

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION NO. P/153/2015

(Present: V.V. Sathyarajan)

Dated: 31<sup>st</sup> December 2015

Appellant : Dr. K.M. Thomas  
Proprietor, Periyar hospital,  
Kumily, Idukki.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
Vandiperiyar, KSE Board Ltd,  
Idukki

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

The appellant, the proprietor of Periyar Hospital, Kumily is a consumer under Electrical Section, Kumily having consumer No. 1332 under LT VI B tariff. The connected load in the premises was enhanced to 72 kW with effect from 23/5/2009 and the meter in the premises was also changed with CT meter with CT ratio 200/5. In an inspection conducted by the APTS team in the premises of the appellant, it was detected that due to the inter changing of the CT connections, the meter was not recording 1/3<sup>rd</sup> of the consumption. Consequent to this, a short assessment bill dated 25-11-2011 for Rs. 1,75,734.00 was issued to the appellant for the period from 6/2009 to 11/2011. The appellant had challenged the issue before Hon'ble High Court. As per judgment dated 14-08-2012 the Hon'ble High court disposed of the case directing the respondent to recompute the bill for 12 months prior to the date of inspection. Challenging this judgment of the Single Bench, KSEB Limited filed Writ Appeal before the Division Bench and as per order of the Division Bench of the Hon'ble High Court vide order dated 13-02-2014 the matter was remanded to CGRF for appropriate decision. The Hon'ble CGRF limited the period of short assessment for two years instead of the actual period of 2½ years, vide order no CGRF-CR/Comp.242/2013-14 dated 27-8-2014. Still aggrieved with the above decisions of CGRF, the appellant has approached this Authority with this appeal petition.

**Arguments of the appellant:**

1. The appellant is aged 94 years and is the Proprietor of Periyar Hospital in Kumily. It is a low tension consumer of electricity with consumer No. 1332 under the Electrical section office Kumily.
2. On 22-11-2011, the Sub Engineer attached to the office of the respondent along with members of Anti Power Theft Squad, Thrissur inspected the appellant's premises and prepared a mahazar and a copy was served on the

Manager of the institution. According to the mahazar, they have detected that the meter was not recording 33% of the consumption due to phase association. All the seals of the meter were intact and there is no allegation of any tampering of the meter. The fault if any in the connection was on account of the negligence of the KSE Board while making the connection to the meter and for that reason the loss if any caused to the Board is liable to be recovered from those negligent officers of the Board. However a bill dated 25-11-2011 for an amount of Rs. 1,75,734.00 was served on the appellant threatening disconnection unless the amount is paid on or before 2-12-2011. An objection dated 21-2-2011 was submitted by the appellant before the Assistant Engineer stating that the appellant is not liable for the wrong connections made by the negligent KSEB officials inside the seal of the meter and requested to exonerate them from the payment. However that objection was rejected as per final assessment order dated 13-12-2011 issued by the respondent.

3. Challenging the above final order and demand, the appellant filed WP No 1122/2012 before the Hon'ble High Court. As per the judgement dated 14-08-2012, the High Court disposed of the case by following the dictum in the judgment in Siby K Thomas Vs KSEB reported in 2012(3) KLT 285 directing the respondent to recompute the charges only for 12 months prior to the date of inspection. Challenging that judgment, the KSEB Limited filed Writ Appeal No. 264 of 2013 before the Division Bench. The said appeal was heard by the Division Bench along with connected cases and passed common judgment dated 13-02-2014 setting aside the judgment in Siby K Thomas vs. KSEB and also the judgment in WP(C) No 1122/2012 filed by the appellant and allowing the appellant to approach the Consumer Grievance Redressal Forum against the final order and demand for Rs. 1,75,734.00. Accordingly the appellant filed the Complaint No 242/2014 before the CGRF and the same was disposed of as per Order No CGRF-CR/Comp 242/2013-14 dated 27-08-2014 which is impugned in this petition. The above order directed the respondent to revise the amount payable by limiting the period to two years from 12/2009 to 11/2011. However, the respondent filed Review Petition No 6/2014 -15 against the above order in September 2014 and the same was pending before the Forum. Now the appellant received the Order No CGRF-Cr/Review Petition No 6/2014-15 and also the demand for Rs. 1,12,445.00 with the last date for payment to avoid disconnection on 21-05-2015.

