

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P /334 / 2013.

(Present: T.P. Vivekanandan)

APPELLANT : Sri. C. J. John Bosco,
Chakkalakkal,
Kumbalanghi, Kochi-7.

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSE Board, Palluruthy.

ORDER.

Background of the case: -

The appellant is electric consumer No. 13749 under Electrical Section, Palluruthy, and is running a Workshop with a connected load of 11KW. The connection was taken initially on 14.03.2001 under tariff LT-IV industrial. While so, he was issued with a bill amounting to Rs. 75066/- based on an allegedly faulty meter reading. The appellant filed objections before the AEE and thereafter approached the Hon. High Court of Kerala with request to set aside the bill vide WP (C) 5905/2004. As per the direction of the Hon Court, the party filed an appeal before the Executive Engineer, Electrical Division, Mattancherry which was disposed of with a direction to remit Rs.15000/- and to give reconnection to the consumer. The consumer again filed a writ petition before the High Court vide W.P.(C) No.20728 of 2004. Aggrieved by this bill, the appellant submitted a petition on 7/9/2012 before the CGRF, Ernakulum, seeking relief to set aside the bill issued. The Forum dismissed the petition vide order No. CGRF-CR/Comp.67/2012-13 dated 6/11/2012. Still not satisfied the appellant has submitted this appeal petition.

Arguments of the Appellant:-

The arguments advanced by the appellant in his petition are the following;

(1). The allegation of the respondent that, the staff of KSEB could not take the reading of the meter from 1/2002 to 12/2003 due to the door locked condition, is totally false and incorrect. The electric connection to this building is touching with the house of appellant's brother and the same is dumped with useless furniture and other materials. The said building has got two doors of which one was always kept open and the meter reading is being taken through this door even now. There was no occasion at all to open this door for taking the meter readings. The three phase connection allotted to the premises is on the road side that too just opposite to the office of KSEB and all the damaged posts and other materials of respondent were/are

dumped in the land attached to the said premises and no official has stated that the reading could not be taken due to door closed.

(2). If the respondent has duly taken the meter reading, the defect in meter reading could be noticed as early as on July 2003 and thus the alleged bill could not have been generated. The faulty meter reading was happened solely due to the willful negligence and omission on the part of the respondent for which the consumer is not at all liable.

(3). The respondent had admitted that the meter was burnt due to lightning during June 2003 and there was some negligence on the part of respondent in not taking the meter reading. This by itself disentitle the respondent to claim the default meter reading and the Forum below ought to have exonerated the appellant from the liability for no fault of him.

(4). The respondent is duty bound to assess the meter reading regularly. Any default/omission on the part of the respondent in assessing the meter reading at any longer period, the respondent is entitled to assess electricity bill only for the last 6 months of inspection.

(5). Further in the case of defect in the meter which is not attributable to the consumer; the consumer is liable to pay electricity charges only for 12 months prior to the date of inspection. This legal proposition has rightly be held by the Hon'ble High Court of Kerala in Sibi K Thomas vs KSEB reported in 2012 (3) KLT 285. The said decision is quite applicable to the present case.

(6). The appellant by his letter dated 27.01.2004, had requested to send the meter to Electrical Inspectorate for examination with undertaking to pay the necessary fees. But the respondent was not amenable for this due to the reason that if the meter is sent for inspection, the defect could be rectified and liability would be cast upon the respondent. The bill was issued based on the burnt meter and the Forum below lost sight of this material fact.

(7). Further without connecting anything from the meter which is burnt, it cannot be held that the appellant consumed the energy and the appellant is not liable to pay the reading if any recorded due to earth leakage.

Reliefs sought: -

(i). Set aside the order of CGRF, Ernakulum.

(ii). To quash the Annexure A-7 demand for Rs. 88929/-

During Hearing, the appellant suggested that he is ready for an amicable settlement, by limiting the billing period to one year, in pursuance to the Decision in the Hon High Court, reported as 2012, (3) KLT 285 of Hon High Court of Kerala.

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 submitted and stated during the Hearings.

