

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/343/2013.

(Present: T.P. Vivekanandan)

Appellant : Sri. Janardhanan Pillai.
S/o Ayyappan Pillai, M/S. Fashion Textiles,
Main Road, Kollam-691 001.

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

ORDER.

Background of the Case:

The appellant is having an electric connection with Cons. No. 1443 of Electrical Section, cantonment, Kollam for running his Textile shop under commercial tariff. While so on 9.10.2012, the APTS of KSEB conducted an inspection in the premises and found that the energy used in one phase (out of 3 phases) was not recording in the meter. Accordingly, the party was served with a short assessment bill, assessing for the period of 10/2011 to 9/2012, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 107798/-. The consumer lodged complaint before the Assessing officer, the Asst. Engineer, against the said assessment on 20.10.2012. Being not satisfied with the decision of the AE, the consumer approached the CGRF, Kottarakkara, with Petition No. OP 827/2012 and the Forum dismissed the petition vide its order dated 28.12.2012. Aggrieved by the decision, the appellant has submitted the Appeal petition before this Forum.

Arguments of the Appellant:

- (1). The order of the licensee directing to pay an amount of Rs.107798/- based on reassessment is incorrect and illegal. The mahazar prepared and submitted by the respondent is fraud and the same was not prepared on site. There is no evidence to show that the alleged meter was sent to the Inspector in a damage free condition. No evidence was produced to show that the seizure of the meter was prompt and the same reached the expert in the same condition, especially when the contention of me was that the meter was working properly at the time of the inspection.
- (2). The verification of the prior bills will clearly show that there was uniform rate of consumption of energy except on festival seasons. The said pattern was not taken

note of by the authorities and that the very nature of the business conducted by the petitioner was seasonal one was also ignored.

(3). The reasoning of Licensee that the average consumption was below 2000 units from 5/2010 to 10/2012 except during festival season and hence the assessment is reasonable and justifiable is unsustainable in law. There is no reasoning or basis for issuing bill from 10/2011 to 10/2012, when the respondent never had any evidence to show when the meter allegedly became faulty. If the meter was indeed faulty then the officials of the respondent could have easily found out that during the monthly inspection. At the same time, the burden of proof is on the licensee to “establish the undercharging” and that includes, establishing from when the customer was undercharged, before issuing a bill for one year as undercharging. Without “establishing” the bill was issued based on surmises and presumptions.

(4). The guiding principles in case of a meter alleged to be faulty and in case when the allegation is that the licensee was unable to raise a correct bill based on the non-recording (of a phase) of the meter would have been the Regulation 33 of the KSEB Terms and Conditions of supply 2005. They should have issued an aggregate bill for the previous 6 months average, after reducing the 2/3rd amount. On what basis the period of one year was taken was never stated at the time of issuing the earliest order by the licensee.

(5). The respondent ignored the Regulation 42 of the Conditions of Supply 2005. The Board has the duty and responsibility to keep the meter in good condition especially when the consequences of the lack of responsibility of the respondent results in the financial suffering of the consumer. The rule also specifies that when meter is found faulty then the consumer bill has to be adjusted with respect to the past 6 months of billing. When law specifies the period of 6 months in case of faulty meters the KSEB travelled far beyond the same to issue a bill for one year period.

(6). The said rule also imposes a clear duty on the electrical Inspector to decide the period during which the meter was deemed to have been incorrect. But here before the said point was taken up for consideration by the Electrical Inspector, the KSEB has issued a bill stating that short assessment was for a period of one year.

(7). The Short assessment bill was issued on 12.10.2012 and the Meter was tested on 12.12.2012. Even the letter of the expert shows that the respondent had issued or even decided to send the meter for test only on 30.11. 2012 and that too coupled with the fraudulent mahazar will clearly show that meter was manipulated and that the tampering of the meter cannot be ruled out.

(8). In whose custody and in what condition the alleged Meter was kept, (whether it was kept in a tamper free condition) for 48 days is never disclosed by KSEB.

(9). The licensee ought to have tested the meter in the presence of the consumer. The mahazar ought to have been prepared in the presence of the customer. There was no unrecorded portion of energy consumed as alleged by the respondents.

(10). No records were produced in the CGRF and the stand of the respondent was that the average monthly energy consumption was 3000 during 2008 and 2009. The respondent failed to acknowledge the fact that a lot of textiles have started in Kollam since 2008, which would result in the reduction of business of the petitioner.

