

THE STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamangalam-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.com

Appeal Petition No : P/ 316 / 2012.

(Present T.P. Vivekanandan)

Appellant : Smt. C. Omana Amma,
W/o Late K. Ramachandran Nair,
T/C-2/3286, GHS Lane, Pattom,
Thiruvananthapuram- Pin- 695 004.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Kesavadasapuram,
Thiruvananthapuram- Pin- 695 004..

ORDER.

Background of the Case: -

The electric service connection, consumer No.11320, under Kesavadasapuram Electrical section, stands in the name of late Sri. Ramachandran Nair, husband of the appellant, Smt. C. Omana Amma. The service connection was effected on 3/9/2005 under LT VIIA commercial tariff. A short assessment bill for Rs.56527/- was issued to the appellant, reassessing him, for the meter faulty period of 3/2007 to 1/2009. In this regard the appellant had filed a complaint in the Section office on 12.11.2011, upon which the said bill was revised to Rs. 54654/-. Still aggrieved against the impugned bill, the petitioner filed a complaint before the CGRF on 06.09.2012. The CGRF dismissed the Petition since it found the bill issued by the respondent as in order. Not satisfied with the decision of CGRF, vide OP No. 805/2012 dated 6/10/2012, the appellant has submitted the Appeal petition before this Authority.

Arguments of the Appellant: -

(1). The building was constructed during the 2003-2005 period, but could not complete the work since the appellant's husband got hospitalized in 2005. Still, the electric connection was obtained by the end of 2005. In the mean period, they had given this space for an organization to run a Godown. They vacated the space in 10/2008 and the tenant was paying the electricity

charges during that period. After that, the finishing works were completed and the building became totally functional only during 26th January 2009.

(2). After getting this additional bill the consumer had personally verified with the Board authorities whether there was any shortage of meters. But it is found there were enough meters during period of 2007 to 2009.

(3). The CGRF in their order, has mentioned that the consumer has not informed Board about meter faulty. This is a wrong finding. The consumer argues that he had given complaints and also informed the Board about the meter faults many times.

(4). The tenant had consumed the electricity and he regularly paid the bills. The arrear bill is issued after 5 years and this is a mistake from the side of the Board employees.

(5). In the order it is said that arrears spreading over 2 years, but actually it is now 5 years and it is against the Electricity Act taxing the consumer for arrears beyond two years. It is not possible to ask tenant to pay the bill after 5 years. The figures given by Board are incorrect, intangible and not rational. I was paying all electricity bills in time. This reassessment bill is a shocking experience. Negligence from the part of employees cannot be transferred on to any consumer. The consumer questions the legality and rationality of this back assessment bill.

(6). The consumer claims that the consumption even now is sometimes lesser than average consumption. So the average consumption calculated by Board during meter faulty periods is not rational. Moreover, during the said meter complaint period of 3/07 to 1/09, about four months the building was vacant. So the calculation of the Board is imaginary and is to hide the mistake done by the Board employees. The appellant prays to cancel the back assessment bill.

During the Hearing day, the consumer has opted for a settlement that he is agreeable to pay the bill at the rate of 950 units per bi-month during the disputed period. He also requested suitable installments to remit the amount.

Argument of the Respondent: -

The respondent has submitted a counter statement with the following contentions.

(1). The Electrical service connection bearing consumer No. 11320 under Electrical Section, Kesavadasapuram stands registered in the name Sri. Ramachandrain Nair, TC.2/3286(2), Pattom, Thiruvnanthapuram. The said service was affected on 03.09.2005 under LT VIIIA Tariff. The energy meter installed in the premises was faulty for the period from 3/2007 to 01/2009. In the inspection of the Regional Audit Officer, KSEBoard, it was found that during the relevant period, the consumer was undercharged and thereof instruction was issued to rectify the said under billing.

(2). In pursuance, a demand for Rs.56, 527/- was raised. On receipt of a complaint from the consumer, it was verified and rectified the defects crept therein and a revised demand for Rs. 54654/- was issued. The details of the demand are as follows. The meter was faulty from 3/07 to 01/2009. Therefore average consumption for the said period was arrived at, based on the previous month's consumption rate. The relevant meter readings were as follows.

