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Appeal Petition No:P/ 235/ 2011.

(Present-T.P. Vivekanandan)

APPELLANT : Smt. Devi Priya,
Sreekovil, 46/630, Keerthi Nagar, Elammakara,
Kochi-24.
RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, Vytila, KSEB, Ernakulam.

ORDER.

Background of the case: -

The appellant is a consumer under Electrical Section, Thrikkakara, with No. 25420. On 5.12.2010, the appellant was issued an additional bill, by the Assistant Engineer, Electrical Section, Thrikkakara for an amount of Rs.249300/-. It was stated that the meter was faulty during the period, October 2006 to May 2007 and an average consumption of 3532 units is assessed for this meter faulty period. The appellant had preferred a complaint before the CGRF, Ernakulum, requesting to set aside the demand cum disconnection notice dated 5/12//2010 demanding Rs.2,49,300/-. The CGRF has disposed of the complaint by directing the respondent to revise the bill, for 2 days in 10/2006 and 6 months from 11/2006 to 4/2007, vide Order no. CGRF-CR/Comp.85/2010-11 dated 8/6/2011. Aggrieved by this, the appellant submitted this appeal dated 11/7/2011 before this Authority.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his appeal petition dated 11/7/2011. Firstly, he argues that the Calibration Certificate dated 10/10/2006 issued by the Chief Electrical Inspector, Ernakulum, clearly proves that the meter installed in the premises of the appellant in October 2006 was working properly and percentage errors were within limit. Hence the contention of the KSEB that the meter was faulty from the date of connection is not correct.

Secondly, he submits, the reason for low energy consumption during October 2006 to May 2007 was due to non-occupation of the building for several months after getting the electric connection in October 2006.

Thirdly, he argues that the claim is barred by limitation because the present bill dated 5/12/2010 relates to energy charges for the period from October 2006 to May 2007 for which the amount was demanded after a period of 2 years.

Another argument raised by the appellant is that even if it is assumed but not admitting that the meter was faulty, the energy charge cannot be demanded for more than 6 months.

The appellant submits that the building was actually on lease with effect from 1.2.2007. Thereafter the maintenance of the building was done till May 2007 and office automation and other interior decoration work were done during this period, i.e. from June 2007 to August 2007. The full-fledged functioning of the office of the lessee was started only from October 2007. He argues that the meter reading had gone up since June 2007, during the period when it was used by the lessee. The lessee vacated the building in August 2009 and the building unoccupied till January 2010. The reason for low consumption for the period mentioned in the bill was due to no-occupancy of the building. This is evident from the meter reading of the occupied and unoccupied period.

Further the appellant challenges the contention of the respondent before the CGRF that the meter installed in the premises of the appellant was faulty from the date of connection itself. The case of the KSEB in the order impugned in the complaint before CGRF is that the meter was faulty during 4/2007 and 5/2007. Hence, according to the appellant even if it is assumed that the meter is faulty as contended by the KSE Board, but not admitting, the respondent can issue the bill only for the period 4/07 and 5/07.

The respondent has demanded the energy charges taking the average consumption after the replacement of meter in the premises of the appellant. The procedure is against the Regulation 42(3) of the KSEB Terms and Conditions of Supply 2005 which clearly stipulates that if existing meter after having found faulty is replaced with a new one, the consumption recorded during the period in which the meter was faulty shall be reassessed based on the average consumption for the previous 6 months prior to the replacement of the meter. Regulation 42 (1) further stipulates that due regard shall be given to the conditions of occupancy during the month. The respondent ignored the procedures as contemplated in law. No notice was issued by the KSEB stating that the meter was faulty. Hence the demand made by the KSEB is illegal, arbitrary and unjust.

The Reliefs sought: -

It is submitted that the CGRF has not considered the above said grounds raised by the appellant and without considering the facts, circumstances and evidence in the case in hand, it has erroneously passed the order impugned. It is prayed, to set aside the order No. CGRF-CR/Comp.85/2010-11 dated 8.6.2011 to the extent of, it's finding the action of reassessment by the respondent as correct and its order to revise it for six months from 11/2006 to 4/2007 and for 2 days in 10/2006.

The Arguments of the Respondent; -

The respondent has submitted a statement of fact opposing the contentions raised by the appellant. The main contentions of the respondent are;

- 1). Though the connection was given through a defect free meter, the meter can become faulty at any point of time.
- 2). The present bill is a short assessment bill, therefore the claim has no time limitation. The meter was faulty from the date of connection of 10/2006 to 5/2007. During the meter faulty period, average of 70 units per month was charged. Due to fault of meter, the reading of consumption recorded in the meter was low. After changing the faulty meter the average consumption rose to 3532 units/ month. Hence, the short assessment bill was prepared as per the average and served to the consumer, so as to recover the loss occurred to the Licensee.
- 3). The respondent's further contention is that there is no time limitation for short assessment invoices.

