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APPEAL PETITION NO.P/083/2015

(Present: Sri. V.V. Sathyarajan)

Dated: 30<sup>th</sup> June 2015

Appellant : Sri C.A. Nazar,  
1/349,  
House of Yesudas,  
Fort Kochi,  
Kochi-682001.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
Thoppumpady,  
KSE Board Limited,  
Ernakulam

**ORDER**

**Background of the case**

The appellant is a Low Tension three phase consumer with consumer number 89 under Electrical Section, Fort Kochi. The service connection stands registered in the name of Sri Augustine Joseph with a connected load of 33265 watts. On 20-11-2012, an APTS inspection was conducted in the appellant's premises and detected that the wiring in the CT meter box was damaged and hence the meter was not recording the actual consumption by making voltage fluctuations. Consequent upon the inspection, a short assessment bill dated 05-03-2013 for Rs. 28,841/- was issued to the appellant for the unaccounted consumption during 11/2012 and 12/2012. Aggrieved against this, the appellant filed a petition before the Hon'ble High Court with W.P. (C) No. 9809/2013 which was adjudicated directing the Assistant Engineer, Electrical Section, Fort Kochi to hear the matter and dispose the petition.

Accordingly the Assistant Engineer heard the appellant and confirmed the bill. Dissatisfied with the decision, the appellant approached the Deputy Chief Engineer, Electrical Circle, Perumbavoor who in turn directed the Executive Engineer, Electrical Division, Mattancherry to examine the matter. But the Executive Engineer simply ratified the orders passed by the Assistant Engineer without adverting to any of the contentions made by the appellant in the said appeal. Hence the appellant filed a complaint before the CGRE, Ernakulam which was disposed with a finding that

1. The short assessment bill dated: 05/03/2013 is in order.
2. The respondents are directed to take action against the officers who delayed the rectification of the anomalies in the meter.

Aggrieved against the order, the appellant has submitted this appeal petition before this Authority.

**Arguments of the Appellant:**

The appellant argued that there was no inspection in the premises as alleged and as such the impugned assessment in the appeal will not sustain further. The notice dated 05-03-2013 for Rs.28,841/- was issued to him by way of assessment pursuant to alleged inspection conducted by the APTS. The appellant further stated that he is not supposed to deal with the power cable inside the meter box in an electrical connection and the authorities under the respondent are duty bound to correct such irregularities if any, instead of instructing the parties to redo such connection. The illegalities committed by the authorities are apparent on the documents themselves and Assistant Executive Engineer is trying to find one or other reason to evade from the responsibility casting upon the authorities to prepare mahazar, if any inspection is conducted by the authorities in a premises under the provisions of Electricity Act.

Though the Assistant engineer has conducted a hearing on 6/4/2013 and the said Assistant Engineer did not pass any order on that, till the date of his transfer as on 2/7/2013. But later as per the proceedings dated 17/8/2013 an order was passed by Sri Giri, the Assistant Engineer who had already been transferred from that section. Therefore the said order is non-est and incompetent and which cannot be treated as an order. Moreover the said order does not contain any of the details as contended by the appellant in the objection made before the Assistant Engineer as well as at the time of hearing. The Executive Engineer simply ratified the order passed by the Assistant Engineer without adverting to any of the contentions made by the appellant in the said appeal.

The appellant argues that the impugned assessment is one issued under the purview of section 126 of the Electricity Act alone and therefore it cannot be turned around and content that which is not under the purview of Electricity Act. In the earlier occasions the respondents vehemently contended that the assessment bill challenged in the appeal in question cannot be considered without following the mandates under section 127 of the Electricity Act since the same is one issued under section 126 of the Electricity Act.

Further the appellant also stated that he has not rectified the alleged sluggishness of meter as alerted by the APTS. The appellant was never put on notice regarding any such alerted sluggishness in the meter and the appellant cannot deal with the meter in the connection. The contention of the respondent that the Assistant Engineer was denied permission to inspect the premises is also false. The said false contention raised by the respondent can be rebutted from the contention of the respondent itself with respect to a running hotel at Fort Kochi and thus the door cannot be closed.

