

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/257/ 2012 & P/ 268/2012.

(Present: T.P. VIVEKANANDAN)

APPELLANT : Mr. Mohmmmedkutty K.V.
M/s Shas Wood Industries,
Mannalamkunnu, Thrissur Dt

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSE Board,
Punnayoorkulam, Thrissur.

ORDER.

Background of the case: -

The Appellant is running a Wood industry, under the jurisdiction of Electrical Sub Division, KSEB, Punnayoorkulam, with consumer no. 5803 under LT IV Tariff. The Anti-Power Theft Squad of KSEB inspected the premise of the consumer on 16.1.2004 and detected some anomalies on the Meter like, Meter seal break, duplicate seal and non-recording of energy in the Meter from two phases of supply etc. On the basis of the inspection conducted by the APTS, a site mahazar was prepared and the Respondent issued an invoice dated 24.1.2004 for Rs.3, 48,260/- as penal bill for the irregularities committed by the consumer. Against this bill, the Manager of the Firm filed a Petition before the Consumer Dispute Redressal Forum, Thrissur, which was dismissed on 24.6.2011 after trial, citing that the petitioner is not the authorized person and his Firm is a commercial one and not a firm for self-employment etc. The Forum did not go into the merits of the case, even though the hearings including the witness examination of the case were done. After disposal of the Petition before the Hon: CDRF, the Respondent issued another invoice dated 4.10.2011, to the consumer amounting to Rs. 9,26,371/- (penal bill of Rs. 3,48,260/- plus Rs.5,78,111/- the surcharge on the penal bill from February 2004 to October 2011). Meanwhile the Appellant filed Appeal against the order of the Hon: CDRF, at the State Consumer Dispute Redressal Commission which was also got dismissed as it was not pressed. As the Appellant failed to remit the bill, his electric supply was disconnected by KSEB. On 19/11/2011, a notice for dismantling the service was also issued to him. The consumer filed a complaint against this notice and the bill, before the CGRF, Ernakulum, on 6/12/2011 and the same Petition was dismissed vide order No. CGRF-CR/Comp.59/2011-12 dated 4/1/2012. Aggrieved by the decision of the CGRF, the consumer has filed the Appeal Petition before this Forum.

Arguments of the Appellant:-

The Petitioner aggrieved by the CGRF order, has filed the Appeal Petition high-lighting the following grounds and reliefs are sought;

He argues that the inspection by KSEB was done on 19.01.2004. At that time the prevailing Act was of I E Act, 2003. As per the Act the procedure and the proceedings for theft is totally different from what the Assistant Engineer had done. Another point raised by the Appellant is that the KSEB should have given complaint to the Police and got registered case at the Criminal Court as per rules but the same was not done. The Appellant also raises the contention that the matter should have been informed to the Executive Engineer and the benefit or opportunity for compounding the charges leveled against them also should have been given to the consumer.

Another point raised in the Petition dated 25/2/2012 is that, after remanding the case to CGRF, no further evidence was adduced during hearing. He further argues that the CGRF, after having collected sufficient data and evidence earlier on the initial hearing, their reasoning that they have not considered the issue on merits cannot be accepted. Before issuing the final order no further evidences were taken and the order was based only upon the fact that the petition was under the consideration of another Forum.

In the APTS inspection, there is no specific case of meter theft and the testing of meter was not done in an independent laboratory and so the test report is not acceptable to them.

The average energy consumption used before and after the APTS inspection is almost same and the Meter might have become faulty very close to inspection date only. There is no willful theft or illegal abstraction of energy. As per clause 52 (5-ii), of KSEB T & C of supply, 2005, breakage of seal does not constitute a theft case.

The KSEB has changed the energy meter 5 months back before the inspection only and the details are available with them. The Meter sealing certificate was not issued then to them. If it was issued they could have verified the seals condition at that time.

The reliefs which the Appellant sought are;

- 1). Direction not to dismantle the electric connection and to give reconnection till the verdict of the case before the Ombudsman.
- 2). The impugned bills for Rs3,48,260/- with letter dated 24.1.2004 and bill for Rs 9,26,371/- as per letter dated 4.10.2011 of the Asst. Engineer, Punnayoorkulam, may be set aside.

During the hearing, the Appellant expressed his desire to settle the case amicably, if the true average monthly consumption during the disputed period of six months is assessed at the rate of 1500 units per month. He also sought the relief of interest payable, if any, to be based on the rates for long pending period @ 5%, announced by the KSEB for Adalaths under the 'One time settlement scheme'.