All the above proceedings are illegal for the following reasons

- a. The inspection was conducted by the respondent on 22-11-2011 and a mahazar was drawn up in the absence of the witnesses from the part of the appellant stating that coils were in interchanged condition inside the sealed box and that was corrected. This is the most unfair method of conducting an inspection and preparing a mahazar.
- b. Even assuming that what is stated in the mahazar is correct, the fact remains that the seals were intact.
- c. Therefore the entire responsibility of the wrong connection to the meter rests on the shoulders of the negligent KSEB staff who gave those connections and the appellant cannot be blamed for the same.
- d. The negligence of the licensee staff has to be compensated from them. The authorities are giving a wrong message by condoning all their

negligent activities and shifting the entire liabilities to the shoulders of the consumer.

- e. The LT meter in the premises was of such a nature that, even if the connection is in reverse mode, the recording will be correct.
- f. The CGRF adopted a hyper technical stand by saying that the Forum accepted the theoretical proof with corresponding vector diagrams submitted by the respondents. No such documents were produced by the respondents to the satisfaction of the appellant. Forum has duty to satisfy the appellant or his counsel with regard to the material if any produced by the respondent. There is no justification on the part of the Forum in saying that the respondents have proved that this increase in consumption tallies with the theoretical method of analysis without informing the appellant or his counsel about the same.
- g. The Forum went wrong in limiting the dispute raised by the appellant only to the period of assessment.
- h. The Forum ought to have found that meter includes connection to the meter and the licensee failed to act in accordance with the statutory mandates to provide correct metering to the consumer and they are liable to be proceeded for their failure.
- i. The Forum ought to have found that the respondents ought to have followed the procedure in Regulation 33 of the KSEB Terms and Conditions of Supply while deciding the issue.
- j. The Forum ought to have found that the person who prepared cannot enter into guess that 33% of the consumption was not recorded in the meter without support of any scientific material.
- k. The Forum ought to have found that the Board could not satisfy the consumer that there was such a non recording of 33% in the meter.
- l. The Forum went wrong in not considering the fact that the licensee failed to consider the consumption prior to 6/2009 for assessing the consumption during the disputed period.

Nature of relief sought from the Ombudsman.

The Order No CGRF -CR/Comp 242/2013-14 dated 27-08-2014 and Order No CGRF-Cr/Review Petition No 6/2014-15 dated 21-5-2015 may be set aside in so far as it has directed to recover amount for two year period from 12/2009-11/2011 and to completely allow the prayers in the petition No 242/2013-14 before the CGRF by fully exonerating the appellant from paying any amount in respect of the inspection dated 22-11-2011 in the premises of the appellant with consumer No 1332 under the respondent.

**Arguments of the respondent:**

1. The petitioner is running a Hospital named Periyar Hospital at Kumily with Con No. 1332 under Electrical Section, Kumily. The connected load of the petitioner was enhanced to 72 kW with effect from 23-05-2009 and accordingly the meter of the appellant was changed with CT Meter with ratio 200/5 as per standing rules in KSEB Limited.
2. The Anti Power Theft Squad of KSEB inspected the premises on 22-11-2011 and found that, out of the three CT's only one CT and its voltage terminal was connected properly and in the other two CT's connections were inter changed with respective voltage connections. APTS unit prepared a Site Mahazar in the presence of the representative of the appellant. It is reported by the APTS unit that due to this wrong connection the meter was not

recording 1/3<sup>rd</sup> of the consumption. As per the findings of the APTS, a short assessment bill of Rs. 1,75,734.00 (One Lakh Seventy Five Thousand Seven Hundred And Thirty Four Only) was issued to the appellant for the period from 6/2009 to 11/2011.