(11). There is no justification in short assessing the consumer for the allegation that the average monthly consumption recorded is below 2000 from 5/2010 to 10/2012. As per the bills produced, the following is the details of consumption

<u>Date</u>	<u>Units</u>	
3/2011	2003	
4/2011	1869	
5/2011	1963	
6/2011	1659	(off season after school reopening)
7/2011	2399	
8/2011	2200	
9/2011	2977	(Onam Season)
10/2011	1334	(Off season)
11/2011	1788	
12/2011	1617	
01/2012	2034	(Christmas)
02/2012	2017	
03/2012	1941	
04/2012	1635	(Off season)
05/2012	1767	
06/2012	1781	
07/2012	1944	
8/2012	1474	
9/2012	2187	(Onam season)
10/2012	1936	

(12).The business of the petitioner had dropped after the starting of new shops with offers and marketing strategies of the new textiles shops. The drop in business has the natural consequence of drop in consumption. The average energy consumption does not show any marked difference but only reduction due to the fall in business.

(13).The expert report is also ambiguous. It says, though the current circuit of one of the meter is not working correctly, the consumption recorded is less compared to actual consumption. The fact is that the expert is also of not the opinion that no recording is there, but only a less recording. How much proportion of current is not recorded is not specifically mentioned. The action of the respondent in assessing 1/3rd current is justifiable only if one phase has not recorded any energy. But here the expert has no case that no energy has been recorded in the said phase. But the mahazar alleges that '1/3rd portion of the energy is not recorded' which is in contradiction to the expert report. Hence on that ground itself the short assessment bill will not survive the test of bonafide and good faith.

(14). Another fact mentioned in the expert report was that the meter is recording of consumption even when there is no load. This very vital and important fact should have been noted by the respondent before issuing the bill. The meter was recording when there was no load means, when the party was not using any load the meter was recording energy. This defect shows that the entire meter was recording more energy than that was consumed and the licensee has overcharged the consumer. The consumer was aware of this fact only when the expert opinion was called forth in the CGRF. This clearly shows three facts.

(a). The meter which was installed by the respondent was charging energy in excess of what was being consumed. (b). The mahazar finding that 1/3rd portion of energy consumed was not recording is false (c) The respondent was negligent in keeping a good meter in the premises. Then the consumer is liable to get back the overcharged portion of the energy with twice the interest from the respondent.

(16). The Hon CGRF has disregarded the directions given by the Hon High Court in 2012 (3) KLT 285. In the said case one phase of the meter was running backward and there were material to show that the defect happened at the time of installation. Even then the High Court stated that no surcharge could be imposed on the party.

(17). The meter was not sealed in the presence of the consumer which is mandatory. The directions stated in 2009 KHC 6979 were also not abided by the respondent.

Arguments of the Respondent: -

(1). The statement that the assessment is illegal and incorrect is not true since the assessment is made as per clause 37(5) of the T & C of Supply 2005. The CGRF vide its order dated 28.12.2012 in OP No.827/2012 has upheld the assessment.

(2).The statement of the petitioner that the mahazar was prepared fraudulently and not in site is false. The mahazar was prepared in the presence of Sri Rajkumar, the Manager and he has received the copy of mahazar signing the original copy.

(3).The statement of the party that the meter was not sent to the inspector promptly for testing is false since the meter was taken to custody in the presence of Manager. Also the meter was send for Test as per the direction of Hon CGRF. The test report of the meter indicates the conditions of the meter and noted the seals as intact.

(4). The allegation that the assessment was done without considering consumption pattern of the consumer is false, since in the bill it is clearly shown that the average monthly consumption during the years 2008 and 2009 was 3000 units, whereas the units recorded was below 2000 units from 5/2012 to 10/2012.

(5). The statement of the petitioner that there is no reasoning or basis for assessing a bill from 10/2011 to 10/2012 is incorrect since the assessment was made as per clause 37 (5) of the C & T of supply, 2005.

(6). The statement of the petitioner that the assessment should be made taking the readings of previous six months is false since as per reading register it can be seen that the average monthly consumption during the years 2008 and 2009 was 3000 units whereas the units recorded was below 2000 units from 5/2010 to 10/2012.

Hence the assessment was made for a period of one year to compensate the loss due to unrecorded portion of energy during 10/2011 to 10/2012 for Rs.107798/- .

