

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/243/2011.

(Present: T.P. VIVEKANANDAN)

APPELLANT : Sri. Saju C. E.
Sun Metal Tech Furnishers, Puthiya Road Jn.,
Palarivattom, Kochi.

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Palarivattom P O, Ernakulam Dt.

ORDER.

Background of the case: -

The appellant is an electricity industrial consumer No. 20723 with a connected load of 17 KW, under the Electrical Section, Palarivattom. It was alleged that the Light Meter of the Unit became faulty in 7/2006, and the same was replaced and showed a very low reading which was billed. Later, it was found that the replaced meter was also a faulty one and therefore the appellant was issued a bill dated 17.5.2011, demanding a sum of Rs.29,786/-, towards the short assessment of the revenue, for the escaped energy from recording, for the period 11/2006 to 3/2009. As per the impugned bill, the energy charges were levied for 8450 units for the period from 11/06 to 3/09, i.e. @ 353 units per month for 29 months. Aggrieved against the impugned bill, the petitioner had filed a complaint before the CGRF on 23.6.2011. The CGRF by order dated 25.8.2011, had revised the bill by reducing the meter faulty average by 293 units per month for the period from 7/06 to 3/09. Still not satisfied with the decision of the CGRF, the consumer has filed the Appeal Petition before this Forum.

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 is paying the electricity charges promptly as and when demand notices are served to him. The meter became faulty in 7/2006 and the same was changed on 7.10.2006 with another faulty meter resulting wrong assessment for the period from 11/06 to 3/09. The appellant argues that the metering equipment is the exclusive property of the Licensee, KSEB. As per Regulation 27 (2) of Kerala Electricity Supply Code 2005, the licensee shall ensure that all electricity equipment's belonging to the licensee or under its control in the consumers premises are in safe condition and in all respects are fit for supplying energy. As per regulation 27 (3) of the said Code, the consumer or occupant of the premises or installation for which licensee had provided electricity service shall

not tamper or permit to tamper electricity lines or metering equipment provided by the licensee. As per regulations 27 (6) and (7), if it appears that the metering equipment provided for supplying electricity to the consumer is defective, the licensee must test the metering equipment and repair and replace it at the cost of the consumer. Any fault in the meter will not escape the notice of the Meter reader who is visiting consumer's premises every month. The appellant has no control over the metering equipment and he is prohibited from approaching the same. Hence whenever any fault is detected, it is the duty of the licensee to set right it and see that the meter is registering correct consumption.

The appellant submits that he has not been informed of any replacement of the faulty meter by another faulty meter at the relevant time. Since the levy is restricted to 3/09, it is presumed that the meter is registering correct consumption thereafter. Another contention of the appellant is that as per Regulation 18 (8) of Kerala Electricity Supply Code 2005, the licensee shall not recover any arrears after a period of two years from the date when such became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied. Admittedly no such arrears were shown in the previous bills issued to the appellant. The additional bill in question is dated 17-5-11 which is well after 2 years limitation period. Hence no arrears for the period from 11/06 to 3/09 can be recovered through a bill. It is absolutely barred by limitation. Also there is no provision in the IE Act, 2003 and the KSEB Terms and Conditions of Supply 2005 or Electricity Supply Code 2005 to re-open consumption already registered, recorded and paid for, under any pretext let alone an audit by the audit officer.

The appellant challenges the decision of the CGRF regarding the direction to charge the light meter faulty period from 7/06 to 3/09 instead of 11/06 to 3/09. The appellant submits that even the licensee has no case that the light meter faulty period, has to be calculated from 7/06. The definite case of the licensee was that the light meter faulty period has to be calculated from 11/06 to 3/09. The honorable CGRF has no power to revise the meter faulty period to an earlier period by creating new case in favour of the licensee.

Nature of reliefs sought:

1. To set aside the order of CGRF/Comp.24/2011-12 dated 25-8-2011 passed by the CGRF, Ernakulum.
2. To set aside the demand dated 7-5-11 for arrears of Rs.29,786/- issued by the Assistant Engineer, KSEB, Palarivattom.

During the hearing done on 29.6.2012, the appellant argued that the average energy consumption recorded in the meter, after replacing the faulty meter in 3/2009, was 210 units per month and hence he is agreeable for a settlement of the dispute, if the short assessment bill is revised at the rate of 210 units per month, for the back period of 11/2006 to 3/2009.

Arguments of the Respondent: -

The respondent has submitted the statement of facts opposing the contentions raised by the appellant.

