

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.keralaeo.org Ph.0484 2346488 Mob: +91 9567414885
Email:ombudsman.electricity@gmail

APPEAL PETITION NO. P/249/2011.

(Present: T.P. Vivekanandan)

APPELLANT : Sri. K.M. Chakkappan
K.M.C. Modern Rice Mill,
Kallorkadan House,
Okkal, Perumbavoor 683550

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

ORDER.

Background of the Case: -

The Appellant is an industrial consumer of electric connection No.18336 (old No. 3550), under Electrical section, Perumbavoor. The Unit named M/s KMC Modern Rice Mill has a connected load of 76 KW and the main activity is running a rice mill and hence LT IV- industrial tariff was assigned. While so, the appellant was served with a short assessment bill dated 21.3.2011 for Rs.2,57,471/- for the meter faulty period from 4/2004 to 12/2004 and also for the period from 1/05 to 3/2005, for the reason of non assessment of the consumer during the meter faulty period, based on the audit report of KSEB. The appellant approached the Asst. Engineer (AE) and filed objection, against the demand notice, on 31.3.2011. The AE heard the appellant and issued the order directing to pay the amount within 15 days. Challenging the demand raised by the AE, the appellant filed a petition before the CGRF on 20.7.2011. The Forum ordered the following. "Petitioner's meter faulty period from 4/04 to 12/04 shall be reassessed based on the average of 6 months consumption recorded in the period 1/05 to 6/05. The disputed short assessment bill amounting Rs.2, 57,471/- shall be revised accordingly". Aggrieved by the order of the CGRF the appellant filed this appeal 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.

According to the appellant, the Rice mill business was a flop and finally the unit was closed in the year 2006 and from 2006 onwards the Electric connection was maintained by remitting the minimum charges. The appellant submits that the demand raised in the short assessment bill which is confirmed by the Asst. Engineer in his order dated 27.6. 2011 is against law and factually

incorrect and legally unsustainable. The statement that the meter was faulty is incorrect and nothing was mentioned in the bills with regard to the faultiness of the meter and the readings were taken on each month and the readings were different in each month. A perusal of the copies of the bills (which was produced and marked as document No.5 in the appeal petition) would prove that the allegation with regard to faultiness of the meter is incorrect. Apart from that, assuming (not admitting) even if the meter is faulty, the average of the previous three months have to be taken for assessing the average of the consumption and not the subsequent period if the average of the previous period is possible. The KSEB has no case that the average of the previous 3 months prior to the alleged date of the meter becoming faulty is unavailable. If that be so there will not be any question of additional bill. Apart from that, it is submitted that the amount demanded is hopelessly barred by the question of limitation. As per Section 56 (2) of the Electricity Act 2003, the period of limitation is two years unless the sum has been shown continuously in the bills as recoverable. It was also submitted that the demand on the basis of audit is legally unsustainable and hence on that count also the demand of additional amount demanded is illegal and liable to be set aside.

Secondly, the findings of the Forum is totally perverse and against the Regulations and hence the same is legally unsustainable. As per Regulation 42(3), the average of previous six months period has to be taken into consideration for deciding in a case, where in the meter is stated to be faulty. In this case, the meter is not declared faulty, by any of the competent authorities under the law, after testing the same with notice to the consumer. Hence the order on the face of itself is illegal and liable to be set aside.

It is not mentioned in any of the Bills issued during the period 4/04 to 12/04 that the meter was faulty and hence average is billed. Hence he denies the argument that the meter was faulty or not shows any display in the meter. Hence it is not correct to reassess a consumer for once he was issued a bill and paid the same. There is no proof to show that the consumer was informed that the meter was faulty. The appellant produced the Judgment copy in WP(C) No.23220 of 2006, M/s Union Polymers Vs KSEB in support of his argument of the applicability of Limitation to this Case.

The reliefs sought are;

- 1) to set aside the order dated 20.9.2011 of the CGRF, Ernakulum.
- 2) to declare that the appellant is not liable to pay the short assessment bill dated 21.3.2011.

Arguments of the Respondent: -

The Respondent has opposed the contentions of the Appellant in the Petition and raises the following arguments among other things included in the replies and stated during the Hearings.

The Electric service connection was effected on 9.11.1991. The energy consumption of the consumer was having an average status of 14387 units per month in 2003. But in 8/2003 and 9/2003, the monthly consumption dropped to below 8000 units. On 27.10.2003, a surprise inspection was conducted by APTS and detected theft of energy by tampering the meter and the consumer was assessed for Rs. 4, 01, 620/- and the meter was also replaced in 10/2003.