(7). The statement that the licensee ought to have tested the meter in the presence of the consumer and the mahazar was prepared fraudulently is false. The petitioner in his complaint to the Assistant Engineer has not requested to test the meter or when the CGRF has directed the AE to get the meter tested, he has not demanded to get the meter tested in his presence.

(8). The statement of the petitioner that no records were produced to show that the monthly consumption during the years 2008 and 2009 was 3000 units is false. The consumption pattern of the consumer is as follows.

Month	Consumption	Average	Month	Consumption	Average
January 2008	3377		January 2009	3035	
February 2008	2619		February 2009	2555	
March 2008	3173		March 2009	1932	
April 2008	3066		April 2009	2556	
May 2008	3021		May 2009	2657	
June 2008	2896		June 2009	2809	
July 2008	3332		July 2009	2874	
August 2008	3740		August 2009	2873	
Sept: 2008	3084		Sept:2009	3413	
Oct: 2008	2482		Oct: 2009	2974	
Nov:2008	2709		Nov: 2009	3101	
Dec:2008	2655		Dec:2009	2840	
Total	36154	3013	Total	33619	2802

Month	Consumption	Average	Month	Consumption	Average
January 2010	3416		January 2011	2322	
February 2010	1939		February 2011	2003	
March 2010	3244		March 2011	1869	
April 2010	2460		April 2011	1963	
May 2010	1515		May 2011	1659	
June 2010	1715		June 2011	2399	
July 2010	1739		July 2011	2200	
August 2010	2165		August 2011	2977	
Sept: 2010	1454		Sept: 2011	1334	
Oct: 2010	1977		Oct: 2011	1788	
Nov:2010	1886		Nov: 2011	1617	
Dece:2010	2482		Dece:2011	2034	
Total	25992	2166	Total	24165	2014

Month	Consumption	Remarks
January 2012	2017	
February 2012	1941	
March 2012	1635	

April 2012	1767	
May 2012	1781	
June 2012	1944	
July 2012	1474	
August 2012	2187	
September 2012	1936	
October 2012	1527 for 15 days Total 728+1527=2255	Mc on 17.10.2012
November 2012	2507	
December 2012	3234	
January 2013	2072	

Feb 2013 - 2948

Mar 2013 - 2451

April 2013 - 2113

May 2013 - 2458

June 2013 - 1810

July 2013 - 2163.

(9). It can be seen that the average monthly consumption during the years 2008 and 2009 was 3000 units where as the units recorded was below 2000 units during 5/2010 to 10/2012. Hence the assessment was made for one year to compensate the unrecorded portion of energy for the period form 12.09.2011 to 04.10.2012 for Rs.107798/- as per conditions of supply 2005 clause 37 (5).

(10). The statement of the petitioner that his business has dropped due to new shops coming in Kollam is false since the consumption in December 2012 with the new meter is 3234 units.

(11).The statement that the report of Electrical Inspector is not clear and ambiguous is false since the testing of the meter was done as per the direction of CGRF. The test report of the meter indicated the general conditions of the meter and the seals which are intact as per the report. In the remarks it is stated as; "The meter is not working properly, the actual consumption is not recorded by the meter. The current circuit of one of the phases is not working properly. The consumption recorded by the meter is less compared to the actual consumption. The energy recorded is 32% to 47% less than the actual consumption".

(13). The statement of the petitioner that the licensee has violated all principles of natural justice is false since the licensee being a public utility can act according to the rules of the land. Also the petitioner has filed petition before Hon CGRF- OP No.827/2012 and the Forum vide its order dated 28.12.2012 dismissed the petition. Hence it is clear that there is no violation of natural justice on the part of KSEB.

Analysis and Findings: -

The hearing of the Case was conducted in my chamber at Edappally, Ernakulam, on 17.7.2013, 14.8.2013 and 27.8.2013.The Learned Advocate Sri. Arun Babu, has appeared for the appellant and Sri. Babu Y, AEE, Electrical Sub Division, Kollam,

represented for the opposite side. Both sides have presented their arguments on the lines stated above. On examining the Petition of the appellant, the statement of facts filed by the Respondent, the arguments made 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 decisions.

1.1 The APTS has conducted an inspection of the consumer's premises on 9.10.2012 and detected that the electric current from one phase of electric supply was missing on the energy meter and accordingly there is no recording of energy from that phase. This anomaly was recorded in a mahazar and was got witnessed by the Manager of the Shop. The appellant argues that the mahazar is fraud but does not dispute the fact of 'witnessing the mahazar' by his own Manager. Hence I take the mahazar dated 9.10.2012, prepared by Sri. Ansar S, the Sub Engineer, as genuine.

