

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION NO. P/135/2015

(Present: V.V. Sathyarajan)

Dated: 25<sup>th</sup> November 2015

Appellant : C.P. Javeed  
Proprietor,  
Wood Seasoning Industries,  
Keeriyad Office, Mill Road,  
Valapattanam, Kannur.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
Valapattanam, KSE Board Ltd,  
Kannur.

**ORDER****Background of the case:**

The appellant is an industrial consumer having consumer no. 9126 under the Electrical Section, Valapattanam. He is running an Industry under the name and style of Wood Seasoning Industries at Keeriyad. The registered owner Sri C.P. Marshab, the brother of the appellant expired and the appellant is running the industry. The Sub Engineer, Electrical Section, Valapattanam inspected the premises of the appellant and prepared a site mahazar. It is alleged that B phase of the meter is not recording because the wire connected to the terminal of the CT was burnt. A short assessment bill amounting to Rs. 5,72,383/- for the period from 01.11.2013 to 1.5.2014, 01-08-14 and 01-11-2014 was issued to the appellant on 27-11-2014..

The appellant approached the Hon'ble High Court of Kerala and the Hon'ble High court vide judgment dated 18-12-2014 in WP (C) No. 34365/14 directed to keep in abeyance coercive steps on condition that the appellant deposits 50% of the demand and directed the appellant to approach the Consumer Grievance Redressal Forum for redressal of their grievance. The appellant filed a petition before the CGRF, Kozhikode which was dismissed vide order OP No.90/2014-15 dated 25-06-2015. Against the above order of the Forum, the appellant filed this appeal before this Authority on 20-07-2015.

**Arguments of the appellant:**

The appellant has preferred the following arguments in his appeal petition.

1. Appellant is running an Industry under the name and style of M/s Wood Seasoning Industries at Keeriyad with L.T. IVA tariff drawing electricity from Consumer No. 9126 under the operative jurisdiction of Electrical Section, Valapattanam. The grievance of the appellant is against a penal bill which is styled as short assessment bill. The Sub Engineer of Electrical Section, Valapattanam on 8.4.14 has inspected the installation and site mahazar was prepared where in it is alleged that 'B' phase is not recording because the wire connected to the terminal of the C.T was burnt. There after a penal bill was issued to the complainant on 01-12-2014 along with a covering letter and a calculation statement demanding an amount of Rs. 5,72,383/- towards short assessment for the period from 01-11-2013 to 01-5-2014, 01-8-14 and 01-11-2014. The appellant submitted a reply dated 08-12-2014 and objected to the demand. The demand is made assuring that the meter was recording only 2/3<sup>rd</sup> of the total consumption for the above mentioned 9 months.

Referring to the readings for the periods from 01-2-13 to 01-10-2013 (previous 9 months) the appellant asserted that there is no tangible difference in the reading before and after the inspection. Admittedly, the equipments belonging to the licensee in the premises of the consumer has to be rendered defect free by the Licensee. This is made clear in regulation 27(2) of the Electricity supply code 2005. Moreover, regulation 27(3) stipulates that consumer shall not tamper distress or damage the metering equipment provided by the Licensee. Also there is no tangible proof to show that one phase of the meter was not recording correctly during the above period. No inspection was conducted in November 2013. Therefore inspection in April 2014 only conclusively shows that one phase was not recording at that point of time. According to the covering letter the defect was connected thereafter.

2. A perusal of the pattern of consumption for the previous nine months and the subsequent 9 months for which the short assessment is made it is clear that there was no difference in consumption. While in previous nine months which the licensee admits to be in order, the average consumption is 21599 units and for the subsequent nine months during which period the short assessment is made the average consumption is higher viz. 24324 units. Therefore there is no substance in the contention that the metering equipment was recording only 2/3<sup>rd</sup> during the period in question. This is further clear from the consumption recorded on 01-06-2014 which is the lowest and the licensee has taken it as correct.

The appellant approached the Hon'ble High Court of Kerala along with the copy of the complaint seeking stay of realisation of demand and against disconnection since on contacting the office of the CGRF Kozhikode it was informed that there is no chance of taking the case for interim order before the last date for disconnection. The Hon'ble High Court vide judgment dated 18-12-2014 in WP (C) No. 34365/14 directed to keep in abeyance coercive steps on condition that the appellant deposits 50% of the demand. Accordingly 50% of the demand viz. Rs. 2,86,192.00 was paid to the section office as per cheque number: 948369 dated 30-12-2014 drawn on Andhra Bank and the respondent has encashed the same.