3. The error in connection was expected to be occurred during the time of enhancing the load of the appellant on 23-05-2009 and the connections were corrected after the inspections of APTS on 22-11-2011.
4. The appellant had challenged the issue of this bill before the Hon'ble High Court. As per judgment dated 14-08-2012 the Hon'ble High Court disposed of the case directing the respondent to recompute the bill for 12 months prior to the date of inspection. Challenging this judgment of the Single Bench, KSEB Limited filed Writ Appeal before the Division Bench and as per order of the Division Bench of the Hon'ble High Court Dated 13-02-2014 the matter was remanded to CGRF for appropriate decision.
5. The Hon'ble CGRF after conducting hearing from both appellant and the respondent admitted all the arguments of the KSEB Limited, but limited the period of short assessment for two years instead of the actual period of 2½ years, quoting Section 18(8) of the Supply Code 2005.
6. On 24-10-2014 the KSEB Limited filed a review petition before the Hon'ble CGRF stating that the bill issued is not a penal bill as per Section 126 of the Electricity Act, 2003 but a short assessment bill for the actual energy consumed. It was also submitted that the restriction of two years as per Section 56(2) of the Electricity Act, 2003 would not apply in this case since the bill was issued on a later date. But the Forum rejected the review petition and the limitation for two years was upheld.
7. The licensee decided to accept the decision of the Hon'ble CGRF and a revised bill was issued to the appellant limiting the period of assessment for two years , amounting to Rs. 1,48,631.00 (One Lakh Forty Eight Thousand Six Hundred Thirty One only). On receipt of the revised bill the consumer approached this Hon'ble Ombudsman and hence this case.

Item wise reply to the allegations raised by the appellant is stated below:

- a) There is nothing unfair in the inspection conducted by the APTS since the Manager of the Hospital, appointed by the appellant was present at the time of inspection and he had been convinced of the case and he had accepted a copy of the site mahazar.
- b) The APTS or KSEB Limited had not alleged any malpractice from the part of the appellant and as far as no discrepancy was noted from the part of the appellant the fact that seals were intact has no reference value in this case.
- c) The appellant is not blamed for any malpractice and as the appellant must have already understood the issue was that the CTs connections were inter changed with respective voltage connections and due to this wrong connection consumption was not recorded properly.
- d) The consumer had actually consumed the energy and for that he is liable to pay the current charges. No question of any compensation or shifting liability arises in this case.
- e) Negligence from the part of staff and officers is properly dealt with by the KSEB Limited.
- f) The consumer is speaking of direct reading meters. The connection of a CT Meter is different from that of a direct reading meter. Direct reading meters have only 3+N connections whereas a CT meter has voltage as well as current connections and hence sequence of connection is very

important. As the matter contains technical details a technical explanation for the power recorded in the meter as per report obtained from TMR Division, Pallom is enclosed.

- g) Required documents to prove the stand of the KSEB Limited that the meter failed to record 1/3<sup>rd</sup> of the consumption had been submitted before the Hon'ble High Court and CGRF and they were convinced of that.
- j) Inspection of various premises of the consumers, detection of abnormalities and rectification of shortfalls also form part of the statutory mandates to provide correct metering to the appellant. The appellant was informed of the mistake occurred in connecting the meter and required to remit the arrears.

### **Analysis and findings**

A hearing of the case was conducted on 16-12-2015 in my chamber at Edappally. Advocate Jose J. Matheikel, represented for the appellant's side and Smt. Parvathy M., Assistant Executive Engineer, Electrical Sub Division, Vandiperiyar for 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 decisions.