1.2 The APTS has checked the working of the energy meter and found that one phase 'Current' is missing in the Meter and only the balance two phases of supply are reaching and recording the energy. The APTS has counter checked the working of the meter by connecting a 5 KW heater load and confirmed the said discrepancy. These facts were recorded in the mahazar and is seen witnessed by the Manager, S Rajkumar, of the Textile shop. Further the same meter was sent for test to the Lab at Electrical Inspectorate, Thiruvananthapuram, as per the direction of CGRF and the Test Report issued by the Electrical Inspector, also states that one phase is not recording energy in the Meter. In the 'Remarks' column, it is stated as follows;

"The meter is not working correctly, the actual consumption is not recorded by the meter. The current circuit of one of the phases is not working correctly. The consumption recorded by the meter is less compared to the actual consumption. The errors are shown above, most often the energy recorded is 32 to 47% less than the actual consumption. But the meter is recording consumption even there is no load. At no load 180 impulses per hour is generated and corresponding units are recorded. This may also be considered while assessment is made".

1.3. The APTS inspection has revealed that one phase is not recording energy in the Meter of the consumer. The same fact is confirmed by the Test undertaken by the Electrical Inspectorate on the Meter at their Lab. Hence it is established that the meter was recording less energy than the actual consumption.

1.4. *Then the point to be decided is, what is the probable average consumption of the consumer during the meter faulty period and if so what is the quantum of energy to be reassessed for the previous one year, prior to the date of inspection?.*

1.5. A verification of the copy of the Meter reading register (consumption pattern of the consumer) shows a decreasing trend of consumption from 5/2010 onwards. The

average consumption for 2008 was 3013 units, in 2009 it was 2802 units, in 2010, it was 2166 units and in 2011 it was 2014 units. For the period from January 2012 to September 2012, the average consumption of the consumer was 1854 units. The average consumption for next 4 months after the meter replacement is 2517 units. Normal consumption is found to be recorded from 10/2012 onwards. In this case it is also noted that the consumer has not an argument that he approached the KSEB to test the accuracy of the meter at any time, even after receiving the arrear bill.

1.6. The assessment bill for Rs.107798/- was seen prepared by the respondent, assessing for the previous one year, i.e. from 10/2011 to 10/2012, to recover the unrecorded portion of energy in the meter, under Clause 37(5) of the Terms and Conditions of Supply, 2005. The KSEB argues that, they believe that the error (loss of one phase) has occurred at least from 5/2010, when there was a sudden drop in energy consumption from that month onwards, but have limited the bill to previous one year. For supporting this argument, the KSEB points out that the consumption pattern of the consumer during 2008 and 2009 was around 3000 units per month, while the same has dropped to around 2000 units after 5/20010. But the appellant contents that the drop in energy use was due to the arrival of new Textile shops and due to it, his business was affected, with corresponding reduction in energy use.

1.7. It is likely that the business of the appellant may be affected with the arrival of new Textile shops. But the illumination of a textile shop has to be maintained as usual, if not better, and so the energy used for that purpose will remain almost the same. In normal case, the consumption rate may go down gradually, I think. From the Meter readings furnished by KSEB, I notice that the average consumption has dropped suddenly from the month of 5/2010 onwards. Hence I feel that there is merit in the argument of the Respondent that the meter might have gone wrong from 5.2010 onwards.

1.8. As per clause 42 of KSEB Terms & Conditions of supply, 2005, when the meter is faulty, the consumer has to be assessed for the meter faulty period, based on the average consumption obtained for the succeeding six months period after the meter replacement, if the previous average is not dependable. In this case, the KSEB has stated that the meter is suspected to be faulty from 5/2010 onwards, but has raised the bill for the previous one year of inspection date (10/2012), i.e. for the period of 9/2011 to 10/2012. Hence the previous average is decided as not dependable and is not considered here.

1.9. The average energy consumption obtained, after changing with the new meter in 10/2012, (for the period of 11/2012 to 6/2013) was noted as;

Meter reading on 28.11. 2012 = 4034

Meter reading on 01.06. 2013 = 19310

That is for 185 days, the energy consumed is 15270 units and the corresponding average consumption for 1 month (30 days) is found as 2477 units, Say 2450 units per month. Hence corresponding consumption for 1 year = $2450 \times 12 = 29400$ units.