(1). The Meter readings of the consumer were taken regularly and the bills issued accordingly till 1/2002. As such the reading recorded during 1/2002 in power meter was 4434 and that in light meter was 364. The meter reader could not take further meter readings from 2/2002 to 11/2003, as the premise remained door locked. Hence monthly bills were issued charging only for fixed charges during this period. In 12/2003, the premises was got opened and the readings obtained and at that time the reading in the power meter was 25534 and 392 units in the light

meter and "R" phase of the meter was found burnt out. Hence a bill amounting to Rs. 75066/- was issued on 17.01.2004 for a total energy consumption of 21128 units.

(2). The consumer filed a case against the bill in the Hon. High Court of Kerala and the Court vide order No. WP (C) 5905 of 2004- C dated 23.02.2004, directed the Executive Engineer to hear the appeal and dispose the case within two weeks. The Exe. Engineer, after conducting a hearing, ordered the consumer to remit the bill demanded by KSEB as the bill was based on actual consumption recorded in the meter. Since the petitioner did not pay the bill, the service was disconnected after issuing notice. The petitioner again filed WP (C) 20728/2004 saying that the petition was disposed by EE without considering the matter in its correct perspective and requesting to restore the supply. The request was granted on the condition that the petitioner pays Rs.15000/-. The consumer remitted Rs. 15000/- on 04.09.2004 and the electric supply was restored. The consumer was remitting regular bills from that day without clearing the balance amount as the case was not finalized.

(3). The consumer filed a petition in the Revenue Adalath on 24.07.2010. The matter was referred to KSE Board's decision. The Hon. High Court of Kerala disposed of the WP (C) 20728/2004 with a direction to KSEB to take a decision on the matter within two months from the date of receipt of the judgment. Accordingly, the Dy.CE, Ernakulam had conducted a hearing on 23.7.2012, upheld the decision of the assessing officer and also directed the petitioner to remit the balance amount within 30 days from the date of the order. The petitioner was also directed to make a written request if he desires to avail the benefit of reduction in surcharge portion available on the One Time Settlement. The consumer expressed his willingness to settle the arrears in One Time Settlement Scheme and remitted Rs. 73929/- (Rs. 60066/- as current charge and Rs. 13863/- as surcharge) at Electrical Section, Kumbalangi vide Rt. No. 187208 dated 4.9.2012.

(4). The demand of the petitioner to cancel the bill which he claims to be was based on faulty meter reading is not genuine. If the consumer had any complaint regarding the accuracy of the meter, the meter could have got tested by Electrical Inspector. The consumer was not really interested in testing the meter and has not remitted the testing fee. The bill issued is for the energy actually consumed by him and he is liable to pay the bill. The consumer has already availed the benefit of One Time Settlement and has already paid the bill amount.

Analysis and Findings: -

A hearing of the Case was conducted in my chamber at Edappally, Ernakulam on 04.07.2013. The appellant's side was represented by Sri.E.G.Gorden and Sri.T.N.Sivadasan, Advocates and the opposite side by Sri. Sunil K W, the Asst. Exe. Engineer, Electrical Sub division, Palluruthy. They have argued the Case mainly on the lines stated above. On examining the Appeal Petition, the statement of facts filed by the Respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

1.1 The respondent submits that the meter reading recorded in power meter during 1/2012 was 4434 units and for the light meter, it was 364 units and the meter readings were not taken for the period of 2/2002 to 11/03, as the premise remained under locked up condition during

the said period. The meter reading in power meter obtained in 12/03 was 25534 units and that in 2/2002 was 4434 units, which shows a energy consumption of 21100 units (25534-4434) for this period. Similarly, for the light meter of the industrial unit, it was 392 units in 12/2003 and 364 units for 2/2002, showing a consumption of 28 units (392-364) for the same period. Hence the total energy consumption during this period was calculated as 21128 units.

1.2 It is seen that the meter readings were not taken continuously for 22 months, stating the reason as, 'door locking' of the premise. It is pertinent to note that there is clear provision in the Kerala Electricity Supply Code, 2005, to deal such cases of 'the premises being locked up or made inaccessible'. By virtue of the Clause 19(5) & (6), the licensee is liable to take proper action in such cases. It reads as; '19 (5)-when the meter reading cannot be taken due to the premise being locked up or made inaccessible, the consumer shall be provisionally charged the average consumption for the last 6 months'.