3. The CGRF has rejected the complaint of the appellant vide order dated 25-06-2015 received by the complainant on 27-06-2015 stating that it is a regular feature previously also on the 'R' phase and the Forum believes that this is due to overloading of 'R' phase by the equipments of the appellant compared to 'Y' and 'B' phases. It is respectfully submitted that as per site mahazar the problem is at 'B' phase and not 'R' phase and this clearly shows that the Forum has not applied its mind properly. The allegation in regard to overloading is not there in any of the statements of the licensee. If there is uneven balancing it is the duty of the licensee to alert the consumer. As a matter of fact there was no uneven balancing as alleged by the Forum and finding to that effect is unfounded. The respondent vide letter dated 04-07-2015 has directed the appellant to remit the balance amount of Rs. 2,86,191.00 on or before 20-07-2015 or face disconnection.
4. The Forum has not referred to the bounden duty of the licensee to keep the metering equipments under the exclusive control of the licensee defect free as mandated under regulation 27(2) of the Electricity supply Code, 2005. This assumes added significance since the respondent has stated that when monthly reading was taken on 04-11-2013, 04-12-2013, 01-01 -2014, 04-02-2014, 03-03-2014, 02-04-2014 and 01-05-2014 'R' phase current was recorded as Zero. Meter reading does not normally show current in any phase. It can be derived by inspecting the meter. This is in the exclusive domain of the licensee. Thus the licensee has allowed to continue the alleged discrepancy for seven months and without rectifying the same then and there, licensee is now trying to penalise the consumer on that account.
5. The Forum never compared the consumption pattern of the current nine months with previous nine months which conclusively shows that there was no tangible difference before and after correction. The average consumption for nine months viz. 1/2013 to 9/2013 before correction (taken as correct by the licensee) comes to 22213 units and for the alleged faulty period viz. 10/2013 to 4/2014 and 7/14 and 10/14 comes to 24324 units. In 5/2013 and 7/2013 when the metering was not admittedly faulty the consumption was 18140 units

(daily 601) and 23480 (daily 783) respectively. Therefore the low consumption in 5/14 and 7/14 with 597 and 881 cannot be the basis for penalising the consumer. Therefore it is clear that the licensee is trying to take advantage of its own failure to keep the electrical equipments under its exclusive control fault free. The licensee simply added 50% on the electricity charges for the above nine months already paid for by the appellant and demanded the inflated amount. This is totally impermissible since such addition will inflate monthly average to 36486 units which is unheard of in the previous history of the consumption of the appellant.

**Nature of relief sought for:-**

- A) To set aside the order dated 25-6-2015 in O.P. No. 90/2014-15 issued by the CGRF Kerala State Electricity Board Northern Region , At Kozhikode.
- B) To set aside the demand dated 8-12-2014 for Rs. 5,72,383.00 issued by the Assistant Engineer, Electrical Section, Valapattanam.
- C) Direct the respondent to refund to the appellant the amount of Rs. 2,86,192.00 remitted on 30-12-2014 in pursuance of the directions of the Hon'ble High Court.

**Arguments of the respondent:**

The respondent put forward the following arguments in the statement of facts filed by him.

1. The Con. No. 9126 and under LT IV A of Electrical Section, Valapattanam is registered in the name of one Sri. C.P. Marshab and he made agreement for the electricity connection. Sri C.P. Javed who is claiming the proprietor after the death of Sri C.P. Marshab has no locus- standi to file the petition. It is further submitted that no information regarding the name of the party who has conducting the business at present is received at the office of the Electrical Section, Valapattanam till the objection filed by the party against the short assessment bill. After the death of Sri. C.P. Marshab, the petitioner failed to submit the required documents for changing the ownership before the Assistant Engineer, Electrical Section, Valapattanam.
2. The averment submitted by the petitioner that the penal bill which is styled as short assessment in the petition is denied by this respondent. No penal invoice was issued in the name of Con. No. 9126 of Electrical Section, Valapattanam till this date. An invoice issued for Rs. 5,72,383.00 in favour of the Con. No. 9126 of Electrical Section, Valapattanam is a short assessment bill i.e. the invoice is issued for the actual usage of the electricity at the premises and the same has not included any penal surcharges normally collected by the KSEB Ltd for the belated payment. It is the invoice for the current charge of non recordable portion of the actual usage.