The Energy recorded in the faulty meter, for the disputed period of 12.9.2011 to 4.10. 2012, was reported to be 23455 units. Hence the short fall in consumption recorded in the meter, for the disputed period is determined as;

$$(29400 - 23445 \text{ units}) = 5945 \text{ units.}$$

2.0. The Electrical Inspector's report points out that, the meter was recording at the rate of 180 impulses per hour during no load, which means $180 \times 24 \text{ hrs} = 4320$ impulses per day. The Meter is reported as requiring 1000 impulses for registering one unit of energy, (shown in the Report) which means $4320/1000 = 4.32$ units per day and for a month it is equal to $4.32 \times 30 =$ say 130 units as excess. But the party was not over charged, since the meter was not recording energy in one phase and hence was registering less energy. Moreover, the party was found to have an average consumption of 2450 units per month during the faulty period and whatever excess the meter has recorded at no load, is taken care of, while computing the balance energy for re-assessment. Hence there is no loss to the consumer on that account.

Decision: -

From the analysis done and the findings and conclusions arrived at, which are detailed above, I take the following decision.

- (i).** The disputed bill was issued to the appellant, based on an inspection conducted by APTS of KSEB and detection of meter fault. One phase (out of 3 phases) of the meter of the consumer was found to be defective, thereby causing, not to record energy consumed in one phase and only the balance two phases are recording the energy consumption.
- (ii).** The appellant has raised the main contentions in his petition and during the hearing that the average consumption taken for calculation and the period for which the short assessment bill prepared is not correct. According to the appellant, due to the competition and starting of new shops in the area, the business of the appellant has dropped considerably which resulted in low consumption. But this Forum feels that contention is not sustainable as discussed earlier. Further, on perusing the site Mahazar, this Forum feels that the contention of KSEB that, one phase of the meter is not recording the energy consumed is found to be correct. This fact is clear from the detailed mahazar report as well as the Test report furnished by the Electrical Inspector, after testing the Meter at their Lab.
- (iii).** There is no ambiguity or contradiction in the report of Electrical Inspector with site mahazar report, as alleged by the appellant. The Electrical Inspector has stated that the consumption recorded by the meter is less than the actual consumption. The mahazar also shows that one phase of meter is not recording energy and the reading is less by about $1/3^{\text{rd}}$ of the actual consumption. The argument of the

appellant that the possibility that the respondent might have tampered the meter while in their custody is not convincing and hence not acceptable.

(iv). After replacing the faulty meter, the consumer was seen to using an average consumption of 2450 units per month, taking the succeeding six months average after changing the meter, i.e. for the period of 11/2012 to 6/2013. This is done as per clause 42 (3) of KSEB Terms & Conditions of supply, 2005. Therefore, I fix the true average consumption of the consumer as, say 2450 units per month during the disputed period and for one year it will be $(2450 \times 12 \text{ months}) = 29400$ units.

(v). The Energy recorded in the faulty meter, for the disputed period of 12.9.2011 to 4.10. 2012, was reported to be 23455 units. Hence the short fall in consumption recorded in the meter, for the disputed period is determined as;

$$(29400 - 23445 \text{ units}) = 5945 \text{ units.}$$

Accordingly, the respondent is directed to revise the disputed bill for 5945 units of energy instead of 11727 units assessed earlier. The consumer shall be given 30 days time (due date), for making payment. The consumer is bound to pay the charges for the actual energy he has consumed. But the consumer need not pay any interest for the bill amount, for the Petition pending period before the CGRF and this Forum. The consumer is eligible for up to 12 instalments, if he requests and the respondent shall allow the same. The instalments will attract interest from the due date of the revised bill to the actual date of payment.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is allowed to the extent it is ordered and is disposed of. The CGRF order dated 28.12.2012 in OP No.827/2012 is quashed.

No order on costs. Dated the 31st December, 2013,

Electricity Ombudsman.

Ref. No. P/ 343 /2013/2142 / Dated 31.12.2013.

Forwarded to

- (1). Sri.JanardhananPillai.
S/o AyyappanPillai, M/S.Fashion Textiles,
Main Road, Kollam-691 001.
- (2). The Assistant Executive Engineer.
Electrical Sub Division,
KSEBoard, Kollam.

Copy to:(1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam,Thiruvananthapuram-10
(2). The Secretary, KSEBoard, Vydyuthibhavanam, Pattom,
Thiruvananthapuram-4
(3). The Chairperson, CCGRF, KSEBoard, VB, Kottarakkara.