

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/110/2015

(Present: V.V. Sathyarajan)

Dated: 17th September 2015

Appellant : Sri. Santhosh Kumar S
Pooja Bhavan,
Elampalloor, Kundara P.O.,
Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kundara, KSE Board Ltd,
Kollam.

ORDER**Background of the case:**

The appellant is a consumer having Consumer No. 11827 of Electrical Section, Kundara, under LT IV tariff. He is running an SSI Unit namely Pooja Food Industries established in 1995 engaged in production of baker/confectionary items. On 23-08-2014 APTS Palakkad Unit conducted a surprise inspection at the above premises of the appellant and it was found a defect in the functioning of the meter resulting short recording due to fluctuation of voltage in the B phase. A site mahazar is prepared and on the basis of this, a short assessment bill for Rs.1,08,001/- was issued on 28-08-2014. Aggrieved by this, the appellant approached the CGRF, Kottarakkara with a petition in OP No. 1312/2014 which was not allowed. Still aggrieved by the above Order, the appellant prefers this appeal.

Arguments of the appellant:

1. The appellant stated that on 23-08-2014 APTS Palakkad Unit conducted a surprise inspection at the premises of the appellant in order to verify the functioning of the service meter installed therein, presumably suspecting tampering to defraud the Board by way of theft, misuse, inducing excess load in dangerous manner, etc. Admittedly none of the above was found against the appellant herein in the premises. The meter was working and sealing was found intact as well. However it is alleged that there was

inherent defect in the functioning of the meter resulting short recording due to fluctuation of voltage in the B phase.

2. A scene mahazar prepared on the same day by the APTS unit specifically ruled out any malpractices on the part of the appellant. However additional bill was issued to the appellant, on the ground of short recording of the meter, for an amount of Rs. 1,08,001/-. This is said to be occurred due to voltage fluctuations. It is contended that voltage fluctuation does not affect the consumption recorded in the meter. The primary current and secondary current noted in the meter are correct according to CT ratio. Current in all the 3 phases are recorded in its proportion, i.e., R, Y and B. The CT ratio R, Y and B phases are correct and secondary current noted in CT is also correct. Hence the reading appearing in the meter must be correct as exact current has been passed through the meter. Voltage drop in the B phase will not affect correct recording of energy in the meter.

3. It is pertinent to note that technically qualified officials of the Board are taking the meter reading every month, a process that amounts to spot inspection as well. The meter in the premises clearly shows voltage, current, KWH and KVA. Voltage fluctuation and short recording, if any, must be due to systemic and inherent deficiency of service on the part of the respondent-Board for which the appellant-consumer cannot be held responsible in any manner whatsoever.

4. The alleged voltage fluctuation is shown only at the time of APTS inspection. It is a common phenomenon taking place very often. The small scale industry run by the appellant is on the verge of closure due to price hike, power tariff hike and upward labour cost, etc. The above said additional bill has put the appellant to great financial hardship. The appellant has already remitted one half of the first additional bill amount of Rs. 1,09,001/- under threat of power disconnection. Thereafter another two additional bills for Rs. 15,619/- dated 7-10-2014 and for Rs. 50,731/- dated 8-4-2015 respectively are served on the appellant based on the same charge of short recording. The 3rd additional bill for Rs. 50,731 dated 8-4-2015 is issued after close of the case before the CGRF.

5. The respondent, Asst. Executive Engineer, Electrical Sub Division, Kundara, filed a statement in reply narrating the APTS inspection and its report and totally relied on the findings to justify the issuance of the additional bills cited above. The respondent has no tenable contention except placing mechanical reliance on the documents namely mahazar, inspection report, calculation sheet and downloaded data. The 3rd additional bill for Rs. 50,731 dated 8-4-2015 is issued after close of the case before the CGRF. As per the directions of the CGRF the alleged meter was tested by TMR Division as arranged by the respondent. According to the respondent the test result is in concurrence with the version of the respondent.

6. It is pertinent to note that the respondent/Board issued additional bill immediately on inspection by the APTS solely on the basis of its finding without carrying out any re-check and without affording an opportunity to the appellant/consumer to explain his side of the case and without hearing him. There is denial of natural justice to the appellant since the additional bills are slapped on him arbitrarily without carrying out any cross check in regard to the functioning of the service meter which is kept under the surveillance of the respondent.