As per Section 24 (5) of the Electricity Supply Code and as per regulation 37 (5) of the Terms and Conditions of Supply 2005, the licensee can recover from the consumer the amount undercharged by computing the consumption. The limitation of two years as envisaged in S 56 (2) of Electricity Act 2003, is not applicable in this case.

4. Since the meter was faulty from the installation date, no previous average is available for the previous six months prior to replacement of the meter. So calculation based on previous six months reading of meter is not possible. The Regulation 42 (3) of the KSEB Terms and Conditions of Supply, 2005, allows taking the average consumption for reassessment during the faulty meter period, after replacement of the meter, as well.

Hence the bill issued is in order and the consumer is bound to pay it and prays to dismiss the Appeal of the consumer.

ANALYSIS AND FINDINGS: -

The hearing of the case was done on 22.12.2011, in my Chamber at Edappally, Kochi, and the appellant was represented by his Counsel Sri. Santhosh G Prabhu, and the respondent by the Assistant Engineer in charge of the Vytilla Sub division, Sri Biju P R and they have argued the case, mainly on the lines stated above.

On examining the Petition and argument notes filed by the appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

The electric connection with consumer number 25420 is provided to the building of the appellant on 30-10-2006. The first reading was taken on 4-12-2006 and it was 10 units. The second reading on 3-1-2007 also shows no change in the units consumed i.e. the reading was 10 units itself. The meter reading as on 2-2-07 and 3-3-07 was 81 units. The faulty meter was replaced with a good one on 5-5-2007. Thereafter, the Meter reading indicates a sharp increase in energy consumption. The appellant's argument that the meter was installed only on 30.10.2006, after certified by the Dy. Chief Electrical Inspector, Ernakulum, and hence will prove that the meter was working properly is not maintainable as the meter can go wrong at any time including its initial transportation, handling, installation if care is not taken and also during in operation or service.

As per the copy of the lease agreement attached along with the appeal petition as document, the building was given on lease with effect from 28-10-2007. But the appellant argues that the building was leased with effect from 1-2-2007 and the maintenance of the building was being done till May 2007 and then the office automation and interior decoration work were arranged during the period from June 2007 to August 2007. There is discrepancy in the statement of the appellant, on the date the building was given for lease as 2/07 and the lease agreement date shown as 10/07. If the maintenance work coupled with other interior decoration works, were going on, in the building during 2/07 to 8/07 as argued by the appellant, surely these works will require electrical energy and therefore the Meter should record the energy used during this period. There is no chance for nil consumption in the meter, during this period, if it was a good meter. Since the meter recordings were negligible and later ceased to record energy, show that the meter was faulty. Moreover, in the Meter reading register it was recorded as meter faulty on 3.4.07. The previous two months of 2/07 and 3/07, the recording shown in the Meter is written as 81 units. Since the appellant has agreed that some works were going on in

the building, there is no chance for nil consumption. Hence I come to the conclusion that the Meter was faulty at least from 2/07 onwards, when the meter was 'struck' at the constant reading of '81', even when works were arranged in the building.

Further the appellant argues that the reason for low energy consumption for the period, 10/2006 to 5/2007 was due to non-occupation of the building. This argument may be correct up to 2/07 as the appellant himself has admitted that the building was leased out with effect from 1/2/2007 and the interior decoration works and other office automation works were being carried out from that date. Since the works are going on from 2/07 onwards, there must be recordings in the meter of the energy consumed. The meter reading as on 2.2.2007 shows 81 units and the subsequent month also showed the same reading. The next two months of 3/07 and 4/07, the meter was seen declared as 'faulty'. So it is evident that, during the period from 2.2.07 onwards the meter ceased to record the correct energy consumption. The non occupancy of the building and hence the reason for low consumption, argued by the appellant, can be accepted at the most, till 1/2/2007 only, when the meter reading showed 81 units. Thereafter the meter ceased to work. The maintenance works of the building and interior works were being carried out with effect from 1.2.07, as admitted by the appellant, for which use of electric energy is essential. According to the appellant, the meter reading had gone up since June 2007 when it was used by the lessee. This statement of the appellant is not convincing as the lease agreement is seen dated 28/10/2007 only. The appellant has also stated that full-fledged functioning of the office of the lessee was started from October 2007 only. The above two versions of the appellant is not found consistent with the energy consumption recorded during these months. The Meter readings recorded, as per the Meter reading Register, are as follows;

