

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO: P/212/2011.

(Present: T P Vivekanandan)

Appellant : Joy Raphela.V,
Maniyacherill House, Koovapady P. O.,
Ayathupady, Ernakulam.

Respondent : The Asst. Executive Engineer,
Electrical Sub Division, KSEB,
Kuruppampady, Perumbavoor
Ernakulam Dt.

ORDER.

Background of the case: -

The appellant is an LT industrial consumer bearing No. 4539 under Electrical Section, Koovapady. He is running a Stone Crusher unit with an installed connected load of 85 KW. While so, on 7.7. 2010 the appellant was served with a short assessment bill for Rs. 86861/- stating that the bill raised during the period of 6/08 to 11/08 was less than the actual due amount, on the basis of an audit inspection report of KSEB. The consumer filed a Writ petition before the Hon High Court of Kerala against the bill vide WP No.21629/2010 and the Hon: Court had relegated the matter to the CGRF for disposal as per Law. Accordingly the consumer filed Petition dated 19.8.2010 before the CGRF, Ernakulam, which was disposed of by order dated 8.2.2011, by directing the KSEB to revise the bills for 11/08, 12/08, 1/09, & 2/09 by taking average of three clear months 3/09, 4/09 & 5/09. Based on this, the respondent has prepared a bill amounting to Rs. 1, 13,722/- and served to the consumer. Aggrieved by the decision of CGRF and the bill, the consumer filed this Appeal Petition before this Authority. Later the respondent has revised the bill to Rs 75815/- pointing out a clerical error has occurred in the previous bill.

Arguments of the Appellant: -

The arguments of the appellant are based on the brief facts and circumstances which are narrated above. Further the appellant has adduced the following arguments. The appellant argues that on 6.7. 2010, he received a letter issued by the Assistant Engineer, Electrical Section, Koovapady stating that during the period 6/08 to 11/08 the amount remitted was less than the due amount to be remitted and demanded an amount of Rs. 86,861/- for that period and it is as per audit parties instructions.

The audit note says " actual average 8953units. But charged 4846 units for 6/08 to 11/08" and the appellant submit that this statement is factually incorrect, unjust, unreasonable, illegal and arbitrary.

Further he argues that under the Electricity Act 2003 and the KSEB Terms and Conditions of Supply 2005 the quantity of energy supplied is to be ascertained by a correct meter. The Licensee, KSEB can charge only for the quantity of energy supplied and ascertained by a correct meter. The energy used in petitioner's premises was ascertained by a correct meter, during the relevant period from 6/08 to 11/08. During the period in question the bills were issued by the Assistant Engineer were as follows;

<u>Month</u>	<u>Energy consumption</u>	<u>Amount paid</u>
6/08	6683 units	Rs. 28, 011/-.
7/08	4680 units	Rs. 20, 492/-
8/08	5718 units	Rs. 26, 224/-
9/08	3472 units	Rs. 17, 961/-
10/08	4796 units	Rs. 23, 629/-
11/08	4000 units	Rs. 20, 793/-

From the above, it can be seen that the consumption of energy in the industrial unit varied from month to month and the charges were calculated on the basis of the units of energy noted in the bill for each month. The bills were raised not on average basis for 4846 units for the period 6/08 to 11/08 as stated by the respondent in Ext. P1 and that the bills were raised on actual readings recorded in a correct meter for that period. The consumption of the consumer's unit for the period prior to 6/08 and the subsequent periods is more or less same.

Another point is that the Asst. Engineer (AE) has no case in Exts P1 and P2 that he was unable to raise a bill on meter reading due to its non-recording or malfunctioning for the months 6/08 to 11/08. The consumer has not received any notice of the AE with regard to any malfunctioning of the meter for the period 6/08 to 11/08. The consumer submits that without following any of the procedure contemplated under the Act and KSEB T & C of Supply, the AE has no jurisdiction to issue Exts P1 & P2. It is a wrong exercise of power by the AE and thus exceeds the jurisdiction vested with him.

The appellant challenges that the demand raised by the AE by approaching the CGRF is wrong. The CGRF after hearing the parties passed an order dated 8/2/11, signed on 28/2/11 and served on the petitioner during the first week of March 2011. While considering the issue the CGRF failed to consider the real issue and jumped to a conclusion that the average consumption for the months of 2/09, 4/09 and 5/09 has to be taken and the bills of 11/08 to 2/09 need to be revised. The above order on the face itself is without jurisdiction. The issue highlighted before the CGRF and the issue decided by the CGRF is entirely different and hence the order directing to revise the bills for the months from 11/08 to 2/09 have to be set aside as it is an order passed exceeding the jurisdiction. Since the issue highlighted by the consumer is not answered against, it has to be assumed that for the relevant period the CGRF had accepted the contentions of the petitioner.

Relief sought :- To set aside the order of CGRF in directing to revise the bills for the months of 11/08, 12/08, 1/09 and 2/09 on the basis of the average for the month of 3/09, 4/09 and 5/09.