7. The respondent as well as the CGRF, Kottarakara, has arrived at the conclusion based only on assumptions and not based on actual facts. There is no direct evidence to show that the appellant/complainant has consumed so much of energy as stated by the respondent.

8. There is absolutely no case for the respondent to the effect that the appellant had any role for himself whatsoever to rectify the defect in the meter from August, 2013 to August 2014, if at all there was any defect. The respondent/Board is solely responsible and duty bound to provide hassle-free metering device to the consumer. The respondent/Board is the owner of the meter conducting monthly reading-cum-inspection through their technically qualified officials. They have had no case of tampering, misappropriation, misuse or unauthorized additional load in any dangerous manner against the appellant/complainant.

9. The appellant/complainant is conducting the business of manufacturing food consumables which are being marketed at prices fixed on the basis of total production cost incurred of which electrical energy is a major component. During the additional bill period in question he had marketed the product at prices calculated on the basis of the then prevailing expenditure. If additional bills demanding huge amounts as arrears are issued now, the appellant/complainant will be put to extreme hardship and financial crisis that may end up in closure of his small scale industry.

10. As per the request of the appellant/complainant and on making necessary payment a new meter has been installed in his premises on 7-04-2015 and its initial reading is awaited only by 5-05-2015. The respondent is bound to cross-check that reading also before insisting payment of any additional bills as arrears.

11. The appellant/complainant shall not be subjected to harassment, injury, loss and hardship for the fault and lethargy on the part of the officials of the respondent/Board in finding out the fault in their meter, if any, and correcting it.

Reliefs sought for:

- (i) To set aside the order of the CGRF, Kottarakara, in O.P. No. 1312/2014 dated 23-03-2015 and direct the respondent to

withdraw the additional bills issued to the appellant/ complainant.

- (ii) To direct the respondent to adjust the amount paid by the appellant/ complainant towards the additional bills against the appellant's future regular bills.
- (iii) To direct the respondent to maintain the service meter devoid of technical errors in order to protect the interest of the customers
- (iv) To grant such other reliefs which this Hon'ble Ombudsman deems just and proper in the interest of justice.

Arguments of the respondent:

1. On 23.08.2014. the APTS Palakkad team along with the section officials inspected the above said premises and found that there was a loose contact in the terminal of pressure coil connection at B phase and that resulted in not recording the actual consumption in that phase. Accordingly a site mahazar was prepared in the presence of the appellant and the same was handed over to him. The details of the voltage, CT primary current and CT secondary current displayed in the meter at the time of inspection was as follows.

Phase	Voltage	CT primary current	CT secondary current
R	224.4	25.7	1.286
Y	232.3	31.4	1.626
B	7	33.5	1.675

2. For ascertaining the actual period from which the phase was not working, the data recorded in the meter was downloaded and found that one phase of the meter was not working from 08/2013 onwards. From that it is cleared that only 2/3 of the actual consumption was recorded in the meter and was billed. Hence a short assessment bill (1/3rd of the actual consumption) for Rs. 1,08,001/- was issued on 28.08.2014. No penalty was imposed on the consumer. Only the actual loss sustained to the licensee was demanded from the consumer and the same was done as per section 134 of Supply code, 2014.

3. After conducting hearing on both sides 'the CGRF' ordered to test the meter in the accredited laboratory or Electrical Inspectorate. Accordingly the TMR Division conducted the test of the meter in the premises of the petitioner, without disconnecting the meter from the existing position. From the report it is cleared that the B phase of the meter is missing from 02-07-2013 at 10:18 Hours onwards. Short assessment bill was issued only for non-recorded units and no penalty was imposed. The report furnished by the TMR Division is almost same with the findings of the Anti Power Theft Squad inspection team.

4. The short assessment bill was issued only for the non-recorded consumption. The consumer hasn't been penalized and no theft or tampering was charged against him. The data downloaded from the meter at the time of inspection and the report received from the TMR Division also is same.

By considering the above facts the respondent requested to dismiss the appeal filed by the consumer as it is against the actual facts and rules.