The appellant Sri. Saju C E, is an industrial consumer No.20723 and is having a connected load of 17 KW. The light meter of the consumer became faulty during 7/2006, but the bill was issued for the recorded consumption of 247 units during that month. But from 8/2006 to 10/2006, an average of 353 units per month were charged based on previous average. The meter changed

during 10/2006 and bills were issued based on the recorded consumption during 11/06 to 1/2007, without noticing that it is a faulty meter. The meter was then declared faulty and average of 200 units were given for 2/2007 and 3/2007. Then from 4/2007 to 8/2007 recorded consumption was billed. Thus during the period, 9/2007 to 4/2008, an average 20 units and from 5/2008 to 3/2009, average of 50 units were billed. The Meter was changed during 3/2009 and then the consumption was seen increased and is being recorded continuously.

When the Audit Officer analyzed the bills as part of routine auditing, it was noticed that the bills issued were wrong since the meter that was replaced during 10/2006 was a faulty one. Therefore the bills issued during the disputed period were not correct. The respondent submits that when a data is analyzed over a period of time only the actual defects are evolved. The consumption of energy during the entire period shows a uniform pattern. Hence the average of 353 units which was charged during 8/2006 to 10/2006 has to be continued till meter was replaced with a good meter in 3/09. Hence as per rules in force, short assessment bills were issued to the consumer. The Regulation 24 (5) enables KSEB to issue bills, when a review finds that it has undercharged the consumer. In this case when the bills were audited, it was found that the consumer was under charged by way of giving wrong average consumption, hence the need for the issue of the bill. The details of the bill is as follows;

The units to be billed from 11/2006 to 3/2009 @ 353 units X 29 months :	10237 units
Units already billed	: 1787 units
Hence shortage in units billed	: 8450 units
Hence amount undercharged = 8450 units X Rs. 3.25	: Rs. 29786/-

It is submitted that clause 27 of supply code deals with tampering distress or damage to electrical plant and in the present case there are no such claims made. The claim was made to set correct the billing done due to wrong average taken during meter faulty period.

The Regulation 18 (8) framed in line with section 56 (2) of Electricity Act 2003 for which Hon: High Court of Kerala has issued orders to the effect that a bill become due only when it is issued. The section 24 (5) of the Supply Code, enables KSEB to issue bills, when it is established that it has under charged the consumer, by way of review or otherwise. The periodical review is done by the audit team of KSEBoard and hence the bill is to be issued based on the same.

It is submitted that the faulty meter replacement is done in a phased manner due to various reasons beyond control. This is not done deliberately and hence KSEB is fit to realize the eligible electricity charges from the consumer.

It is submitted that meter faulty average was not correctly claimed on the consumer originally. As the faulty meter has recorded some units during the billing period, the bill was issued for the reading (energy consumption) recorded in the faulty meter. From the meter reading taken after installing a good meter, it can be clearly seen that the previous bills were not correct. During the RAO inspection these facts were noticed and therefore the short assessment bill was issued. No deliberate attempt has been done from the part of KSEBoard and the consumer would have paid this sum earlier itself, had it been detected earlier.

It is submitted that Hon: CGRF took a stand that 12 months average consumption may be taken for arriving the average to be billed and they revised the period from 7/06 onwards, during which the meter became faulty. Accordingly, the average consumption arrived at by Hon: CGRF was 293

units per month. The billed units for the months of 7/2006 were 247 units and for the period from 8/2006 to 10/2006, it was 353 units each totaling to 1306 units for the period from 7/06 to 10/06. The Hon: CGRF has directed to revise this into, 293 units x 4 months i.e. 1172 units, for the same period, which is in favor of the consumer. This is an addition to the balance payable from 11/2006.

It is submitted that the average units billed, during the early months of the detection of meter fault, was @ 353 units per month and the average taken by audit team for the billing is also the same and hence 353 units are to be taken for the short assessed billing. Inadvertently the faulty meter is replaced with another faulty meter and that was not noticed at that point of time. It is submitted that, the faulty meters are replaced in a phased manner, considering the availability. KSEBoard being a social organization has to fulfill the needs of the society in general. Giving new connections with meters, replacement of faulty meters etc. needs a good number of meters.

Analysis and Findings: -

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

The first hearing was posted for 12.1.2012 and the appellant represented that he got the notice late and requested another opportunity to present the case, which was allowed. Hence the case reposted for hearing on 29.6.2012. In the Hearing of the case done on 29.06.2012, in my chamber at Edappally, Mr. Mohammed Shameer K P, represented the Appellant's side and Smt. Savitha, Asst. Exe. Engineer, Electrical Sub Division, Palarivattom, represented the Respondent's side.

