

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/219/2011.

(Present: T.P. Vivekanandan)

Appellant : Mr. Shaju K C,
Manager, M/S. Chemmannur Fashion Jewellery,
Mavoor Road, Kozhikode.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Vatakara North, Puthoor P.O
Kozhikode Dt.-673 104

Background of the Case: -

The appellant is consumer No.16218 of Electrical Section, Vatakara North, who is running Jewellery Shop at Badakara, under LT VII A- commercial tariff. The energy meter was installed at the cost of the consumer and the meter readings were taken by a Sub Engineer of the local Section regularly. While so, the meter of the consumer was replaced on 7.8.2008, as it was found that the meter has recorded low energy consumption, during the period from 4/2007 to 6/2008, due to meter fault. The energy consumption rose high after changing the meter. So a short assessment bill for Rs.3, 10,145/- dated 21/11/2008, was issued to the consumer, back assessing for the meter faulty period as from 4/07 to 6/08 and taking the true average consumption of the consumer as 3305 units per month, which was obtained after changing the meter. Aggrieved by the Bill, the consumer approached the Executive Engineer, Electrical Division, Vatakara, and he directed the respondent to revise the disputed bill, taking the previous six months average consumption instead of succeeding 3 month's average. The respondent issued a revised bill amounting to Rs.241937/-, assessing the previous monthly average (before meter became faulty) as 2753 units and also informed the consumer that he has a right to file appeal before the Deputy Chief Engineer, after remitting 50% of the bill amount, if he is not satisfied by the decision. The appellant remitted 50% of the bill but did not file any petition before the Dy. CE.

Meanwhile, the appellant had also represented before the KSEB Adalath conducted on 29.7.2010 in which it was instructed to appear before the Dy. CE. Instead of filing petition before the authority, the appellant preferred a Writ Petition before the Hon High Court of Kerala who dismissed the same with the direction to approach the CGRF within one month. Accordingly, the appellant filed petition before the CGRF. The CGRF after hearing both sides, ordered to revise the bill taking the true energy average consumption of 2000 units per month for the disputed period of 4/07 to 6/08, vide order

dated 14/3/2011. The respondent revised the bill accordingly on 5.5.2011 and deducting the 50% bill amount already paid by the consumer, the remaining amount is reported as Rs.7949/-. But before the issue of the bill dated 5.5.2011, the appellant has filed this Appeal petition before this Authority on 25.4.2011, as he was not satisfied by the decision of CGRF.

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 has filed a complaint before the CGRF as per the order of Hon High Court of Kerala in WPC. No.25210/2010, regarding the bill amount of Rs.2, 41, 937/-, calculated as per section 33 (2) of the KSEB Terms and Condition of Supply, 2005. He is running a Jewellery shop at Badakara, in a double storied building. The complainant had separate AC in the ground floor and the first floor of the building. During the period 28.05.2007 to 14.07.2008, the 8 tone AC in the first floor was faulty. Since he was renovating the first floor of the shop and the AC was also under repair and since the full working has started only on 14.07.2008, the meter reading was comparatively low. The Sub Engineer who has taken the meter during this period was fully aware of the above facts. He has satisfied that the first floor of the building was renovating and the 8 ton AC was not working during the said period. Therefore he has not made any complaint regarding the shortage of meter reading.

The meter was supplied by the consumer and installed after complying with the formality under section 58 of the KSEB Terms and condition of supply. No notice was issued by the Sub Engineer to consumer as per section 58 C of the Terms and conditions of Supply 2005, regarding the decreasing meter reading after 28/5/2007. Subsequent to the repair and installation of 8 ton AC in the first floor of the Shop, the respondent had changed the meter on 07.08.2008, even without giving a notice or testing the old meter. The respondent did not test the old meter or there is no any report regarding fault of the old meter by any competent authority like the Electrical Inspector. The said meter was installed by KSEB after testing, as per the condition of supply, 2005 with full satisfaction. Since the rise in consumption was found, after working of the 8 ton AC, the new Sub Engineer who has taken the meter reading has reported the variation and accordingly changed the meter. But the fact was explained to the Sub Engineer by the complainant and filed objection regarding the bill dated 21.11.2008. A new bill was issued by taking the previous 6 months average consumption of the alleged faulty period and accordingly given a bill for Rs.2,41,937/- as additional bill for 4/07 to 6/08.

