

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/238/2011.

(Present: T.P. Vivekanandan)

APPELLANT : Sri. K.V.Sambasivan.
Managing Partner, Lakshmi Agro Mills,
Edavoor, Koovapady,
Perumbavoor, Ernakulum (DT)

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Perumbavoor.

ORDER.

Background of the Case: -

The Appellant is an electrical consumer with No. 19501, of Electrical section, Perumbavoor and is running a Rice mill under LT IV- industrial tariff was assigned to the unit. The service connection was effected on 1.3.1999. While so, the appellant was served a short assessment bill dated 1.10.2009, for Rs.3, 39,187/- by the licensee. The consumer made a representation to the Assistant Exe. Engineer, Electrical Sub division, Perumbavoor, disputing his liability to pay the above bill and also requested to withdraw the bill. The Executive Engineer passed an order confirming the stand taken by the Audit officer and found that the short Assessment bill amounting to Rs.3, 39,187/- was in order. Aggrieved by the said order the consumer approached the CGRF, Ernakulum by filing a complaint, numbered as No: 57/2011. The Forum after hearing disposed of the petition by directing the respondent to issue a revised bill according to the conclusions described in order no. CGRF-CR/Comp.57/2010-11/dated 21/3/11. Still aggrieved, the Appellant has filed the Appeal Petition, before this Authority.

Argument of the Appellant: -

The appellant has adduced the following arguments in his Appeal petition dated 11/8/2011.

The consumer is running a Rice Mill named "Lakshmi Agro Mills" at Edavoor, Koovappady, under Electrical Section, Perumbavoor. The consumer was granted a power connection during 1975 by the Licensee for running the above unit. The consumer was paying the electricity charges for the power consumption regularly as per bills raised by the licensee. While being so, the appellant was served a short assessment bill dated 01.10.2009, demanding a sum of Rs.3, 39,187/- by the licensee. Further,

the consumer was threatened with disconnection if the above bill was not paid on or before 26.10.2009. On receipt of the above bill, the consumer contacted the officials of the KSEBoard to ascertain the reason for such an exorbitant bill on him. It was gathered from the office of KSEBoard that the short assessment bill was on the following two counts on the basis of the observations of the audit report of the Regional Audit Officer, KSEBoard, Perumbavoor.

- 1). Light energy consumption of the industry for the period from March 2005 to August 2008 was not properly billed, resulting in a revenue loss to tune of Rs.1, 62,799/- to the Electricity Board.
- 2).The fault occurred to one phase of the CT Power meter was not taken into account while billing for the month of November 2005 and December 2005, resulting in a revenue loss of Rs.1,76,388/- and that deviation of billing procedure adopted by the Assistant Engineer, Electrical Section, Perumbavoor was not on valid grounds.

The consumer made a representation to the Assistant Executive Engineer (AEE), Electrical Sub division, Perumbavoor, disputing his liability to pay the above bill and requested the authority to withdraw the bill. The said representation was subsequently made over to the Executive Engineer, Electrical Division, Perumbavoor, for his consideration and disposal. After hearing both sides, the Executive Engineer passed an order confirming the stand taken by the Regional Audit Officer and found that the short Assessment bill amounting to Rs.3, 39,187/- was in order. Aggrieved by the said order the consumer approached the Consumer Grievance Redressal Forum (CGRF), Ernakulum by filing a complaint as per complaint No: 57/2011.

The CGRF heard both sides and passed an order on 21.03.2011 cancelling the short assessment bill for Rs.3, 39,187/- issued to the consumer. The CGRF however directed the respondent to issue a revised bill for the light energy consumed by the appellant from March 2006. The appellant has revised the Bill to Rs. 1, 50, 710/- as such.

The appellant has raised the following contentions also in his appeal petition.

1. The finding of the CGRF in respect of short assessment bill of Rs.1, 62,799/- for the light consumption is against law, facts, circumstances and probabilities of the case.
2. The CGRF has grossly erred in holding that this consumer is liable to be short assessed for the light energy as per the rectification note of the then Assistant Engineer on 02.03.2006.
3. The CGRF ought to have found that the claim of the KSEBoard is barred by limitation under Sec.56 (2) of the Electricity Act, 2003 read with Regulation 18 (8) of the Kerala Electricity Supply Code, 2005.
4. The CGRF ought to have found that the light meter connection provided was after CT and not before CT as remarked by the Assistant Engineer on 02.03.2006 when he rectified the power consumed by the consumer was already billed and there was no need of any short recovery.

Argument of Respondent: -

The respondent has furnished a statement of facts denying all the contentions raised by the appellant in his petition.