The contention of the respondent that Assistant Executive Engineer of APTS served a red sheet to their own Engineer on 20/11/2012 directing to redo all the power cable connection and such other needs itself would prove the case of the appellant that the appellant is not supposed to deal with the cable connection in the meter and it is prerogative of the authority to correct the defects if any, in the electric connection. But without completing such formality, the present impugned assessment bill is issued making the appellant liable to pay such amount as assessed by the Assistant Engineer by a non-est and incompetent order. The Assistant Engineer himself admits that there was a direction to charge average for meter faulty period and as understood by the appellant, this is one and same word used in Electricity Act as assessment charges of previous period. The said aspect is contrary to the earlier contention regarding mahazar was not prepared, since the previous assessment was not made. It is the case maintained by the respondent till this time that, back assessment was not proposed and therefore the mahazar at the time of inspection was not prepared. The specific case of the appellant is that once any inspection is done by any squad, a mahazar should be prepared. Absence of such a mahazar reveals that there was no inspection at all in the premises of the appellant on the alleged date and as such, the assessment bill impugned in the appeal will not sustain further.

### **Arguments of the respondent**

The respondent has stated that the alleged cause of action emanated from an inspection by the Anti Power Theft Squad conducted on 20-11-2012 in the premises of the appellant who has been running a Hotel at Fort Kochi having a three phase CT meter connection with consumer number 89 which is registered in the name of one late Mr. Augustine. Upon the said inspection it was detected that the power cables inside the meter box was found burnt causing the voltage tapping of meter got loose thereby leading to intermittent voltage failure at the meter terminals which in turn ultimately led to incurring loss of revenue to the licensee. The Anti Power Theft Squad instructed to redo all the power connections immediately, till then average may be charged. Pursuant to the above, a short assessment bill amounting to Rs. 28,841.00 for the difference in consumption between previous two months average and the recorded consumption was served to the appellant on 05-03-2013 for the unaccounted consumption as per the statutory provisions in vogue.

The respondent further argued that on verifying the consumption pattern, it becomes evident that the recorded consumption during 11/2012 and 12/2012 are far less compared to previous and succeeding months. The same clearly shows the defects in recording consumption. It may be noted that the previous average is taken for only two months (i.e., 3070 units – average of 1960 & 4180) instead of the previous six months average which comes to around 3477 units from 06/2012 to 11/2012 i.e. average of 5340, 1720, 3820, 3840, 1960 & 4180.

It is also stated that the cause of action has already been examined and disposed keeping in line with the directive of the Hon'ble High Court of Kerala. But conveniently suppressing these material facts, the appellant further agitated the matter before the

Hon'ble CGRF and now before this Hon'ble Ombudsman, the very cause of action of which has already been barred by the doctrine *Res Judicata*. Hence it is humbly submitted that this Authority may be pleased to fame issues in the light of the above factual matrix and dismiss the appeal petition *in limine*.

The prime contention of the appellant is that no mahazar has been prepared by the APTS. It may be noted that the said bill was raised not under the purview of Section 126 of the Electricity Act 2003, but for the meter sluggish period. Hence the question of mahazar is unwarranted. Besides, the appellant laments that the said defects were promptly rectified by him upon alerted by the APTS. But it is also submitted that in the ensuing two months since the inspection of the APTS, many a time the Assistant Engineer, Electrical Section, Fort Kochi attempted to inspect the said meter, but in vain as the premises was either door locked or the Assistant Engineer was denied permission to inspect the same. But the Assistant Engineer resisted himself from resorting to the extreme step of disconnection by serving the statutory notices, as he just wanted to hamper the cordial relationship with the consumer.

The appellant's argument that no inspection was conducted in his premises that day was totally wrong because the Assistant Executive Engineer, Anti Power Theft Squad served Red Sheet to Sri Giri, Assistant Engineer, Fort Kochi on 21-11-2012 directing to redo all the power cable connection and voltage tapping to the meter immediately and to charge average for meter faulty period. Again the hearing conducted by Assistant Engineer, Fort Kochi on 06-04-2013, the Assistant Executive Engineer, Anti Power Theft Squad Ernakulam. Sri Thobias C.C was also attended the hearing and stated anomalies of inspection and direction issued through Red Sheet. The minutes of hearing was signed by the Assistant Executive Engineer, Anti Power Theft Squad, Assistant Engineer, Electrical Section, Fort Kochi and appellant Sri. C. A. Nazar. The Assistant Engineer, who heard the appellant, was already transferred without issuing the order and he approached Executive Engineer whether to issue the order on a later date. The Executive Engineer directed to issue the order as he was the person who heard the appellant.