3. The KSEB authorities had inspected the electrical installations of Con. No. 9126 on 08.04.2014 and site mahazar was prepared in presence of Sri K. Prashanth, the Electrician of the appellant's industry. The energy meter installed at the appellant's premises (cons. No. 9126) is having capacity of -/5A, class 0.5 S with ToD facility. While inspecting the energy meter on 08-04-2014 it is found that one of the CT coil connection was burnt and detached. No current is getting into one of the phases of the meter and hence the energy meter was recording only 2/3<sup>rd</sup> of the actual consumption. KSEB had supplied / installed only energy meter. The CT was purchased and tested by the consumer and installed by KSEB. If any one of the CT coil connection is burnt and detached corresponding phase current in the meter will be zero. Thus the 'R' phase current was found recorded zero in the monthly reading taken on 04.11.2013, 04.12.2013, 01.01.2014, 04.02.2014, 03.03.2014, 02.04.2014 and 01.05.2014 i.e., the 2/3<sup>rd</sup> of the actual usage was recorded from 11/2013 to 05/2014. Further it is submitted that the fault was rectified on 02-06-2014, but the same error again seen occurred while taking meter reading on 01-08-2014. The same was rectified on 16.08.2014. Again while taking reading on 04-11-2014 again the 'R' phase current was seen recorded as zero and is rectified on 10.11.2014.
4. The averment of the appellant that the demand is made assuming that the meter was recording only 2/3<sup>rd</sup> of the total consumption for the 9 months and the reading for the periods from 01.02.2013 to 01.10.2013, the appellant's averment that there is no tangible difference is denied by the respondent. After rectification of the defect the reading found during the month of 06/2014, 09/2014 and 10/2014 are 1074, 1210 and 1003 units/day respectively. Between these months the CT is seen partially defective. The reading found for the month of 05/2014 and 07/2014 are seen found on 597 and 881 units respectively. Hence it is submitted that there is tangible difference in reading before and after rectification of defect.
5. The averment of the appellant that no inspection was conducted in November 2013 is denied by the respondent. Every month meter reading was taken in presence of the staff of the appellant's industry bearing Cons. No. 9126. The seal of the CT was removed every time in presence of the staff of the industry. Every time if any work on this meter or in the meter panel, KSEB supply has to be switched off. Before switching off the KSEB supply, KSEB authorities should inform the staff of the industry to change over the supply to generator supply. Further it is submitted that while taking meter reading due to viewing of zero on anomaly part and 'R' phase current is zero, the concerned Sub Engineer informed the matter to the Electrician present. It is submitted that as far as the phase sequence is concerned, the sequence is important than whatever notations used. Normally notations are used for the convenience. Whatever may be the

sequence of connected supply of the meter terminal meter shows the current through the phases only as Ir, 1y, Ib. The meter installed is of ToD facility and it measures and records current through the individual phases.

Further it is submitted that while one of the coils were burnt and detached and current through one phase became zero. This was intimated and shown to the staff present while taking meter reading. Due to aforesaid reason, all the other allegations made by the petitioner in the petition are denied by the respondent. The respondent has authority to re-open the reading and issue short assessment bill for the actual usage.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 14-10-2015. Advocate Sri P.M. Pareed, represented for the appellant's side and Smt. Renuka V.V., Assistant Executive Engineer, Electrical Sub Division, Valapattanam represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, 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.

Apart from the assertions, the only material produced by the respondent in this case is the site mahazar dated 08-04-2014. The bill dated 27-11-2014 is seen issued relying on the site mahazar. Now on close perusal of the site mahazar shows that the 'B' phase of the meter is not recording because the wire connected to the CT terminal was burnt and broken. Nowhere it is stated in the mahazar that the appellant had tampered or damaged the meter. But it is noted that there is a marked difference in the consumption recorded in the meter.