The complainant, Sri. K.V. Sambasivan, has an electric connection having Con No: 19501, under Electrical section, Perumbavoor, for his unit, 'M/S Lakshmi Agro Mills', Edavoor at Koovapady. The

service connection was effected on 1.03.1999. The power meter and light meter were connected in the same manner in which it exists now, from the date of connection, as reported by the Assistant Engineer, Electrical Section Perumbavoor. The light meter was connected as an additional meter to the power meter, so that, the light consumption was not recorded in the power meter. According to the Assistant Engineer's report, this mode of connection was not changed till date. Hence, light circuit energy consumption can be measured only from the light meter reading. But, the light consumption was not being used for billing till 8/2008 by mistake, assuming that the light meter was connected as a sub meter to the power meter. This error was later rectified from 8/2008 onwards.

Power consumption from 3/05 to 8/08 was 1054820 units and Light consumption was 46656 units.

As this consumption was within 5% limit of the Power consumption,

The energy charges comes to =	46656 units × Rs. 3.25 (tariff rate)	= Rs. 1, 51,632/-
Less (2723×0.5) and (45×3.75)		= Rs. (1362/- + 169/-)
Total		= Rs. 1, 50, 101/-
Duty		= Rs. 12698/-

Hence the net charges payable for the period from 3/05 to 8/08 = Rs. 1, 62, 799.

Up to the month of 6/2005, the meter readings were taken normally. But for 7/2005, the meter reading could not be taken due to blocking of the passage to the metering portion, by the consumer. Later, the meter reading was taken on 31/10/2005. But in 11/2005, even after the oral instructions to the consumer, he blocked the metering portion, for not taking the meter reading and is suspected as purposefully done. On 01.02.2006, the meter reading was taken and at that time, it was found that, one phase of the CT for metering, was not working. Hence, it was decided to reassess for the months 11/2005, 12/2005 and 1/2006, and hence the measured consumption multiplied by 1.5 was taken, as one phase of the CT was found not working. But the meter was good and not faulty. The short assessment for the period was calculated as follows.

Total recorded consumption for the period 11/05 to 1/06	= (24619-22177) × 40 (MF) × 1.5 times
	= 2502 × 40 × 1.5 = 150120 units.
Amount to be realized 150120 x Rs 3.25	= Rs. 4, 87, 890/-
Less remitted by the consumer (24619 – 22177) x 40 x 3.25	= Rs. 3, 25, 260/-
Balance to be remitted (487890 – 325260)	= Rs. 1,62, 630/- + duty Rs.13758/-
Total	= Rs. 1,76,388/-
Grand total (162799.00 + 176388)	= Rs. <u>3, 39, 187/-</u>

The consumer has objected the bill arguing that it was exorbitant, as it never been recorded such a high consumption equivalent to 150120 units and filed objection.

The Executive Engineer has disposed of this case vide his order dated 16.09.2010, considering all the evidences available. In this order, the following are the contents of the findings arrived at:-

1). First part of the impugned bill is relating to the short assessment raised on account of wrong billing of light consumption. According to the available records, and the report of the site inspection conducted by the Assistant Engineer on 17.10.2009, it was revealed that, the incoming of the light meter, is tapped from the point before the power metering CT. In such an electric connection, the

consumption recorded in the power meter is purely for power consumption only. Hence the light consumption for the period from 3/2005 to 8/2008 was not billed resulting in revenue loss to KSEBoard. Hence the short assessment amounting to Rs.1, 62,799/- is in order.

2). Second part is relating to the defect of 1 phase of CT for metering in the month of 1/2006. If one phase is not working, and thereby not recording the consumption, the correct method to ascertain the actual consumption is to multiply the recorded consumption by 1.5. The original assessment was on the above ground and was correct.

3).The demand 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 Sec. 56(2) of Electricity Act 2003.

According to the CGRF order dated .21.03.2011; the reassessment was done as follows.

(A) The Light meter consumption was limited for the period 3/06 to 8/08.

According to the conclusion of CGRF, by going through the remarks of Assistant Engineer in the MR register, Light Meter Consumption was after CT (i.e. sub meter) till 3/2006. In 3/2006, the mode of connection was changed to be as additional meter, i.e. before CT. Hence the bill issued to the consumer, for that period, is to be revised, for the period, considering from 3/2006.

The Meter reading for light consumption for 8/08 was 95753 units and meter reading on 2/3/2006 was 61836 units and the consumption for the period was calculated to 33917 units (95753-61836) which is less than 34658 units.

Therefore Assessment - 33917×3.25	=Rs. 1, 10, 230/-
Less the amount already remitted	= <u>Rs. 1709/-</u>
Therefore amount to be remitted	= Rs. <u>1, 08,521/-</u> + duty Rs. 9181= Rs. <u>117702/-</u>

B). The CT fault reassessment is limited for 1 month only

Total recorded consumption from 10/05 to 12/05 = 100080 units [(24619-22117) × 40 × 1.5]

Average Consumption calculated for 1/06 = 18728 units

Consumption for the period from 11/05 and 12/05 = 100080 - 18728 = 81352 units

Consumption for 1/06 (CT 1 phase fault)=18728×1.5 = 28092 units

Therefore Total consumption from 11/05 to 01/06 = 81352+28092 = 109444 units.