The following anomalies were noticed in the audit conducted by the RAO/KSEB in 2009. The meter was having no display and was declared as faulty from 4/2004 onwards. The faulty meter was replaced on 5/1/2005. After the replacement of the meter the average consumption for six months from 2/2005 onwards was 19473 units. During the period from 4/2004 to 12/2004, the

consumer was served with monthly bills for an average monthly consumption of 14387 units only. Hence the loss for the period was calculated to be Rs.161350/-. On 4.4.2005, the meter was again changed and the average monthly consumption for six months increased to 23443 units. Hence the back assessment for the three months from 1/05 to 3/05 was calculated and come to Rs.96, 121/-. The consumer was served a short assessment bill for Rs.2, 57, 471/- (Rs. 1, 61, 350+Rs.96, 121) for realizing the loss occurred to the Board due to meter faulty and for subsequent low consumption.

Another contention of the respondent is that after the replacement of the meter in 4/2005, the energy consumption recorded was found nearly doubled. This was noticed at the audit of the RAO in 2009. This disputed bill was raised only on 1/10/2009, which became first due in 10/2009. Hence the amount shall be recoverable and there is no violation of Electricity Act 2003.

Further the respondent submits that there was a history of tampering, done previously by the consumer and due to which the recorded consumption has dropped to below 8000 units per month. Hence the reading at that time was not reliable to calculate the average consumption.

There was no display in the power meter from 4/04 to 12/04 and the same fact is clear from the meter reading register. The bill was revised as per the order of CGRF and the short assessment bill reduced to Rs. 161350/- and the respondent requests to allow the recovery so as to make good of the losses sustained by the KSEB. The consumer has neither objected nor filed any complaint when the Meter was replaced. The changing of meter is done due to its faultiness.

The limitation under section 56(2) is applicable only after a demand is raised. The disputed bill was raised in 10/2009 and hence the bill due date is that date only. This is clearly vindicated in the WP 264 of 2006 of Bombay High Court verdict.

The meter readings of the 6 months prior to 10/2003 are not available and for 5 months only are available. Hence KSEB assessed the previous 3 month's average and issued the bill. Subsequently the Meter was replaced. When the Audit team found out the mistake, the revision of the bill was done and issued to the consumer. The Meter reading register and Bill calculation register are the proofs to substantiate that the meter was faulty during that period. With regard the argument of business loss, the respondent has contended that there was consumption recorded till 01/2007.

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 final decisions.

The Hearing of the case was conducted on 10.1.2012 and 14.3.2012 in my chamber at Edappally and Advocate Mr. Julian Xavier represented for the Appellant's side and Mr. John Varghese, Asst. Exe. Engineer, Electrical Sub Division, Perumbavoor, represented for the Respondent's side.

The centre of the dispute is, on the reassessment done of a faulty meter at a later date, in the industrial unit of the appellant.

The contention of the respondent is that there was no display in the power meter from 4/04 to 12/04 and the consumer was served with monthly bills for an average monthly consumption of 14387 units during this period, based on previous 3 months average, as six months reading was not available. But the respondent has failed to mention the non-recording or malfunctioning of the meter in the bills issued during this period, though it is seen recorded in the Meter reading

register and the Calculation bill register of the KSEB, copy of which was issued to the appellant for his verification.

Accuracy of Meters- Regulation 42 (3) of KSEB T & C of Supply, 2005 reads; “.....If the 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 six months prior to replacement of the meter. If the average consumption for the 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 six months after replacement of meter....”.

The meter faultiness was detected in 4/04, and to calculate the average consumption of the previous six months (from 10/03 to 3/04), it was not available as a ‘tampering of meter’ case was detected in the same premises on 27.10.2003 and so the energy consumption of 10/03 was not reliable to be included for calculating the average consumption. The meter was changed on 29.10.2003 and it worked for the next five months only i.e. from 11/03 to 3/03 and from 4/04 onwards, the meter showed no display or has to be considered as meter faulty. During 11/2003, the energy used was 16320 units and for 12/03, it was 13080 units and finally it failed in 4/04. Hence the succeeding 6 months reading is also not available to reach the average consumption. It is argued by the respondent that the replaced meter in 10/2003 was also a faulty one.

For the above reasons, the contention of the respondent that the reading from 11/2003 to 3/2004 was not reliable, to calculate the average consumption is found to be reasonable.