Arguments of the Respondent: -

The respondent has submitted the following, opposing, the contentions raised by the appellant. The main contentions of the respondent are;

- 1). An arrear of Rs.33275/- is outstanding against the consumer as balance of penal bill issued upon the inspection of Anti Power Theft Squad of KSEB on 21/2/07. It was revealed in the inspection that the consumption of one phase was not recording in the meter. A penal bill for Rs. 49913/- was issued to the consumer. He approached the Hon High Court vide WP 7682/07 against the bill. The Court has directed to pay 1/3rd of the bill and so Rs.16638/- was paid on 20-3-07. Balance Rs.33275/ is pending. On 22.2.07, the faulty meter was replaced with a new one.
- 2). One CT of the power meter was found faulty during 1/2009, while taking the meter reading by the Sub Engineer concerned. The monthly energy bill for the said month was arrived at by multiplying the recorded consumption by 1.5, to arrive at the actual consumption. The defect of CT's were rectified on 10-2-09. After the rectification of the CT's, the consumption was found increased considerably, during the subsequent months, though there was no change in the business activity or the connected load of the firm. Hence it was evident that the CT of the meter became dysfunctional for quite some time back, resulting in non-recording of actual consumption which in turn has resulted in revenue loss to the KSEB for the period 6/08 to 11/08. The said bill was issued as per the Regulation 24 (5) of the Kerala Electricity Supply Code 2005 and hence legally sustainable.
- 3). There is no case that the energy meter installed in the consumer premises was faulty. Only the CT of one phase to the meter was faulty and it was detected only during 1/09. After rectification of the defect during 2/09 the consumption was found increased substantially. The non-functioning of the CT has resulted into under assessment of the current charges of that period. The short assessment bill was issued to recover the said revenue loss of the KSEB. Apart from the above, the same does not contain any penal charges or surcharge. Hence the impugned bill is sustainable.
- 4). The consumption of the consumer from 6/08 to 11/08 and 3/09 to 8/09 is furnished as follows.

6/08	6800 Units	3/09	9480 Units
7/08	4640 "	4/09	8920 "
8/08	5640 "	5/09	6400 "
9/08	3440 "	6/09	10880 "
10/08	4560 "	7/09	9920 "
11/08	4000 "	8/09	8120 "
Average of 6 months	4847 Units	Average of 6 months	8953 Units

12/08 = 800 units.

1/09 = 960 units

2/09 = 5800 units.

The respondent alleges that the consumption recorded from 6/08 to 11/08 was not correct owing to malfunctioning of the one phase of the CT. Also the petitioner has failed to establish any valid reason for the increased consumption after the rectification of the CT, he argues.

5). The Sub Engineer had informed the concerned staff of the crusher Unit about the defect of the CT and the fact of correcting the defect. If the consumer has any objection about the bill the first thing to do is to file objection before the authority (AE) who has issued the bill. Instead he had filed petition before CGRF and the Forum had disposed the same directing to short assess the consumer for 11/08 to 2/09 by taking the average reading for 3/09, 4/09 & 5/09.

6).The respondent admits that a clerical error occurred in the bill dated 28.3.11 issued to the party. The assessment was done for 6 months instead of 4 months as directed by CGRF. The same has been corrected and a fresh bill amounting to Rs. 75815/- was served upon the consumer on 25.4.11. Since the demand raised is a short assessment bill, no penal charge has been imposed. The respondent says that the consumer is liable to pay the amount and prays to dismiss the Petition filed by the party and permit to realize the short assessment charges from him.

ANALYSIS AND FINDINGS: -

The Hearing of the case was done on 25.7.2011, 28.12.2011 (adjourned at the request of appellant) and on 14/3/ 2012, in my chamber at Edappally, Kochi. Mr. Julian Xavier J, Counsel appeared for the Appellant’s side and Mr. M.P. Poullose, Asst. Exe. Engineer, Electrical Sub Division, Kuruppumpady, represented the opposite side. On perusing the Petition, the counter filed by the Respondent, the documents attached and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

In this case the Sub Engineer who has taken the meter reading in 1/09 has detected the defect of CT (an input device that feeds proportional electric current to the energy meter) in one phase and rectified its defect in 2/09. It would have been proper, had the Sub Engineer made a site mahazar of the above actions taken, in the presence of the consumer or his representative. Neither the appellant nor the respondent has a case that the energy meter installed in the consumer’s premises was faulty. But the fact of detection of fault with the CT’s provided to the Energy meter in 1/09 and its defect rectification done in 2/09 were not disputed by the appellant. From 2/09 onwards, there was rise in energy consumption recordings (after rectification of CT) and the respondent continued to issue the regular monthly bills as per the meter readings and the same was paid by the consumer. But KSEB did not opt to prefer any claim due to defective readings of the period prior to 2/09. That is to say though the defect was rectified in 2/09 the respondents failed to reassess the consumer, for the CT defective period causing less energy recordings than the actual. Later, based on the report of the audit party of KSEB regarding the same omission, the short assessment bill was issued to the consumer on 6.7.2010 for the period 6/08 to 11/08.