<u>Month</u>	<u>Meter Reading</u>	<u>Consumption (for two months)</u>
09/2006	4516	1291 kWh

11/2006	1012	1012 kWh
01/2007	6819	1098 kWh
03/2007	7917	149 kwh

The average consumption was; $(1291+1012+1098)/3 = 1134$ Kwh/bi- month and produce herewith two statements (marked as R1 & R2) for showing the consumption pattern of the consumer and the details of back assessment calculated.

(3). The Regulation 19 (2) of Supply Code stipulates as follows.

“If licensee is unable to raise bill on meter reading due to is non-recording or malfunctioning, the Licensee shall issue a bill based on the previous six months average consumption”. In the present case, this respondent has acted as per the above stated rule position and issued a demand. This being so, the Appellant is bound to honor the same. In the circumstances, the Hon Consumer Grievances Redressal Forum (south) was perfectly justified in holding the said demand as enforceable and there is no reason to interfere with the order of the said Forum.

(4). Further, the present appeal is not sustainable because of the following factual and legal positions.

i). As submitted supra, the service connection No.11320 stands registered in the name one Sri. Ramachandran Nair and no steps have been made to change the ownership. This being so, there is no privet of contract between the appellant and the respondent.

ii). The appellant has admitted that during the relevant period, the premises in question were rented out to conduct a commercial establishment. Based on the agreement entered with the respondent, electricity supply was effected and the said Terms and Condition of Supply forms part of the said agreement.

Because of the above submitted facts, it can be seen that there is no ground to interfere with that of the findings of the CGRF. The respondent has acted as per rules in force and there is no illegality or ill will in the matter. This respondent has taken action to demand actual charges due to KSEBoard, which went unrealized and the consumer is bound to pay the amount, what would have been paid earlier, in installments only and that also without interest. In the circumstances the consumer is having no real cause to approach this Hon Forum.

Analysis & Findings: -

The appellant was heard on 17.5.2013, in my chamber at Edappally. The appellant was represented by her son, Sri. R. Ashok Kumar and the opposite side by Sri. A. Brijendra Kumar, the Asst. Engineer, representing the respondent. On a perusal of the appeal petition filed, the counter statement submitted by the respondent, the averments raised in the hearing by both sides and analyzing all the facts and circumstances of the case, I come to the following findings and conclusions leading to the decisions thereof.

There is no denial of the fact from either side that the existing meter was faulty during the period of 3/2007 to 1/2009.

Hence the point for decision is what was the true average bimonthly energy consumption of the consumer during the meter faulty period?

As per KSEB, prior to the meter became faulty, the consumer has consumed energy during the Bi-months of 9/06, 11/06 and 1/07, as 1291 units, 1012 units and 1098 units respectively and thereby the consumer had an average bimonthly energy consumption of 1134 units and after the replacement with a good meter, the reading for subsequent three bi-months were 827, 1187 and 1221 units and the average energy consumption was 1078 units per bi-month.

The KSEB has reassessed the consumer, during meter faulty period, as per the provision of Regulation 33 (2) of the Terms and Conditions of Supply, 2005. Regulation 33 (2) reads; “If the Board is unable to raise a bill on meter reading due to its non-recording or malfunctioning, the Board shall issue bill based on the previous 6 months average consumption. In such cases the meter shall be replaced within one month. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or for any other reason, the consumption will be determined based on the meter reading in the succeeding three months after replacement of the meter.”

Thus, as per Reg. 33(2), the meter shall be replaced within a period of one month. Here, the faulty meter was not replaced for 20 months from 3/2007. It seems that the Board has not taken proper action in time. The Board has miserably failed in replacing the faulty meter in a reasonable time and penalizing the consumer after 5 years is not fair. The argument of the non-occupation of the building by the appellant is not proved by any documentary evidence.

The appellant has quoted the provision of Sec. 56 (2) of the Electricity Act 2003 which is; *“(2)Notwithstanding 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 sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”*. Based on this Clause, he argues that the short assessment bill claimed by the KSEB is a time barred one. The respondent countered this argument by quoting the relevant provisions in Regulation 24 (5) of KSEB Electricity Supply code 2005 and Regulation 37 (5) of the Terms and Conditions of Supply 2005. The licensee can recover from the consumer, the amount undercharged by the Licensee, if it is proved, by reassessing the consumer. The short assessment became due only after the detection or realization of an apparent error or mistake and the bill raised for the same (undercharged) from the consumer and it is not depended on the date of electricity consumed. Amounts of impugned bill were never demanded earlier and hence the same can not be said to be due at any earlier time. The recovery of the amount of the impugned bill is not hit by the provisions of Section 56(2) of the Electricity Act 2003 and therefore cannot be said to be unrecoverable and barred by the provisions of the said Act.

