength of the Drinking Water Scheme. That is why the consumer has registered an energy consumption usage of 22500 units per month in the year 2010-11 while it was only 15000 units, more than ten years back i.e. during 1997-99 period.

While the old meter has recorded an energy use of 7485 units for the period 2/2010 to 01/2011, the corresponding energy recorded in the Check Meter was 22538 units, which shows an almost three times the existing meter's recording and proves that two phases out of three CT's were not recording the energy and only one phase was working properly and recording the energy consumed. The fault is not on the Meter but lie on the CT's or its wirings which feed the 'Current' to the Meter for its working and recording the true energy usage. It is not a case of faulty meter, but there is loss of a part of the input to the Meter, causing to record a part of the actual consumption instead of the total energy consumed.

This Electric service connection is used for the purpose of pumping water to Edaparambu Drinking Water Scheme of Alathur Grama Panchayath. Sri Sivadasan, the pump operator and Sri.GangadharanTG, the panchayath 10th Ward Member cum Standing Committee Chairman, were present during the APTS inspection. They are reported to have stated that the consumption is more or less same throughout the period. There is nothing to disbelieve the statements of these persons. The appellant has not adduced any proof sufficient to support their argument of low consumption during the period from 04/08 to 10/09, the disputed period. It is noted that a substantive decrease in consumption pattern came to be noticed from 4/08 onwards by the Sub Engineer who had taken the Meter reading of the consumer periodically. This may be the cause for the surprise inspection conducted by APTS. The inspection of the APTS in the premises was only to identify the real cause for such a low consumption deviating from the earlier consumption pattern. This is not be considered as a punitive action as alleged by the appellant.

The Check Meter installed shows the actual consumption of the three phases which comes to 14800 units for 3/10, 14460 units for 4/10, and 21920 units for 5/10 and so on and indicates an increasing trend. Considering the above facts, I find it difficult to accept the argument of the appellant adduced regarding low consumption. Hence it is clearly fixed that the Meter has seized to record in two phases from 6/08 onwards as decided by the CGRF. I do not want to interfere with the above decision of CGRF, as it seems reasonable and justifiable.

The utilization of energy was for pumping drinking water to domestic as well as non-domestic consumers of the Panchayath. The request of the appellant that they may be categorized under LTI (a) tariff was not allowed by KSEB since the said tariff is applicable to Drinking Water scheme for domestic consumers only. It is also specified that electricity used for water supply projects coming under local self governments and beneficiary committees, schemes under Jalanidhi, Jaladhara, Swajaladhara and similar water supply projects coming under water supply societies, drinking water supply schemes in SC/ST and Laksham Veedu settlement colonies and taken over and managed by three tier Panchayaths etc. where *water is used only for domestic purpose*, shall be charged under domestic tariff. The appellant has claimed that the utilization of the energy is for pumping water supply for domestic purpose only. But the respondent has disagreed and challenged this contention. According to him, the beneficiaries of water supply include households as well as Govt: offices, public and private institutions, Commercial establishments, Temple, Masjid, School etc and argues that major usage of water from this connections is for non domestic purpose. Hence the request to change the tariff to LTI (a) is not permissible as per existing rules.

There is no dispute regarding sanctioning of installments for payment of the reassessed bill since as per clause 22 (8) of the Kerala Electricity Supply Code, 2005, allows the Licensee to offer installments payment option, in case the consumer has difficulty in paying the arrear bill in full, but it is without prejudice to the additional charges applicable for belated payments. The consumer is eligible for up to 19 installments, if requested for, and the respondent shall issue the same on demand by the consumer.

It is difficult for me to agree with the argument of appellant that the claim is barred by section 56 (2) of Electricity Act 2003. The period of two years as mentioned in section 56 (2) of Electricity Act 2003 would run from the date when such a Bill is raised by the Board against consumption of electrical energy and have become due for payment only after that demand has been raised. In a related case it has been clarified by Hon: High Court that "Amount of charges would become due and payable only with the submission of the bill and not earlier. Word 'due' in this context must mean due and payable after a valid bill has been sent to the consumer", (Srihanmumbai Municipal Corporation V Yatish Scheme and others-2007 KHC 3784). Here the period of the Bill 6/2008 to 10/2009, is seen raised in 11/2009, which does not cross beyond 2 years and the argument is not maintainable. Further, it is not an arrear, but is the charge for unrecorded portions of energy used by the consumer only.

Decision.

From the foregoing analysis done and the conclusions arrived at, I decide that the consumer is bound to pay the electricity charges for the period 6/2008 to 10/2009, as reassessed by the respondent after the CGRF order. Firstly, there was a decrease in energy consumption than the normal usage during

the disputed period, when naturally one would expect an increase in energy usage in tune with the increase in consumer strength of water supply. Secondly, the APTS inspection had detected that two phases out of three phases, are not recording the energy consumed due to missing of 'Current' from the CTs connected to the Meter. Thirdly, the consumer is using Power for running Motor Pump-sets of higher ratings which carries 'Balanced Load' (equal load in all phases) and therefore if two phases of Supply (Electric current) to the Meter through CT are missing, due to wiring defect or so, then the Meter will record only 1/3rd of the true energy consumption and by multiplying by a factor of 3, the true energy consumption can be arrived at, is technically correct. Finally, the fact that the Meter was recording only 1/3rd of the actual consumption was proved beyond doubt from the Test done using the Check Meter installed at consumer's premises in addition to the existing Meter. All these factors conclusively prove that the reassessment done by the Licensee is in order and justifiable.

The consumer is eligible for, up to 19 installments, and he may choose the number of installments required and may file a request to the Respondent accordingly, who shall issue the same immediately. The consumer shall pay the bill dated 14.12.2010 for Rs 502869/- issued by the Respondent, or the 1st installment (if requested for installment facility) within 30 days of this Order, without any interest being levied. The late payments of the Bills and the installments allowed by KSEB, shall carry interest as per KSEB rules from the 31st day of this order to the actual date of payment. Having concluded and decided as above the Appeal petition stands disposed of accordingly. No order on costs. Dated the 23rd of January, 2012,

Electricity Ombudsman.

No.P/188/2011/ Dated 23.01.2012.

Forwarded to:

- (1). The Secretary, Alathur Grama Panchayath, Alathur, Palakkad (Dt.)
- (2). The Assistant Executive Engineer, Electrical Sub Division, KSEBoard, Alathur, Palghat.

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, Consumer Grievance Redressal Forum, KSEB, Vydyuthibhavanam, Gandhi Road, Kozhikode.32.