The short assessment bill was issued to the appellant based on the report of the audit party of Regional Audit Office of KSEB. The meter of the consumer was found faulty during 7/2006 and it was replaced in 10/2006. But the replaced meter was also a faulty one. During the period from 8/2006 to 10/2006 an average 353 units were charged based on previous average. Thereafter, till 3/2009, the bills were issued not according to the actual consumption, but according to the energy recorded in a faulty meter. This type of wrong billing continued till the faulty meter was replaced in 3/2009. The consumer does not dispute the fact that the meter was faulty during the period of 7/2006 to 3/2009. The main contentions of the appellant are that as per regulations 27 (6) and 27 (7), if it appears that the metering equipment provided for supplying electricity to the consumer is defective, the licensee must test the metering equipment and repair and replace the metering equipment at the cost of the consumer.

Further, Regulation 33 (2) of the KSEB Terms and Conditions of Supply, 2005, deals with the procedure regarding preparation and issuance of a bill on meter reading due to its non-recording or malfunctioning, which reads as follows; *"(2) 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 the previous six months average consumption. In such cases the meter shall be replaced within one month. If the average consumption of previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding three months after replacement of the meter"*.

The above Clause enjoins the Licensee, the obligation to replace the faulty electric meter of the consumer and how to assess a consumer during such periods. Though the meter was replaced in time, it was later found that the replaced meter was also a faulty one. The Board took 2 years

and four months to identify it and then to take action to replace it with a good meter. But this can not be considered as a reason to bar charging of the true electricity consumed by the appellant during the meter faulty period.

During the period in question there was actual consumption of electricity by the consumer and the only issue pertains is to fix the quantity of the electricity consumed by him. The meter became faulty in the month 7/06. The average of 353 units was assessed based on previous three months consumption ($282+423+354=1059/3=353$). The CGRF has found that the three months average adopted for arriving at the average consumption, during the meter faulty period, does not find to be realistic in order to apply for a reasonably lengthy faulty period from 7/06 to 3/09. As per the opinion of CGRF, it is proper to take 12 months average consumption, before the light meter was faulty, for preparing the short assessment bill and CGRF has ordered accordingly. But as quoted in the rules above, it has not stipulated any such provisions of taking previous three months average or twelve months average in such cases. I am of the opinion that, since the Board has failed to replace the faulty meter in time, it is fit to determine the consumption of the faulty period based on the meter reading in the succeeding three months, after the replacement of the meter.

Another contention of the Appellant is based on Section 56 (2) of Electricity Act, 2003 which reads "The licensee shall not recover any arrears after a period of two years from the date when such sum become first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied". Hence the point to be decided is 'when the electricity charges became due for payment' i.e. the date from which the Electricity charges are 'liable to pay' by the consumer, which is also termed as the 'due date'. This is an important date as far as both consumer and Licensee is concerned.

In the Brihanmumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11(Bom), it was held as follows.

"The period of two years as mentioned in section 56 (2) of the Electricity Act 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of Electrical energy".

"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 consumer. Till after the issue and receipt of the bill the respondents have no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent".

Hence the point of argument of the appellant, with respect to 'Limitation' under Section 56(2) of the IE Act, cannot be acceptable, since the bill was raised only on 01.10.2009 which became first due in 10/2009 and therefore shall be recoverable. Hence, there is no case of violation of Section 56(2) of Electricity Act 2003.

DECISION: -

From the analysis done and the findings and conclusions arrived at, which is detailed above I take the following decision.

As per Regulation 33(2); ".....If the average consumption of previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be

determined based on the meter reading in the succeeding three months after replacement of the meter". The appellant has expressed his willingness for a settlement under this provision.

For the above reasons, it is decided that the consumer's disputed short assessment bill dated 17.5.2011 for Rs. 29,786/-, pertaining to the period of 11/2006 to 03/2009, shall be revised for the same period, based on the succeeding three months average consumption of the Light meter that was replaced with a good meter in 3/2009. The consumer is bound to pay the charges for the actual electricity he has consumed and therefore is liable to pay the revised bill as ordered now. The CGRF's order No. CGRF-CR/ Comp24/2011-12/ dated 25.8.2011 stands set aside.

Having decided as above, it is ordered accordingly. The revised bill shall be issued with 30 days time (due date of the revised bill) given for making the payment. It is clarified that no interest is payable by the consumer for the Appeal pending period before this Forum. The Appeal Petition filed before this Forum by the Consumer, Mr. Saju C E, (Con.No. 20723), stands disposed of with the above directions. No order on costs.

Dated the 11th of January, 2013,

Electricity Ombudsman.

Ref. No. P/ 243/ 2011/ 1531/ Dated 11.01.2013.

Forwarded to : 1). Sri. Saju C E,
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Palarivattom, Kochi.
2). The Assistant Executive Engineer,
Electrical Sub Division,
Palarivattom P O, Ernakulam Dt.

Copy to : 1). The Secretary,
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3). The Chairperson,
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