Analysis and findings

The Hearing of the case was conducted on 15-07-2015, at KSEB Inspection Bungalow, Paruthippara, Thiruvananthapuram and Smt. Daisy Jose, Assistant Executive Engineer, Electrical Sub Division, Kundara represented the respondent's side. The appellant was absent during the hearing but requested for postponement of the case through an email on 14-07-2015. Accordingly further hearing of the case was conducted on 28-07-2015 in my chamber at Edappally and Sri M.V. Somarajan, Council for the appellant was present. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

The argument of the respondent is that the APTS, Palakkad team along with the section officials inspected the appellant's premises on 23-08-2014 and found that there was a loose contact in the terminal of pressure coil connection at B phase and that resulted in not recording the actual consumption in that phase. Short assessment bill for Rs. 1,08,001/- was issued to the appellant on 28-08-14 for the period from 7/2013 to 7/2014 is in order. But the contention of the appellant is that the voltage fluctuation does not affect the consumption recorded in the meter. The primary and secondary current noted in the meter are correct according to CT Ratio. Current in all the three phases are recorded in its proportion i.e. R, Y & B. The CT Ratio R, Y & B phases are correct and secondary current noted in CT is also correct. Hence the reading appearing in the meter must be correct as exact current has been passed through the meter. Voltage drop in B phase will not affect correct reading of energy in the meter. The present case is regarding whether the respondent is eligible for collecting the short assessment for the entire period due to defect in the meter connection?

On going through the records it can be seen that the respondent had tested the disputed meter without disconnecting the meter from the existing position with the help of TMR Division, Thirumala. The test result confirmed the fact that B phase of the meter is missing from 02-07-13 at 10:18 hours onwards. The finding of the APTS team that B phase of the meter is missing during the inspection at the appellant's premises is also matching with the report of TMR Division, Thirumala. It is established that

when one phase of the meter is not working the actual energy consumption will not be recorded in the meter. Hence the argument of the appellant that the reading appearing in the meter must be correct as exact current has been passed through the meter cannot be accepted. In the present case as 2/3rd of the actual consumption was only recorded and charged, the respondent is eligible for assessing the balance of 1/3rd consumption.

It is an admitted fact that the APTS team had conducted an inspection in the appellant's premises on 23-08-2014 and detected B phase of the meter was found missing. In order to ascertain the actual period from which the phase was not working the data recorded in the meter was downloaded and found that the B phase of the meter was not working with effect from 08/2013. Hence the short assessment bill was issued for the period from 08/2013 to 08/2014 as per Regulation 134 (1) of Supply Code, 2014. As per Regulation 134 (1) of Supply Code, 2014 ***if the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making payment of the bill.***

Further, Regulation 152 of the Supply Code 2014 deals with *Anomalies attributable to the licensee which are detected at the premises of the consumer* which reads thus: ***“(1) Anomalies attributable to the licensee which are detected on inspection of the premises of the consumer such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer an inaccuracies in metering shall not attract provisions of section 126 of the Act or of Section 135 of the Act. (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during such anomalies persisted.”***

The respondent has to replace the faulty meter within the time limit. Hence the pendency to replace the faulty meter for a long period cannot be justified. Even without replacing the faulty meter in time, respondent issued two additional bills to the appellant which is quite irregular and hence cannot be admitted. Neither the appellant nor respondent has specified any details of above additional bills issued. As per Regulation 118(4) replacement of damaged meter, ***“If the meter is damaged due to causes attributable to the licensee, the licensee shall replace the damaged meter with a correct meter within three working days of receiving the complaint in the case of LT meter and within fifteen days in the case of HT meter.”***

Even without rectifying or replacing the faulty meter or even without furnishing any details of assessment, the bills for Rs. 15,619/- dated: 07-10-2014 and for Rs. 50,731/- dated: 08-04-2015 respectively served on the appellant is found arbitrary and hence cannot be admitted. But at the same

time the appellant is liable to pay the short assessment bill for Rs. 1,08,001/- since the appellant has actually consumed the energy during the period from 08/2013 to 08/2014.

Decision

Above analysis leads to the conclusion that the short assessment bill issued by the respondent for an amount Rs. 1,08,001/- is found in order. The appellant stated that he had already remitted half of the additional bill amounting to Rs. 1,08,001/- it is directed to remit the balance amount in 5 installments without any interest. Consequently the appeal petition is disposed of with the above direction. The order CGRF-South in OP No. 1312/2014 dated: 23-03-2015 is hereby affirmed. No order as to costs.

ELECTRICITY OMBUDSMAN

P/110/2015/ _____ Dated: _____

Forwarded to:

1. Sri. Santhosh Kumar S, Pooja Bhavan, Elampalloor, Kundara P.O., Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, Kundara, KSE Board Ltd, Kollam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.