

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/275/2012.

(Present: T.P. Vivekanandan)

Appellant : Smt. Beena Justin.
M/S. Sirex Designer Tiles,
Thekkumbagom P.O, Thodupuzha-685 585.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Thodupuzha East.

ORDER.

Background of the Case.

The appellant is industrial consumer (No.7490) of No. II Section, Thodupuzha, with a sanctioned connected load of 57 KW. The consumer has obtained the connection on 27.5.2005 with an initial connected load of 33 KW. Later the consumer availed an additional load of 24 KW to the existing load in 2/2006. Consequent to the increase in load, the existing meter was changed to CT operated meter. The consumer has executed MG agreement for enhancing her load and her average bill was around Rs.12000/- per month. While so, on 23.09.2011, the factory premise was inspected by the APTS of KSEB and detected wrong application of multiplication factor (MF) of 20, instead of actual 40, for converting the meter readings into true energy consumption. The CT's at the time of the inspection in the premise of the consumer was tested at the meter testing laboratory and the ratio of each CT was confirmed as having 200/5 i.e. 40. The consumer was issued a short assessment bill of Rs.4,48,380/- towards the loss of 'energy cost' occurred to KSEB due to mistake in the MF. The consumer filed objection before the Assistant Engineer who revised the short assessment bill to Rs.4,19,768/-. Still not satisfied with the decision of the Asst. Engineer, the consumer approached the CGRF and filed a petition on 21.1.2012, seeking cancellation of the impugned bill. The Forum found no merit and disposed of the petition vide order no. CGRF-CR/Comp.69/2011-12 dated 21.2.2012. Aggrieved by the decision of CGRF, the appellant has submitted the Appeal petition.

Arguments of the Appellant: -

1). All the bills raised by KSEB have been paid by the consumer. The allegation is not supported with the accuracy of meter. The meter and the CT are to be tested for the error. The multiplication factor can be treated only as the meter fault and hence the settlement should be up on previous average taking into consideration of the value when the meter was correct. If the previous average is not available subsequent average may be taken.

2). As per section 56 (2) there is no provision for revising the bill, once it is claimed on the ground that there was some mistake in the original bill. These bills are not new bills; hence the limitation as per Sec.56 (2) will prevail.

3). As per limitation act also there is no provision for collecting money after 3 years.

Reliefs sought for by the appellant are the following: -

1. The impugned proceeding of the Assistant Engineer, Electrical Section No.2, Thodupuzha, dated 16.01.2012 and additional bill for Rs.4, 19, 768/- may be declared as void & null.

2. An interim direction may be given to the concerned Section office not to disconnect the supply till the disposal of the petition.

Arguments of the Respondent: -

1).The petitioner is an industrial consumer under Electrical Section No II, Thodupuzha, who availed Electrical connection on 27.05.2005 with a connected load of 32266 Watts. The connected load of the consumer was enhanced to 57 KW with an addition of 24 KW load during 2/2006. Consequent to the increase in load the existing energy meter was changed with CT type meter with Serial No. 05288295 /5A in 2/2006. A copy of the meter reading register is filed as proof for installation of CT meter marked as R1. Even through the CT meter was installed in 2/2006, the 1st meter reading was obtained only on the month of 5/2006. Hence it is clear that the consumption and electricity bill calculation were commenced on 5/2006 and the calculation of the bill as Rs.448380/- is correct.

2).The CT meter 5288295/5A was in existence at the consumer's premise, at the time of inspection by APTS and the same CT meter was noted in the site mahazar. Copy of the mahazar is marked as R2. The multiplication factor for a 200/5 ratio CT is 40. The CT meter and CTs were functioning in good condition. The mistake in applying the correct multiplication factor (MF) for computing the actual energy consumption is the real dispute in this case. The MF was applied as 20 instead of 40 which caused a revenue loss of Rs.4, 48, 380/- to KSEB, for the period of 5/2006 to 9/2011. The CTs at the time of inspection in the premise of consumer, by the APTS, Vazhathoppe, is tested at the meter testing laboratory and the ratio of the CTs was confirmed as 200/5 itself. A copy of the Test report is marked as R3. This MF was applied for computing the actual energy consumption.

3).The Meter in this case was not faulty as it was working properly. Only a clerical error occurred in the computation of actual energy consumption by applying the MF as 20 instead of 40. Since the energy meter was working properly, there is no need to take the previous average consumption. By a wrong application of MF as 20 instead of 40, the computation of the actual energy consumed will be reduced to 50 percent and it is clearly specified in the first page of the site mahazar and the same is witnessed by Sri. Lijo T Joseph, Works Manager of M/s Sirex Designer Tiles. The Sec. 56 (2) of Electricity Act 2003, specifies about the period of arrears of current charges and in this case only a calculation mistake has occurred from the KSEB side, and the respondent is demanding only the cost of actual energy consumption.