***The point to be discussed is as to whether the short assessment bill issued by the respondent is in order or not.***

On going through the records it can be seen that the APTS team has inspected the appellant's premises on 22-11-2011 and found that out of the 3 CTs only one CT and its voltage terminal was connected properly and in the other 2 CTs connections were interchanged with respective voltage connections. The respondent's contention is that due to this wrong connection the meter was not recording the 1/3<sup>rd</sup> of the consumption. Based on the above finding the respondent issued a short assessment bill for Rs. 1,75,734.00 for the period from 06/2009 to 11/2011.

According to the respondent the error in the connection was expected to be occurred during the time of enhancing the connected load of the appellant on 23-05-2009 and the connections were corrected only after the inspection by the APTS on 22-11-2011. Due to the wrong connection, the meter failed to record 1/3<sup>rd</sup> of the consumption and to prove this a technical explanation was required. Hence the respondent produced a report obtained from the Executive Engineer, TMR Division, Pallom. The respondent has proved theoretically in support of vector diagram which was accepted by the Forum.

Admittedly this wrong connection of CTs if any was made by the staff of licensee and there is no allegation to that effect against the appellant. The appellant contented that in the mahazar the Sub Engineer unilaterally found that CT connections to Phase 1 and 2 are interchanged and that he has understood that there is reduction in consumption recorded by 33%. Even without explaining the reason to the satisfaction of an ordinary consumer, the respondent arrived at above conclusion regarding the non-recording of 33% consumption which was challenged by the appellant.

Since the staff of licensee who is responsible for making connections is liable for the losses, if any, and the appellant cannot be held responsible for the wrong connections of CTs. Another contention of the appellant is that **“as per Section 55 of Electricity Act, 2003, no licensee shall supply electricity except through installation of a correct meter in accordance with the Regulations to be made in this behalf by the authorities. A “correct meter” is defined in Regulation 2 (J) of Central Electricity Authority (Installation & Operation of Meters) Regulations, 2006 as a meter which shall at least have features, accuracy class and specification as per the standards on Installation and Operation of Meters given in the Schedule of these Regulations. In Part III Clause 3 of the Schedule it is stated that:**

- a. **The meter shall not get damaged or rendered non functional even if any phase and neutral are interchanged.**
- b. **The meter shall register energy even when the return path of the load current is not terminated back at the meter and in such a case the circuit shall be completed through the earth. In case of metallic bodies, the earth terminal shall be brought out and provided on the outside of the case.**
- c. **The meter shall work correctly irrespective of the phase sequence of supply.**
- d. **In the case of 3 phase, 3 wire meter if reference Y phase is removed, the meter shall continue to work. In the case of 3 phase, 4 wire system, the meter shall keep working even in the presence of any two wires i.e. even in the absence of neutral and any one phase or any two phases.**
- e. **In case of whole current meters and LV CT operated meter the meter shall be capable of recording energy correctly even if input and output terminals are interchanged.”**

The appellant’s contention that the meter installed in the premises is an L & T make EM 301 three phase meter whose catalogue clearly says that **it is able to work normally under reverse current unbalance voltage and current different phase sequence, voltage variation etc.** and this fact was never challenged by the respondent.

Further argument of the appellant is that there is a mechanism prescribed under Regulation 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 to test a consumer meter. The testing may be carried out through National Accreditation Board of Testing & Calibration Laboratories (NABL) accredited mobile laboratory using secondary injection kit, measuring unit and phantom loading or at any accredited test laboratory and recalibrated if required at manufacturers works. Here in this case the Sub Engineer failed to act in accordance with the above statutory mandate and straight away reached a conclusion absolutely without any basis that the meter failed to record 33% of the consumption. Hence the argument of the appellant that without conducting a test as described above and to arrive a conclusion in the mahazar itself that there is reduction of 33% in recorded consumption, is illegal and arbitrary and hence can be admitted.