"19 (6):- During the second instance of locked up premises, the consumer shall be given a written 24 hour's notice to keep open the premises at a particular date and time give facilities for reading the meter to the Licensee's designated employee. If the consumer fails to keep open the premises and give facilities for taking the meter reading as aforesaid, without giving proper reasons, the supply shall be disconnected with due notice. After taking the meter reading, the consumer shall be charged for the whole consumption since last reading less the charges already paid".

1.3 The non-compliance of the above provisions by KSEB has lost the chance to investigate and decide the cause for such a high consumption of electricity during the disputed period. It was also reported by the respondent that the meter's R phase link has been in burnt out condition while taking reading in 12/2003. The appellant states that he has reported the meter faultiness to the Section office on 16/6/2003. But the respondent deny the arguments of the appellant in this regard and even goes to content that, had the consumer wished so, the meter would have been sent for testing.

1.4 When the meter readings were taken during 12/2003, after taking the last readings in 1/2003, there was seen rise in meter readings recorded in both Power meter and in the Light meter, which means work was going on in the Workshop of the consumer during this period. Hence the claim of the appellant that the Unit was under shut down during this period does appear to be correct.

1.5 Secondly, if the Power meter was burnt due to lightning, as claimed by the appellant, then there is every possibility to get burnt the Light meter also along with the Power meter, as it was connected from the same supply and is near by and the striking 'Lightning surge' voltage level is very high. But there is no such report of Light meter as having burnt.

1.6 Further, the average energy consumption of the consumer for the disputed period of 2/2002 to 11/2003, as per the bill issued, comes to 880 units per month, {i.e. 21128 units / 24 months = 880 units per month}. The respondent states that the appellant was consuming more energy than this average previously i.e. before 2/2002. The appellant has not disputed this fact and hence the bill raised against the consumer on this much consumption cannot be termed as abnormal.

DECISION: -

From the analysis done above and the conclusions arrived at, I take the following decision.

The respondent has failed to take timely action as specified in the Kerala Electricity Supply Code, 2005, Regulations 19(5) & (6), by which it was required to issue notice and make the door to the meter premises got opened, for taking the meter readings. The Board has not taken the meter readings of the consumer for 22 consecutive months, nor given any notice to that effect, itself shows that there was gross negligence and lapse on the side of Respondent.

Similarly the consumer was paying only the minimum charges (Fixed charges) for the whole disputed period of 22 months and has not paid any energy charges, as the respondent has not taken the meter readings, complaining that the Meter premises was under Locked condition. The consumer did not raise any dispute on the bills received from KSEB, perhaps it may be beneficial to him. But the consumer is bound to pay the charges for the electricity he has actually consumed.

Further, the consumer has filed petitions before Hon High court twice, but has not urged the matter of "testing" of Meter at that time. If that has been the case, it would have been ordered earlier. Hence the claim of the consumer that he has made request to test the meter to Board does not appear to be convincing.

Since, there was negligence on the side of KSEBoard in taking the meter readings and issuing the bills in time, I am of the view that the settlement option suggested by the appellant is more reasonable. The respondent has reassessed the consumer for 24 months, but I am of the view that the appellant's reassessment shall be limited to one year instead of 24 months. The loss to the Board on this account may be recovered from the concerned Board officials, responsible for the lapses on their side, to take the meter readings in time and initiate actions envisaged as per rules, if the door to the meter premises is in locked condition.

Accordingly, I decide that the consumer may be billed for $(21128/2) = 10564$ units, pertaining to the period of 12/2002 to 11/2003. The respondent is directed to revise the bill as ordered above, giving credit to the amount already deposited by the consumer and raise the bill for the balance amount only. On the other hand, if any excess amount is found paid by the consumer, it shall be refunded or adjusted in the future bills of the consumer, within 60 days of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having some merits and is allowed to the extent ordered.

The order of CGRF, Ernakulum, in Petition No. CGRF-CR/comp.67/ 2012 -13/dated 06.11.2012 is set aside. No order on Costs.

Dated the 17th of October, 2013,

Electricity Ombudsman.

Ref. No. P / 334 / 2012 / 2009 / Dated 17.10.2013 .

Forwarded to 1). Sri. C. J. John Bosco,
Chakkalakkal,
Kumbalangi, Kochi-7.

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

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, Consumer Grievance Redressal Forum,
KESB, Power House Building, Ernakulam- 682018.