Analysis and Findings: -

The Hearing of the Case was done 31.10.2012 in my chamber at Edappally, Kochi and Sri. Shaji Sebastian represented the appellant's side and Sri. Anil Paul AEE, ESD, Thodupuzha represented

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

The first argument of the appellant is that he had paid all the bills raised by the KSEB and the meter and CT has not been tested for error. But according to the respondent, the meter and CT's were found working properly and only the multiplication factor (MF) taken for calculating the true energy consumption was wrongly applied. The site mahazar and test report of the CT's also reveal that the averment of the respondent in this regard is true.

Regarding the contentions of the party that the meter and CT were faulty, it poses no serious weightage, since there is no defective or malfunctioning in the CT's or in the meter, as alleged by the appellant. It is possible that due to some omission, an error can occur in the calculation of electricity bill. This may be due to wrong application of MF as happened in this case or may be due to clerical mistake or oversight. The Regulation 24(5) of Electricity Supply Code 2005 states that; "If the Licensee establishes that it has undercharged the consumer either by review or other wise, the Licensee may recover the amount under charged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment. Similar is the clause 37(5) under KSEB Terms and Conditions of Supply. These Regulations authorizes the Licensee to set right the omission occurred and to prefer the correct demand. Though it was a fault on the part of KSEB to apply the correct MF, it cannot be ignored that the consumer has actually used the energy and is liable to pay the charges for the energy she has consumed. She is required to pay the charges only for the actual energy and not any penalty. In such situations, the consumer can be allowed to remit the amount in monthly equal installments.

In this case, the short assessment bills became due only after realization of a mistake. Amounts of the short assessment bills were never issued earlier and the same cannot be said to be 'due' at any earlier time. In short, the word 'due' in Section 56(2) means the amount due and payable after a valid bill has been served on the consumer. In this case the short assessment bill was issued on 17/10/2011 and a revised bill on 16/01/2012 and hence the amount of the impugned bill cannot be said to be unrecoverable and barred under Section 56(2) of the said Indian Electricity Act, 2003.

In an identical case, reported as, 2009(1) KHC 945 of Hon High Court of Kerala in W P (C) No. 90 Of 2009 (1), Sunderdas P Vs KSEB, it was decided as follows; "...The scheme of Section 56(2) is that the amount becomes due when the bill is issued". In that particular case also, the bill was caused due to the wrong application of multiplication factor.

Similarly, in a Division Bench Order in WA No 2196 of 2009 dated 30.3.2012 of Hon High Court of Kerala held that "...the Electrical Inspectorate has a role under section 26(6) only when the meter is found defective and not when the meter is perfectly in order ...". In this case, the energy Meter was good and the CTs used for measurement of 'current' to the Meter were working properly and only the Multiplication Factor (MF) used for the computation of actual energy used, for preparing the electricity Bill of the consumer, went wrong. It is a clerical mistake and not a technical error. Hence the Case does not invoke the interference of the Electrical Inspector to decide the Issue.

DECISION: -

From the analysis done above and the findings and conclusions arrived at, I do not find any merit in the Appeal Petition filed. The appellant has consumed energy and due to some omission on the side of the respondent, the multiplication factor was wrongly applied as 20 instead of 40. The site mahazar prepared during APTS inspection has noted down the anomaly detected and was witnessed by the Works Manager of the Firm. The consumer also does not seriously dispute the omission of MF detected except that it is barred by Limitation under Section 56(2) of IE Act 2003. It has been established that the Bill become due only when it is raised and not before. The additional Bill for 4, 19, 768/- is dated 16.1.2012 and hence the bar of Limitation is not maintainable.

The appellant has expressed apprehension during the Hearing that, since she is paying the MG charges, there is less possibility for an additional bill. The respondent is directed to verify the same and confirm that, consumer is liable to pay only either the monthly, MG amount or the electricity charges, whichever is higher and the present additional bill was raised accordingly. The appellant is also eligible for suitable installments, if requested for, and the respondent shall issue the same.

The action of the respondent in raising the additional bill is found to be in order. The consumer shall pay the whole amount or the 1st installment within 30 days of this order. The subsequent installments will bear interest from 30th day of this order to the day of payment. No interest or surcharge is payable by the consumer for the Appeal pending period before this Forum and up to 30th day of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is found devoid of merits and hence stands dismissed. No order on costs.
Dated the 9th of May, 2013.

Electricity Ombudsman.

Ref. No. P/275/2012/1741/ Dated 09.05.2013.

Forwarded to

- 1). Smt. Beena Justin.
M/s. Sirex Designer Tiles, Thekkumbagom P.O,
Thodupuzha-685 585.
- 2).The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard, Thodupuzha East.

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, CGRF, KSEB,
Power House Buildings, Cemetery Mukku, Ernakulam, Cochin -18.