The energy consumption pattern from 12/07 to 5/08, when the meter was reported to be good, is as follows;

<u>Month</u>	<u>Energy consumption</u>
12/2007	3720 units
01/2008	7240 “
02/2008	7800 “
03/2008	4000 “

04/2008	4320 “
<u>05/2008</u>	<u>8800 “</u>
Total	35880 + 6 = 5980 units (average monthly consumption).

In the table (page-3 above), it is noted that the consumer had an average energy consumption of 4847 units per month, during the subsequent period of 6/08 to 11/08, when the meter was supposed to be not recording correct energy due to fault in the CT. The consumer had an average consumption of 5980 units during the previous six months of 12/2007 to 5/2008. This difference of $(5980 - 4847) = 1133$ units can not be attributed to the fault of one phase 'CT' because, in such a case of one phase of CT defect, approximately 50% difference in the average energy consumption should occur i.e. around $4847/2 = 2424$ units per month. But we see here a difference of 1133 units, i.e. roughly 25%. Further, the energy consumption pattern of the consumer, for the back year does not show a consistent or regular pattern, but varies considerably from month to month.

The recorded energy consumption for 12/08 was 800 units and for 1/09 was 640 units and the Sub Engineer detected the defect in the CT in 1/09 and repaired the defects. Subsequently, when the defective CT of the meter was rectified, the energy consumption rose to a high level. This suggests that the contention of the respondent that the meter was not recording the correct consumption but a lesser one, due to defect of the CT's, is likely to be true. Therefore I am sure to accept the averment that the Meter was not recording correct energy during 12/2008 to 2/2009 (for three months) and it is reasonable to assess the consumer, at the average consumption obtained, taking the succeeding three months (3/09 to 5/09) average, for this period of 12/08 to 2/09. But the KSEB has not raised any bill for the period of 12/08 to 2/09 but has raised a short assessment bill for the period of 6/08 to 11/08 which is found to be not maintainable.

A contention of the respondent is that the consumer has not raised any objection against the short assessment bill before the Assistant Engineer, but instead filed petition before the CGRF. This cannot be said as a wrongful act as he is free to approach any authority he prefers. The respondent claims that the Sub Engineer has informed the defect of the CT to the staff of the appellant's crusher unit. The consumer has not disputed this fact but during the hearing, the appellant submits that there is no evidence to show the meter was faulty and the Board has raised the bills as per the meter readings only. It is noted that the Meter was not at fault but the CT's feeding the electric Current (input to the Energy meter) was at fault, which causes a reduction in the energy recordings in the Meter.

Another allegation of the appellant is that while considering the issue the CGRF failed to consider the real issue and jumped to a conclusion that average for the months of 3/09, 4/09 and 5/09 has to be taken and revised bills issued for the months of 11/08 to 2/09. The issue highlighted before the CGRF and the issues decided by the CGRF are seen to be entirely different. The CGRF has not issued any specific orders regarding the main prayers of the appellant.

DECISION: -

From the analysis done above and the findings and conclusions arrived at, I decide the following.

The Audit team has found an omission and pointed out it. If there is an omission or error it has to be set right but with a notice given to the opposite side and giving him opportunity for being heard.

At the same time the consumer is also bound to pay the electricity charges for the true energy he has consumed.

The consumer was issued bills as per the readings recorded in the Meter during the period 6/08 to 11/08 and the same was paid. KSEB has no complaint that the Meter recorded a lesser consumption prior to 6/08. KSEB has a case of lower consumption than the actual from 6/08 onwards only and the reason for assessing this period is not substantiated. They preferred the short assessment bill for the period 6/08 to 11/08 based on audit report only. Comparing the consumption of the disputed period (6/08 to 11/08) and its previous period, it is not proved that the Meter was recording less for the fault on one phase CT. The energy consumption recorded during this one year period is seen to vary from 4000 units and above in both spells of time. Hence the charge against the consumer is not proved conclusively.

Later, in 1/09 when the energy consumption recorded was seen below 1000 units, for the last two months, the Sub Engineer inspected and detected the defect in the CT of the meter, thus ascertaining the cause to record a lesser energy consumption than the actual. After rectifying the defect there was a substantial increase in energy consumption. From the analysis done above, I have reached to the conclusion that there is no need to reassess the consumer, during the disputed period of 6/08 to 11/08. If at all the consumer needs reassessment, it is for the period of 1/09 to 3/09 only for which the respondent has to initiate action afresh. The disputed bill issued for the period 6/08 to 11/08 is found to be not maintainable. Similarly the CGRF order dated 08.02.2011 is also found not in order and hence set aside.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed. No order on costs.

Dated the 1st November, 2012,

Electricity Ombudsman.

Ref. No. P/ 212/ 2011/ 1440/ Dated 08.11.2012.

Forwarded to : Mr. Joy Raphel A.V.
Maniyacherill House, Koovapady P. O., Ayathupady
Ernakulam Dt.

Respondent : The Asst. Executive Engineer
Electrical Sub Division, KSEB, Kuruppampady, Perumbavoor
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,
Consumer Grievance Redressal Forum, Power House, Ernakulam-682018.