Decision:-

Based on the analysis done above and the findings and conclusions arrived at, I take the decision as follows.

Firstly, it is clarified that the complainant before the Forum, can also be one, who is the legal heir or his representative, in the case of death of the consumer. In this case the Consumer has expired and the case is represented by his wife and son, which is legally maintainable.

On perusing the Meter readings furnished, I see that the Meter was faulty from 3/07 onwards, when the energy consumption has suddenly dropped to 149 and the consumer was assessed for 149 units in 3/07. After a while, the display of the meter was got stuck (on the same reading) and remained so till 1/09 i.e. for the next 20 months (10 bi-months), when the meter was replaced. For the meter faulty period of 5/07 to 9/08 the consumer was assessed at the rate of 770 units per bi-month and for 11/08 & 01/09, he was charged for 642 units each.

It is specified under Clause 33(2) of KSEB T & C of Supply, 2005 to reassess the consumer, if the Meter is malfunctioning or fail to display the Readings etc, after changing the faulty meter with a good one within a month and according to the average consumption obtained in the succeeding 3 months, if the previous average is not reliable. Here in the first instance, the faulty meter was not replaced for 20 months after the meter became faulty in 3/07. Moreover, the respondent failed to reassess the consumer as per the true average energy consumption obtained, even after getting the subsequent meter readings on replacing the faulty meter. The reassessment was done only in 10/2011, and that too based on an audit report.

The Board is duty bound to watch the discrepancies in the meter readings obtained and take appropriate action in time, including the replacement of faulty meters. The respondent took no action to replace the appellant's faulty Meter in time. There is total laxity or lapses on the part of respondent in this regard. The average consumption reported by the Respondent, prior to Meter became faulty was 1134 units/ bi-month and that obtained after change of faulty meter was 1078 units. The consumer has presented the bi-monthly bill of 01/2011, which shows the consumption as 920 units. Considering all the above facts, it is decided that, the reassessment done for the disputed meter faulty period of, 3/07 to 1/09 of the consumer, shall be revised to 950 units per bi-month, taking it as his true average energy consumption, which is agreed by the consumer and is also found reasonable in the circumstances of gross omission and negligence on the part of the Respondent. The consumer is bound to pay the electricity charge for the energy he has consumed.

The respondent is directed to revise the disputed bill dated 15.10.2011 for Rs. 56527/-. The consumer shall be reassessed at the rate of 950 units per bi-month as decided above, for the meter faulty period of 3/2007 to 1/2009 and shall issue to the consumer, with thirty days time (due date) given for making the payment. The consumer is also eligible for up to ten installments, if requested by the party, and the respondent may allow the same. No interest is payable by the consumer up to the due date of the revised bill as ordered now. But consumer has to pay the applicable interest for the installments, as per Reg. 22(8) of Electricity Supply Code, 2005, from the due date of the revised bill, to the date of actual payment of installments.

Accordingly the CGRF order dated 06.10.2012, in complaint OP No.805/2012 of CGRF, Central Region, Kottarakkara, and the bill dated 15.10.2011 for Rs. 56527/- stand set aside.

Having concluded and decided as above, it is ordered accordingly. No order on costs.
Dated the 11th September, 2013.

Electricity Ombudsman

Ref. No. P/ 316/2012/ 1964/ Dated 11.09.2013.

Forwarded to : - 1). Smt. C. OmanaAmmu,
W/o Late K. Ramachandran Nair,
T/C-2/3286, GHS Lane, Pattom, Thiruvananthapuram-695 004.

2). The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard, Kesavadasapuram,
Pattom PO, Thiruvananthapuram- Pin 695004.

Copy to: - (1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10
(2). The Secretary, KSEBoard, Vidyuthibhavanam, Pattom,
Thiruvananthapuram-4
(3). The Chairperson, Consumer Grievance Redressal Forum, KSEBoard,
Vidyuthibhavanam, Kottarakkara.