The Sub Engineer, Electrical Section, Valapattanam conducted an inspection of the appellant's premises on 08-04-2014 and prepared site mahazar. In the same it was found that 'B' phase is not recording because the wire connected to the CT terminal was burnt and broken. Thereafter issued a short assessment for Rs. 5,72,383.00 for the period from 01-11-2013 to 01-05-2014, 01-08-2014 and 01-11-2014 assuming that the meter was recording only 2/3<sup>rd</sup> of the total consumption.

It is established that the meter was recording a lesser energy consumption than the actual due to defective CT's output to the meter. In such cases the meter itself cannot be termed as faulty, as only the electric current inputs fed to the meter were missing, causing a reduction in recording. Here in this case, on perusal of the consumption pattern of the appellant from 01-10-2013 to 01-03-2015 it can be seen that no tangible difference in consumption. Therefore, there is no substance in the

contention that the metering equipment was recording only 2/3<sup>rd</sup> of the total consumption during the period in question. The consumption recorded on 01-06-2014 and 01-09-2014 which are the lowest and the respondent has taken it as correct without questioning the accuracy. On a verification of the energy usage of the appellant by referring the meter reading furnished by the respondent for the above said period, it is noted that the consumption pattern is not consistent but varies considerably.

It is pertinent to note that the respondent has not furnished the connected load details of the appellant to verify whether the consumption is proportional to the connected load and the working pattern of the industry. It is the duty of the respondent to inform the appellant about the defects in the CT meter connection and its timely rectification. Here in this case, the respondent recorded the current in the phase 'R' phase as zero from 04-11-2013 to 04-05-2014 and failed to take any action to rectify the same. It is also noted that the date of rectification in the CT connection was not furnished by the respondent. Moreover, the respondent failed to produce any documents to show that the meter is not recording properly with effect from 04-11-2013. Hence the argument that the short assessment bill issued for the actual usage of electricity in the premises is without any documentary evidence and cannot be admitted.

Though the inspection in the appellant's premises was conducted on 08-04-2014, the short assessment bill is seen issued only on 27-11-2014. The provisional assessment order describing the reason and the basis of assessment along with invoice/bill and detailed calculation shall be issued to the consumer/occupier immediately after inspection and not later than 3 days from the date of inspection through email or hand delivery with dated acknowledgement. This is not followed in this case. The principle of natural justice is not followed by the respondent in this case. Hence the assessment is not sustainable before law and liable to be set aside.

There is no justifiable reason for the delay to rectify the defects if any in the CT connection of the appellant and to issue revised bill in accordance with the consumption. Instead, the appellant is mulcted with heavy demand for a previous period from 11/2013 to 05/2014, 08/2014 and 11/2014 which is arbitrary and unreasonable. It is also pertinent to note that there is no allegation that the appellant has tampered the meter or any willful misuse. There is no mechanism for the appellant to know whether the CT connected in the metering system is working or functioning properly.

In view of the above factual situations there is no reasonable justification for issuing such a short assessment bill to the appellant. Needless to say that the failure of the licensee to discharge their duty properly is the reason for issuing such a short assessment bill for Rs. 5,72,383.00. The officers concerned of the licensee are responsible for such a grave irregularity and irresponsibility. Hence it is directed to take proper action against the responsible officers for the lapse and to recover the amount from the concerned, if desired so.

**Decision**

In view of the above discussions there is no reasonable justification for issuing such a huge short assessment bill to the appellant. Further, no reason is seen forthcoming for relying the above intermittent period of assessment. Hence it is decided to quash the impugned bill amounting to Rs. 5,72,383.00 issued to the appellant. Amount already remitted by the appellant as per the direction of Hon'ble High Court may be refunded or adjusted against the future bills. Order of CGRF in OP No. 90/2014-15 dated 25-06-2015 is hereby set aside. The appeal petition is allowed. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/135/2015/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Forwarded to:

1. Sri C.P. Javeed, Proprietor, Wood Seasoning Industries, Keeriyad Office, Mill Road, Valapattanam, Kannur.
2. The Assistant Executive Engineer, Electrical Sub Division, Valapattanam, KSE Board Ltd, Kannur.

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, KSEBoard Ltd, Gandhi Road, Kozhikode.