This Forum has verified the bills issued to the consumer from 4/04 to 12/04. The energy consumption used in the preparation of monthly bills, during these months were seen recorded in the bills as follows.

4/04=14962 units,
5/04=14932 units,
6/04=14967 units,
7/04=14849 units,
8/04=14787 units,
9/04=15106 units,
10/04=14922units,
11/04=15106 units,
12/04=15059 units.

The above energy units billed were seen to be comprised of;

- 1).An average consumption of 14387 units per month as there was no display in the power meter
- 2).The actual light meter consumption recorded by a separate meter for the corresponding month

The consumption of 14387 units is arrived as follows;

1/04 = 17440 units.

2/04 = 10080 units.

3/04 = 15640 units. Average of above 3 months = 14387 units.

The faulty meter was seen replaced only on 5/1/2005. The reason for this much delay for changing the faulty meter is not seen explained by the respondent. The subsequent energy consumption were as follows;

1 & 2/2005 = 26862 units.
 3/2005 = 16198 units
 4/2005 = 23098 units
 5/2005 = 26200 units
 6/2005 = 24480 units

Average of 1/05 to 6/05 is $116838/6 = 19473$ units. The reassessment for the period 4/04 to 12/04 (9 months) was seen done as follows;

True average obtained with a good meter	= 19473 units/month
The previously assessed units during meter faulty	= 14387 units/month
Difference	= 5086 units x month
Assessment (5086 units x 9 months x Rs.3.25)	= Rs. 148765/- + duty Rs. 12585/-
Bill amount	= Rs. <u>161350/-</u>

The referred case of WP(C) 23220 of 2006 by the appellant, deals with the meter faulty case occurred in 1998 and falls under the IE act 1910. With the introduction of IE Act, 2003, there are specific rules to deal such issues of Meter fault and hence the current dispute that occurred in the year 2004, comes under the purview of the new Act, 2003, and therefore the contention of the appellant is not applicable here.

The appellant argues that the amount demanded is barred by the question of limitation. As per Section 56 (2) of the Electricity Act 2003, the period of limitation is two years unless the sum has been shown continuously in the bills as recoverable. The Section 56 (2) reads; "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 electricity".

The reported decisions in Hon Court cases viz Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC 7794 AIR 2008 Jha 99) and Brihanmumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11(Bom) were 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". In this case the invoice under dispute was originally issued to the consumer only on 21/3/2011. Hence the Limitation will not apply here.

DECISION: -

The consumer's meter was faulty from 4/2004 onwards as was evident from the Bill calculation register and the Meter reading register of KSEB. The copy of the same was issued to the consumer and the appellant has not disputed the said documents. Hence it is taken as correct. It is seen that that the consumer was billed for a power meter average consumption of 14387 units plus the actual Light meter energy during this period. This average of 14387 units was obtained from the

previous three months average prior to 4/04 i.e. 1/04 to 3/04 (instead of the previous six months as per rules), since the 6 month period was not available as there occurred a case of Tampering of the Meter during this time. It is not advisable to assess the average consumption by taking the previous three months average, from the meter readings obtained from 1/04 to 3/04, as there exists a specific rule for six months average for the same. Hence the six months average taken after changing with a good meter in 1/2005 and reassessed at 19473 units instead of 14387 units and consequently the arrear amount of Rs. 161350/- arrived at, is found to be in order and payable by the consumer.

The reason for changing the energy meter on 4/4/05 is not reported by the respondent. Hence the reassessment made for the period from 1/05 to 3/05 is not valid and the finding of the CGRF in this regard stands good.

Having concluded and decided as above, it is ordered accordingly. I find merit in the order of the CGRF vide order No. CGRF-Cr/Comp.29/2011-12 dated 20.9.2011. The consumer is eligible for 9 (nine) installments, if requested for, by him. No interest is payable by the consumer for the appeal pending period before this Forum. The respondent shall serve the bill as ordered now, with 30 days time given (due date) for making the payment. The Appeal Petition filed by the appellant stands disposed of with the directions ordered as above. No order on the costs.

Dated the 22nd of January, 2013.

Electricity Ombudsman.

Ref No. P/ 249/ 2011/ 1551/ Dated 22.01.2013.

Forwarded to : 1). Sri. K.M. Chakkappan
K.M.C. Modern Rice Mill, Kallorkadan House,
Okkal, Perumbavoor 683550

: 2). The Asst. Executive Engineer,
Electrical Sub Division, KSEB,
Perumbavoor.

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, CGRF, KSEB, Power House Building,
Cemetery mukku, Ernakulum, Cochin -18.