Arguments of the Respondent: -

The Respondent has filed the following statement of facts on the points raised in the Petition submitted by the Appellant. The consumer no: 5803/PKLM is a connection under industrial LTIV tariff of Electrical Section, Punnayoorkulam, and stands in the name of Sri MuhammedKutty K.V and was effected on 11.03.85. The APTS has conducted a surprise inspection on 16.01.2004 and detected illegal abstraction of energy by way of tampering the meter and its terminal cover and making the functioning of the Meter defective. It was found that 2 seals of the Power Meter as missing and other two seals were not of the KSEB make. The meter was found to be recording only in one (R) phase and not recording in other two (Y&B) phases. The site mahazar prepared dated 16.1.2004 by the inspection team contains the details of irregularities noted there. The

consumer is bound to pay the penal bill issued for Rs.3, 48,260/ with interest. The consumer has approached CDRF, Thrissur against the bill and claiming other things. The Honbl'e CDRF after completing the verification, hearings and witness examination of the case, dismissed the same as it was not maintainable and rejected the complaints filed by the petitioner.

The petitioner has further appealed before Hon'ble State CDR Commission, Trivandrum, vide Petition No A 709/11 against the dismissal of his complaints in Petitions No.94/04 & 150/ 2004 by the District Forum, Thrissur. But the case was withdrawn by the petitioner from the Hon: State CDRC, Thiruvananthapuram, without any specific reasons. The consumer enhanced his connected load from 11.19 KW to 28 KW due to the expansion of his Wood mill during 3/2002. The highest consumption was 826 units recorded during 4/03.

The meter of the consumer was replaced on 21.07.03. Thereafter the meter was changed again on 30.04.04, after the APTS inspection conducted on 16.01.04. There after the meter was again changed on 07.08.06.

Another contention of the Respondent is that the consumption recorded in the meter was not matching with the connected load i.e. 28 KW. The consumption for a 28 KW loads for one hour working itself per day for 25 days a month will come around 700 units and hence taking an average working hours of 4 to 6 hours per day, the daily consumption will be high.

The disputed bill was raised as follows;

Penal bill = 28 KW(Conn: Load)/ 1.5 (Diversity factor) X 12 Hrs(Working hrs per day of 2 shifts) X 25 days per month X Rs 3.25 (rate of energy) X 6 months X 3 times= Rs 3,27, 600/- less the electricity charges already remitted by the consumer for the same period.

Analysis and Findings: -

The Appellant aggrieved by the penal bill for Rs 926371/- issued by the Respondent on 4.10.2011, has filed a Petition before the CGRF, Ernakulum, on 6.12.2011. The Petition was dismissed by the CGRF without going into the merits of the case even though the Forum had conducted the hearing. On finding that the Appellant had already approached the Hon: State CDRC, Trivandrum, on the matter and the same was pending for disposal there, the CGRF decided that the Petition is not maintainable before Law as per the existing Regulations. The Appellant then filed an Appeal Petition on 17.1.2012 before this Forum, against the order of CGRF, Central, Ernakulum and was registered as No: P/257/2012. This Forum, on finding that the Petition before the Hon: State CDRC had been dismissed, as it was not pressed by the Appellant, directed the CGRF, that the case (complaint dated 6.12. 2011) may be reopened in the context and to hear and issue appropriate orders as per law. Consequently the Petition submitted before the CGRF was heard and rejected vide order no. CGRF-CR/Comp 59 (Review)/ 2011-12 dated 22-2-2012. Aggrieved by the said order, the Appellant has filed the Appeal Petition No P/268/ 2012, before this Authority.

The Hearing of the case was conducted on 30.03.2012 in my chamber at Edappally, and Mr. K. V. Mohammed kutty and Mr Shaji Sebastine represented the Appellant's side and Mr Regunath P.B., Assistant Executive Engineer, represented the opposite side. On perusing the Petition of the appellant, the counter of the Respondent, documents filed from both sides, and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The allegation against the Appellant is theft of energy by tampering the meter. A surprise inspection conducted by the Anti-Power Theft Squad (APTS) of the Board detected anomalies in the Meter of the Appellant. The mahazar prepared by the APTS, after inspecting the premises is not disputed by the Appellant. The mahazar appears to be reliable and is corroborated by other witnesses like the son of the Appellant and a Sub engineer of KSEB. During the inspection it was found that two numbers of seals of power meter was missing and other two numbers of seals were not of the KSEB brand. The party did not oppose this finding of the APTS seriously. He has raised objections mainly against the flaws in procedures adopted by KSEB after the inspection like, not informing the Police of the theft case, not charging the case at the Criminal Court, non-referring the meter fault case to the Electrical Inspector, not providing the option of eligible Compounding facility to the consumer etc.