<u>Date of meter Reading</u>	<u>Reading</u>	<u>Consumption Units</u>
2.2.07	= 81	70
3.3.07	= 81	0 Average 70 units charged
3.4.07	= Meter faulty	
3.5.07	= Meter faulty- Meter changed on 5.5.07 with Initial reading = 17	
2.6.07	= 5716	5699
2.7.07	= 9495	3779
2.8.07	= Reading not furnished-But 3779 units charged.	
2.9.07	= 15287 = 5793-3779=	2013
3.10.07	= 18560	3273
3.11.07	= 21206	2646
4.12.07	= 25478	4272

After changing the faulty meter on 5.5.07, there was appreciable rise in energy consumption recordings in the meter and the consumer remitted the electricity charges without any protest. The perusal of the meter readings register of the consumer and the analysis done above confirms that the meter was faulty during the period 2.2.07 to 5.5.07. As per clause 33(2) of KSEB T & C of Supply, 2005, the true average energy consumption of the consumer is assessed by taking the succeeding

three months consumption, after the meter change (as the previous readings are not available since the meter has ceased to function and record the correct energy consumption in those months), and it comes to $(5699 + 3779 + 5793/2)/3 = 4125$ units per month. Hence the average energy consumption of the consumer, assessed by the respondent as 3532 units per month, is found reasonable.

The appellant has quoted the provision of Section 56 (2) of the Electricity Act 2003 which is reproduced below;

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”

Hence he argues that the short assessment bill claimed by the KSEB is a time barred one. The respondent countered this argument by quoting the relevant provisions in Regulation 24 (5) of KSEB Electricity Supply code 2005 and Regulation 37 (5) of the Terms and Conditions of Supply 2005. The licensee can recover from the consumer the amount undercharged by assessing the true consumption. The Amount of short assessment became due only after the detection or realization of mistake and the bill raised for the undercharged amount from the consumer and therefore does not depend on the date of electricity consumed. Amounts of impugned bill were never demanded earlier and hence the same cannot be said to be due at any earlier time. The recovery of the amount of the impugned bill is not hit by the provisions of Section 56(2) of the Electricity Act 2003 and therefore cannot be said to be unrecoverable and barred by the provisions of the said Act.

DECISION : -

It is proved from the Meter reading register recordings that the meter was faulty during the period of 2.2.07 to 5.5.07, till the day of faulty meter replacement. Before the faulty meter change, the energy consumption recorded was almost negligible and after the change, it rose to more than 4000 units per month. The consumer remitted the same without any hesitation which means he was convinced of his true average consumption at that time. The arguments of the consumer that the low consumption is due to non occupation of the building are not convincing.

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 within 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, the Regulation 33(2) is relevant.

The respondent has raised a bill taking the average consumption of 3532 units per month for 6 months and 2 days. From the analysis done and the conclusions arrived at, I am convinced that the meter was faulty for four months and 2 days, beginning from 2.2.07 to 5.5.07 and the appellant is bound to pay the undercharged amount, for the same period, for the energy he has consumed. Hence the consumer shall be reassessed at the rate of 3532 units per month for the period of 2.2.07 to 5.5.07. The respondent is ordered to revise the short assessment bill as decided above and issue the same to

the consumer, with 30 days time period, for making payment. The consumer is eligible for 5 (five) installments, if requested for, with in the period of 30 days time given i.e. before the due date of payment. The consumer need not pay any interest, for the revised short assessment amount or the 1st installment, for the appeal pending period up to the due date of the revised bill. The subsequent installments or the belated revised bill amount will carry interest, at the rate approved by the Hon: KSERC, from the due date of the revised bill to the date of actual payment.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by Smt. Devi Priya, is allowed to the extent ordered as above and the same stands disposed of as such.

No order on Costs. Dated the 25th of May, 2012.

Electricity Ombudsman

Ref. No P/ 235/ 2011/ 1242/ Dated 25.05.2012.

Forwarded to: - 1). Smt. Devi Priya,

Sreekovil, 46/630, Keerthi Nagar, Elammakara, Kochi-24.

2). The Assistant Executive Engineer,

Electrical Sub Division, KSEB, Vyttila, Ernakulam.

Copy to: -

1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.

2). The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram 4.

3). The Chairperson, CGRF,

KSEB, Power House Buildings, Ernakulam, Cochin -18.