The complainant has produced the AC repair bill dated 14.07.2008 to the CGRF and marked as P1. The appellant also produced Repair service report dated 07.08.2008 and 16.08.2008. These reports of the 'Blue Star Company' are marked as P2 A and P2 B. Since the AC was showing complaints, a new AC was purchased and installed instead of the old one. The said purchase bill is produced and marked as Ex P3. The complainant has also produced letter dated 27.05.2009, of the Executive Engineer, the letter dated 23.06.2009 of the consumer, the short assessment bill dated 29.05.2009 and the letter dated 29.05.2009 of the Section Office, Badagara, as documents. The complainant had deposited an amount of Rs.1, 20,970/- as a pre condition for appeal filing. Even though a petition to set aside the short assessment bill was filed before the CGRF, KSEB, the Forum has reassessed the bill, into 2000

units instead of 2753 units assessed by the respondent, as the monthly consumption for the alleged period. The Forum has found that the respondent has failed to comply with the condition laid down under section 58 C of the KSEB Terms and conditions of supply 2005. But the Hon CGRF was reluctant to set aside the bill dated 29.05.2009. The respondent has not produced any evidence to show that the electricity meter installed was faulty during the period of 28.5.2007 to 14.7.2008. The consumer filed petition to CGRF, to examine the witness who has repaired the 8 tone AC, the technician who filed the test report of Blue star Company and the Sub Engineer who has taken the meter reading for the said period. But the Hon Forum has not permitted to examine the above mentioned witnesses.

Arguments of the Respondent: -

The respondent has filed the statement of facts opposing the contentions raised by the appellant. The petitioner is consumer No: 16218 under LT VII A tariff with a connected load of 26 KW. They are running a Jewellery shop in Vatakara named Chemmannur Fashion Jewellers. The 3-phase meter in this electric connection was purchased by the consumer by observing the prevailing rules in KSEB (as per section 58 of the T & C of Supply 2005). The Meter reading was taken monthly by Sub Engineer of the office. During the period 04/2007 to 06/2008, the energy consumption recorded by him in the meter reading register (Exhibit R1) was found to be very low when compared with the previous period of 01/2006 to 04/2007. Hence the meter installed by the party was suspected to be faulty.

Since the meter was installed by the party, the consumer was responsible to report to KSEB about any fault in the energy meter. But on confirming the meter as faulty, the party was intimated that the meter supplied by him was faulty and instructed to replace the same with a new meter and if failed, it will be supplied by KSEB on work deposit basis. Accordingly the meter was replaced in 07/2008, after remitting the requisite fees, without any objection by the consumer. After installing the new meter, the meter reading also increased considerably. Hence the petitioner was issued a short assessment bill vide no: 086016 dated 21.11.2008 (Exhibit R2) for the meter faulty period for the period 04/2007 to 05/2008 amounting to Rs.3, 10, 145/-, by taking the average of the succeeding 85 days energy use.

Then the consumer filed a complaint to the Executive Engineer, Electrical Division, Vatakara, to waive the short assessment bill and claimed that the A/C unit was faulty during that period. The E E vide letter no: RB/Bill/V (N) 193/09 dated 26.05.2009 (Exhibit R3) up hold the action of the Assistant Engineer, Electrical Section, Vatakara North, but instructed to revise the bill by taking the previous six month's average. Accordingly the bill was revised to Rs.2, 41,937/- dated 29.05.2009 and issued to the consumer (Exhibit R4) as per clause 33 (2) of the T & C of supply. As the consumer did not pay the revised short assessment bill for Rs.241937/-, the party was intimated vide letter dated 02.06.2010 (Exhibit R5) to pay the bill to avoid disconnection. The party was also intimated to submit application to the Adalath conducted by KSEB on 29.07.2010 at Vatakara.

Another letter dated 17.07.2010 (Exhibit R6) was issued by the AE to the consumer, to pay the short assessment bill within 7 days, as they did not pay the bill till 17.07.2010. Moreover, it was also informed that they have the right to file appeal before the Deputy Chief Engineer, Electrical Circle, Vatakara, by paying 50% of the short assessment bill of Rs.2,41,937/-. Agreeing to this, they have paid Rs.1, 20,970/- on 28.07.2010 at Electrical Section without any protest. The party appeared before the

Adalath conducted on 29.07.2010 at Mini Civil Station, Vatakara. Though the consumer remitted 50% of the bill, they have not approached the Dy. CE till date, instead filed a Writ petition before the Hon High Court. The Hon Court dismissed the petition but ordered the petitioner to approach the CGRF.

The Petitioner states that the A/C unit in the appellant's Shop was not working from 28.05.2007 to 14.07.2008. If it was true, the consumption in May 2007 should have been more than the 938 units (AC unit in use for 28 days in May) as recorded by the SE in the meter reading register. Similarly as per their petition, the AC unit was repaired on 14.07.2008, which means that the A/C unit might be in use for the remaining 17 days of July 2008, whereas the consumption during the month of July 2008 was only 228 units, as recorded in the M R register. This fact shows that the energy meter was faulty and their argument of low consumption due to 'A/C under repair', is baseless.