A person charged with the offences referred to under Sections 135 to 139, of the Indian Electricity Act 2003, are required to be tried by the Special court constituted by the State in exercise of powers conferred by Section 153 of the Act. Here, though the Appellant has raised complaint on the procedures flouted by KSEB, it is noted that actually the Respondent has helped the Appellant knowingly or otherwise, from being tried in a court. The argument that the Electrical inspector was not referred to in this case, cannot be considered as a flaw of KSEB, as either party can refer to Ele.Inspector, if there is a case of Meter faulty, if they so desires, as such a step is not compulsory but is more reasonable and is a preferred procedure. But, here the dispute is not a case of meter faulty but a case of tampering of meter which does not come under the purview of the Electrical Inspector. Hence the argument is not maintainable.

Further, the consumer alleges that the disputed Meter was a recently replaced one and the sealing certificate of the meter was not issued to him. He also argues that the energy usage (consumption) before and after inspection were consistent and not high and so the assessment made by the respondent is an inflated quantity than the actual. I feel that this averment carries some merit and requires consideration.

Going through the consumption pattern of the consumer, it shows inconsistent variation in energy usage after installing the disputed meter. The meter was recording only 1/3rd of actual consumption when tested. After the installation of the new meter the first month's energy consumption was about 900 units but subsequently it dropped to 145-263 units. The Appellant has failed to produce any valid reasons for such a vast variation in energy usage, but the APTS inspection revealed that there exists some anomalies at the consumer's Meter. From the above, what is clear is that there was some omission on the side of the Appellant as far as the Meter is concerned.

The KSEB assessed the true average energy consumption per month of the consumer, during the disputed period, based on the Connected load, its Diversity factor in the usage of Load, and the working hours of the machinery in two shifts (time taken as 12 hours per day) etc. But I feel that, these factors are mere assumptions only and cannot be relied upon for arriving at the true average energy consumption of the consumer. For a Wood industry the normal works of cutting and shaping of timbers and its related works, as per the requirement of customers, is not a constant or compatible to any specific nature of work and does not have a regular pattern of work on all days. The assessment done as above by the Respondent have resulted in an average

energy consumption of around 5600 units per month which I think is very much on the higher side by any means.

The Energy consumption recorded for a month after changing the Meter was around 900 units. But the CT's provided to two phases of the Meter was not functioning leading to a lower energy consumption than the actual usage. Therefore the Meter showed a drastic decline in recording the true energy usage since the 'feed' (current) from the CT's to the Energy Meter was missing. This is not a case of 'Meter faulty' but a case of inaccurate Meter due to loss of input to the Meter by way of CT fault or wiring defect or fault deliberately done with an ulterior motive.

The Appellant in the hearing has agreed for an assessment of 1500 units per month as the average consumption, as a mediatory or conciliatory move for the settlement of the case and the Respondent states that even now the maximum energy consumption recorded in a month is around 3000 units only.

I conclude that the assessment of 5600 units per month done by the Respondent is very high. The assessment of 1500 units per month as the true average energy consumption of the consumer during the disputed period of six months from 7/2003 to 1/2004 appears to me as a reasonable and justifiable assessment and I am inclined to accept that.

DECISION: -

From the above analysis done, the findings and conclusions arrived at, it is decided that the Appellant shall be assessed at the true average energy consumption of 1500 units per month for the disputed period of six months. The original bill dated 24.1.2004 for Rs 3,48,260/- shall be revised as stated above. The bill amount shall carry interest at the rate of 5% only for the belated period "as applicable for arrears pending for more than 2 years during the Adalath under one time settlement scheme" announced by the Board for clearing the long pending arrears and the Appellant shall be eligible for the same if he remits the bill amounts revised as above, within 45 days of the issue of this order. The bill dated 4.10.2011 for Rs 9,26,371/- shall be cancelled as the same lost its relevance upon revision of the original bill dated 24.1.2004. Having concluded and decided as above, it is ordered accordingly. No order on costs. Dated the 11th of April, 2012,

Electricity Ombudsman.

Ref: No. P/ 257 /2012 & P / 268 / 2012 Dated 11.04.2012.

Forwarded to :

- 1). K V Mohmmmedkutty, M/s Shas Wood Industries,
Mannalamkunnu, Thrissur Dt.
- 2). The Assistant Executive Engineer, Electrical Sub Division,
KSE Board, Punnayoorkulam P O, Trissur Dt.

Copy to: -

1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum, KSEB,
Power House Bldg, Cemetery mukku, Ernakulam-682018.