Already billed units = 100080 units

Balance to be billed for this period = 109444 - 100080 = 9364 units

Assessment 9364 × Rs. 3.25 = Rs. 30433/- + duty Rs. 2575/-

Total assessment for CT fault = Rs. 33,008/-

Grand total = Rs. 117702/- + Rs. 33008/- = Rs. 150710/-

The respondent submits to recover the losses sustained by the Board by allowing the short assessment arrived above.

Analysis and Findings: -

The hearing of the case was done on 10.1.2012 and 15.3.2012, in my Chamber at Edappally, Kochi, and the appellant was represented by Sri. K.V. Ramesan, and the respondent by the Assistant Exe. Engineer of the Perumbavoor Sub division, Sri John Varghese 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 appellant was served with a short assessment bill for Rs. 3, 39, 187/- on the basis of following two counts of charges.

1). For the Light energy consumption of the consumer for the period from March 2005 to August 2008 was not properly billed, resulting in revenue loss to tune of Rs.1, 62,799/- to the Board. The fault occurred to one phase of the CT Power meter was not taken in to account while billing for the month of November 2005 and December 2005, resulting in a revenue loss amounting to Rs.1,76,388/-

2). The short assessment bill for Rs. 1,76,388/-, towards the CT fault (1-Phase) for 3 months.

But it was ordered by the CGRF that the CT fault be limited to one month and the Light meter consumption be revised for the period of 3/06 to 8/08 instead of from 3/05.

The 1st point to be decided is on the matter of CT fault and its assessment. I feel that the decision of CGRF on the assessment arising from the 'CT fault' issue was reasonable and hence justifiable since the CT fault was detected in 1/06 only and for the previous 2 months, the consumption recorded is comparable to the average use. Accordingly, the respondent has revised the short assessment bill from Rs. 1,76,388/- to Rs. 33,008/- for the above fault.

The next point that needs to be decided is – 'Whether the finding of the CGRF, in respect of short assessment bill of Rs.1, 17, 702/-, for the light consumption was correct'?

The short assessment bill for Rs. 1, 62, 799/- was done on the basis that the lighting consumption recorded in the light meter was not billed from 3/05 to 8/08, as it was wrongly taken as a sub meter, whereas actually it was an additional meter, connected after the power meter CT. The AE after his inspection has remarked as "light meter connection provided after CT and light unit to be billed w.e.f. 3/06. It can be read from the remarks that he has witnessed the mode of connection as, after the CT and he rectified it by connecting it before CT and hence the light unit to be billed w.e.f. 3/06.

Considering this aspect, the CGRF has ordered that the bill issued to the consumer has to be revised and only w.e.f. 3/06, the consumer is to be short assessed for the light units. Hence the decision of the CGRF to revise the light meter consumption of the consumer is found justifiable.

Whether the claim of the KSEBoard is barred by limitation under sec.56 (2) of the Electricity Act, 2003 read with Regulation 18 (8) of the Kerala Electricity Supply Code, 2005.

Section 56 (2) Electricity Act 2003, which reads as under;

"56 (2)- Not with standing 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 became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity".

It will not be out of place here to refer to the reported decisions in Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC7794 AIR 2008 Jha 99) and other and Brihanmumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11(Bom) where it was held as follows respectively.

“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 this point of argument of the appellant 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 :-

As per the analysis done and conclusions arrived at, I decide as follows.

The CT fault is limited to one month and the decision of CGRF on this respect is upheld. Secondly, the reassessment of Light meter consumption is also found justifiable. Hence the consumer is bound to pay the Bill dated 20.7. 2011 for Rs. 1, 50, 710/-. Having decided as above it is ordered accordingly. The consumer shall be provided up to 10 (ten) installments, if requested by him, for paying the bill. The consumer is given 30 days time, for making the payment (due date for payment) in full or the 1st installment, from the date of this order. The subsequent installments will bear interest as per rules. No interest is payable by the consumer for the appeal pending period before the CGRF and this Forum and up to 30th day of this order. Having concluded and decided as above, it is ordered accordingly. No order on costs. Dated the 22nd of January, 2013.

Electricity Ombudsman.

Ref. No, P/ 238/ 2011/ 1550/Dated 22.01.2013.

Forwarded to : 1). Sri.K.V.Sambasivan.
Managing Partner, Lakshmi Agro Mills, Edavoor,
Koovapady, Perumbavoor, Ernakulum (DT).

: 2).The Assistant Executive Engineer,
Electrical Sub Division, KSE Board, Perumbavoor.

Copy to: - 1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB,
Vydhyuthibhavanam, Pattom, Thiruvananthapuram
3. The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Power House Bldg, Ernakulam-682018.