The consumer has submitted two consecutive service reports dated 07.08.2008 and 17.08.2008 of M/S Blue Star Ltd, of the repairs done on the '8 ton A/C units' at their premise vide the Bill numbered 422864 and 422865 respectively, which raises suspicion on the genuineness on the ground that the Bills produced by them, has consecutive Bill numbers, for a gap of 10 days. (Exhibit R7 and R8). Kindly note that the Hon CGRF, also remarked in the order dated 14.03.2011 that the service report bearing serial no: 422864 dated 07.08.2008 and No. 422865 dated 17.08.2008, are un-trustable.

As per the order dated 14.03.2011 in OP No.48/2010-11 of the Hon CGRF, the opposite party was ordered to revise the bill at 2000 unit per month, for the period 4/2007 to 05/2008 and to adjust the amount if any deposited in this regard. Accordingly a revised bill for a sum of Rs.7949/- was issued, deducting the amount already paid and issued to the consumer on 05.05.2011 (Exhibit R9). But the consumer did not remit the amount till date.

From the above, it is evident that the petitioner was trying to suppress the truth, misrepresent the facts and to mislead the Hon Ombudsman. Hence it is prayed that the Petition may be dismissed.

Analysis and Findings: -

The Hearing of the Case was done on 23/2/2012, at Kozhikode and the respondent requested 15 days' time to submit some more documents and the same was allowed. Thereafter the hearing was done on 28/6/2012 in my chamber at Edappally and the Learned Advocate, Sri Rajan CM, appeared for the appellant's side and argued the case. The respondent was absent, as he was reported sick. In the next hearing done on 29/1/2013, Smt. Sonia Jacob, AEE, Vatakara, was present, but the appellant was not represented and instead a prayer for adjournment through E-mail was received. The Counsel for the appellant, on contacting him over phone on 7.02.2013, stated that he has nothing more to say than what he has already submitted in the hearing on 28.6.2012 and requested for consideration.

On examining the Petition, the counter of the Respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

On perusing the Meter reading register (M R Register) it is seen that the Sub Engineer who took the meter readings during the disputed period has not recorded any defects or sluggishness of the meter till 7/2008. No test was conducted on the meter, either at site with a Check meter or sent for Lab Test, to determine the nature, quantum of the Fault etc by the KSEB. The consumer has also the

right to demand the test of the meter, in case he doubts its accuracy, but that did not happen here. To support the argument that the meter fault was known to the consumer, the KSEB has produced the copy of the Bills as documents, regarding the amount paid by the consumer towards the 'cost and service charges' of the meter, as per clause 58 of KSEB T & C of supply, 2005. Moreover, the relevant pages of M R register, which shows a gradual decrease in energy consumption from 4/07 to 8/2008, till the meter was replaced with a good one in 8/2008, was also produced by them.

The energy consumption for the period 01/2006 to 5/2007 (16 months) lies between 2270 units to 4366 units per month i.e. an average energy consumption of 3115 units per month as follows.

The Meter Reading in 04/07 = 138531

The Meter Reading in 12/05 = 88701.

Hence the average consumption for 16 months above is $(138531 - 88701) / 16 = 3115$ units/month.

The meter was replaced in 8/08 and there after till date, has a comparatively higher consumption, say 3500 units and above.

The officer of the respondent has not reported any faultiness of the meter and not verified the reason for the considerable low reading of meter till 7/2008. The respondent has also failed to take the procedures to be followed up in cases of faulty meter and should have issued a notice for its replacement to the consumer, as the original meter was supplied by him, under clause 58 of KSEB T & C of Supply. But, the consumer was seen having remitted the cost of meter and service charges in 8/08, which shows that the consumer was aware of the fact that the meter was faulty.

The appellant's argument that the meter was installed after certified by the Dy. Chief Electrical Inspector, Ernakulum, and hence will prove that the meter was working properly is not maintainable as the meter can go wrong at any time including its initial transportation, handling, installation if care is not taken and also during in operation, after a certain period in service.

According to the appellant the low consumption in the premises during the period from 4/2007 to 5/2008 was the result of non operation of one No. of "8 ton A/C unit" installed in the first floor of the building of the Jewellery shop, as it became faulty. There are separate A/C's for both ground floor and 1st floor of the shop is admitted by the appellant. Hence even if the A/C unit of the 1st floor was under repair, the A/c of the ground floor was working as usual and it is hard to believe that the consumer's monthly consumption during this period will go so much low, an average of 983 units per month, for the 14 months from 4/07 to 6/08, the disputed period. That is ;

The Meter Reading in 04/07 = 138531

The Meter Reading in 06/08 = 152290. Hence the average consumption for 14 months = 983 units.

It is to be noted that, previously the consumer had an average consumption of 3115 units per month and after replacement of meter also had a higher average consumption than this.