### **Analysis and Findings: -**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 27-05-2015. The counsel of the appellant, Sri V.K. Peer Mohammed Khan, and Sri C.A. Nazar were present for the appellant's side. Smt. Asha P.A., Asst. Executive Engineer, Electrical Sub Division, Thoppumpady represented the opposite side. Both sides have presented their arguments on the lines as stated above. On examining the 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 decisions.

The present dispute is regarding the short assessment bill amounting to Rs. 28,841/- issued to the appellant for the months of 11/2012 and 12/2012. The respondent's contention is that the APTS inspected the premises of the appellant on 20/11/12 and it was found the wiring in the CT meter box damaged resulting the meter was not recording the

actual consumption. Accordingly, APTS issued a Red Sheet directing to redo the power connection with an instruction to charge the monthly bill on an average basis till rectification of the defect.

On going through the detailed procedures to be followed during inspection, it can be seen that an inspection conducted by any squad operating under any wing of the licensee is reckoned as an inspection conducted on behalf of the licensee under Section 135 (2) or 126 (6) of the Electricity Act 2003 and hence should be comprehensive in all respects. Here, the respondent has failed to produce a copy of the report of inspection conducted on at appellant's premises. Further, the APTS team detected that the power cable inside the meter box was found burnt at the time of inspection on 20-11-2012 and directed to rectify the same immediately till then issue bills based on average consumption. But the respondent did not rectify the defects till 01/2013 and also failed to issue bills on average basis, which shows serious lapses on the part of respondent.

It is a fact that the meter is recording a lesser consumption than the actual due to the failure / defect in CT connections. But, there is no mechanism for the appellant to know whether the CT connected in the metering system is working or functioning properly. It is the duty of the respondent to rectify the defects if any found either in meter or in CT and to ensure that the electrical installation is working properly. Anomalies detected at consumer premises which are attributable to the supplier like wrong application or multiplication factor or metering inaccuracies shall not attract provisions under section 126 or 135. Hence the respondent argued that the bill was not raised under the purview of Section 126 of Electricity Act, 2003, and the question of mahazar is unwarranted. Even though the mahazar is strictly not necessary in this particular case as no detection of defects on the part of appellant, the respondent ought to have informed the appellant about the defects in CT connection and further action proposed. So in any view of the matter, it cannot be concluded that the short assessment bill amounting to Rs. 28,841.00 issued to the appellant for the months of 11/2012 and 12/2012 is valid.

However, the fact remains the appellant consumed energy for the period 11/2012 and 12 /2012. It is true that the procedure adopted by the respondent for issuing the short assessment for that period is wrong. That doesn't mean the appellant is absolved from remitting the charges for the energy consumed. The procedure to be adopted in this case for assessment is Regulation 33(2) of KSEB Terms & Conditions of Supply, 2005, which reads thus ***"If the licensee is unable to raise a bill on meter reading due to its non-recording or malfunctioning, the licensee shall issue a bill based on previous six 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 meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in succeeding three months after replacement of the meter"***.

So it is fair to charge the appellant for the consumption of energy for the period 11/2012 and 12/2012 by taking the previous average of 6 months' consumption from 10/2012. It is also relevant to note about the order issued by the Assistant Engineer dated:

17-08-2013 which was passed after he was transferred from the concerned section on 02-07-2013. That order is unsustainable and hence the argument of the appellant that the order passed by the Assistant Engineer is non-est is in order.

### **DECISION**

In view of the above discussion it is decided to quash the short assessment dated: 05-03-2013 for Rs. 28,841.00. So the respondent is directed to issue revise the bill based on taking the average consumption for a previous period of 6 months starting from 10/2012, after deducting the amount already remitted by the appellant.

Having concluded and decided it is ordered and disposed accordingly. The CGRF Order No 69/2015-15 dated: 27-11-2014 is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

No.P/083/2015 / \_\_\_\_\_ /Dated: \_\_\_\_\_

Forwarded to:

1. Sri C.A. Nazar, 1/349, House of Yesudas, Bastian Street, Fort Kochi, Cochin -682 001
2. The Assistant Executive Engineer, Electrical Sub Division, Thoppumpady KSE Board Ltd., Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018