The main contention of the appellant is that, the A/C unit became faulty and since the process of renovating the first floor was going on, the meter reading was comparatively low. To substantiate the argument of defective AC and its nonfunctioning, the appellant has produced two Nos. of A/C Service repair reports vide No. 422864 for the work done on 7.8.2008 and 422865 for that done on 17.8.2008 respectively. The doubts raised by the KSEB that the Reports are fabricated, seems to me as possible,

since the consecutive numbered Sheets have a date difference of 10 days, which means in between these days, there was no work undertaken by a reputed Firm like 'Blue star' Company, is difficult to take into account. Moreover, the verification of the Bill dated 14.7.2008 of M/s Cool Nest,(document No.2 of the appellant) contains the amount of Rs. 82, 500/- towards the Purchase/ Service of a Blue Star Compressor, in addition to the Labor charges. I think a Bill for such an amount will normally carry the Tax portion, either the Service tax or the Sales tax, whichever is applicable. But the Tax part is also missing in the Bill raising doubts on its validity.

Another point of the appellant is that no notice was issued to the consumer about the fault of the meter. The respondent has failed to produce any notice said to be issued by them. But they have produced copy of the documents (duplicate copies), of the Cash bill dated 02.08.2008 for Rs. 3850/- towards Deposit charge for Meter cost and service charges collected from the consumer and also Rs.25/- as Test fee and Rs. 10/- as AF, remitted by the consumer, in connection with the Meter change done in 8/2008, as contemplated under Clause 58 (v) (c) of the KSEB Terms and Conditions of Supply, 2005. These remittance particulars suggest that the consumer was aware that the meter was faulty, otherwise he would not have remitted such amounts at that point of time. Further, the appellant has not made any objection to the replacement of the meter done in 8/08. The consumer could have demanded the Meter to be tested at site or sent for Testing at Lab, at that time itself, if he had any doubt on the same, but has not acted so.

DECISION: -

From the analysis done and the Findings and conclusions arrived at, I take the following decisions.

Before changing the Meter in 8/08, the consumer was having an average energy consumption of 3115 units per month. During the disputed period, the consumer was paying the electricity charges for an average energy consumption of 983 units per month. After changing the meter on 7/8/2008, there was appreciable rise in energy recordings in the meter (average consumption of around 3500 units) and the consumer remitted the electricity charges without any protest. The consumer has only one argument that the A/C unit in the 1st floor was faulty and hence the reason for low consumption which is found not correct and hence not maintainable. The perusal of the meter readings register of the consumer and the analysis done as above, confirms that the meter was faulty during the period from 4/2007 to 6/2008. The remittance of the cost and service charges done in 8/08 by the consumer confirms that he was aware of the fact that the meter was faulty. In such a case, as per clause 33(2) of KSEB T & C of Supply, 2005, if the meter was found as not recording or malfunctioning, the true average energy consumption of the consumer is assessed by taking the previous six months average or succeeding three months consumption after the meter change, if the previous consumption can not be taken. Here the previous readings are available and hence it is reasonable to assess the consumer on the previous average during meter faulty period.

However, the CGRF has revised the true average energy consumption of the consumer during the disputed period as 2000 units per month which is lower than the previous average consumption and the respondent has acted accordingly, revising the short assessment bill for the disputed period of 4/07 to 6/08. The revised bill dated 5.5.2011, shows the balance amount payable by the consumer as

Rs. 7949/- after adjusting the amount of Rs. 1,20,970/- already remitted by the consumer. Since the respondent has not a case against the said decision of average energy consumption of 2000 units by the CGRF, I am confirming the said decision, as it is within limits of the true average consumption.

Having concluded and decided as above, it is ordered accordingly. The consumer is found liable to pay the Revised bill dated 5.5.2011 for Rs. 7949/-, (after adjusting the advance amount paid already by the consumer) within 30 days of this order. The respondent shall issue a fresh bill with the new 'due date' for payment as per this order. No interest is payable by the consumer, during the appeal pending period before this Forum, for the revised bill up to 30th day of this order (Due date). The Appeal Petition filed by the appellant stands disposed of with the said decisions ordered as above. No order on costs.

Dated the 8th of February, 2013.

Electricity Ombudsman.

Ref. No. P/219/2011/1575 / Dated 08.02.2013.

Forwarded to :-

- 1). Mr. Shaju K C,
Manager, M/S. Chemmannur Fashion Jewellery,
Mavoor Road, KOZHIKODE.
- 2). The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Vatakara North, Puthoor P.O
KOZHIKODE Dt. Pin- 673 104

Copy to: -

- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-695010.
- 2). The Secretary, KSEB,
Vydyuthibhavanam, Pattom, Thiruvananthapuram- 695004.
- 3). The Chairperson, Consumer Grievance Redressal Forum,
KESB, Vydyudhi Bhavanam, Gandhi Road, Kozhikode.