But the respondent’s argument is that the interchange in CT connections 1 and 2 to phase voltages 1 and 2 has resulted in the non-recording of 1/3<sup>rd</sup> of the

energy consumption. But such proofs are not approved by law and therefore the CGRF was not justified in considering those proofs without giving appellant an opportunity to understand as to what are those proofs. No such procedure is prescribed by law and CGRF being a quasi judicial Forum for deciding disputes raised by the consumers cannot accept such theoretical proofs which are not supported by any provision of law. The mahazar also does not say that any such theoretical proof was taken by the licensee from this particular meter at the time of inspection. Though the manager of the appellant's hospital accepted a copy of the site mahazar, the appellant objected the findings in the site mahazar. As this is a legal mechanism where evidence is to be considered and in the absence of evidence, the case raised by the licensee regarding non-recording the consumption has to be rejected. After the rectification of the wrong connection of the CT meter, if the consumption of electricity increases 1/3, this can be taken as a real proof, admitting the argument of failure of recording of actual consumption. In the absence of such a finding, it is difficult to believe that there is 33% reduction in the actual consumption in the appellant's premises.

The appellant's contention is that Regulation 24(5) of the Supply Code has no relevance to the facts of this case. That provision is applicable in a case where the licensee has undercharged a consumer which means that meter has recorded the actual consumption, but the licensee has not realised its charge accurately. In such cases, the respondent can realize the undercharged amount as per the Regulation 24 (5) of Electricity Supply Code. Hence the argument of the appellant that this has no relevance in this case can be accepted.

It is pertinent to note that the appellant has not furnished the connected load details and consumption recorded prior to the date of enhancement of load to 72 kW i.e. on 23-05-2009 and not furnished the consumption after the date of inspection on 22-11-2011. In the absence of above details, this Authority is not a position to verify whether the consumption of the appellant is proportional to the enhancement of connected load. Moreover, the Executive Engineer, TMR Division, KSEB Pallom has confirmed that when an interchange in voltage connection occurs, the meter will go erroneous and hence the consumption recorded will not be correct. But he has not pointed out the percentage of reduction in recorded consumption in anywhere in his report due to the wrong connection. In almost all the CT meters are having data storage and downloading facility and using the downloaded data, actual date of voltage/current missing and wrong phase association can easily be detected. The respondent has not conducted any testing using calibrators (Accucheck) for detecting the percentage error. It is also to be noted that as there is single phase loads in the premises and all the phases are not balanced always. Hence it is not fair to issue such a short assessment bill to the appellant.

From the documents produced by the respondent and perusal of mahazar reveals that the respondent failed to convince the appellant regarding the 1/3<sup>rd</sup> reduction in consumption though they submitted a technical report along with vector diagram etc. In the absence of a detailed testing of appellant's meter as prescribed in the Regulation 18(2) of Central Electricity Authority (Installation & Operation of Meters) Regulations, 2006 and to convince the appellant that there is any reduction in the recorded consumption, there is no justification in issuing such a short assessment bill to the appellant all of a sudden.

So long as the appellant had not done any act to commit theft of electrical energy or to make a meter dysfunctional, normally he cannot be penalized by way

of demanding huge amount as short assessment. In this case if at all any loss sustained to the licensee it is only because of the malfunctioning of the responsible officers and staff of licensee. It is the duty of the respondent to rectify the defect if any found in the meter or CTs and to ensure that the electrical installation is working properly. If the officers and staff of the licensee were negligent in the matter of inspection of the same it is totally unjust to saddle the appellant with the liability to pay huge amount. Hence it is advisable to conduct an enquiry to find out the reason and the person responsible for the issue.

### **Decisions**

In view of the above discussions it is concluded that the short assessment bill issued for Rs. 1,75,734.00 is hereby quashed. The respondent is free to reassess the appellant on the basis of proper evidence to prove that the appellant is undercharged. This can be done only by assessing the average consumption for a period of 6 months with effect from 01-12-2011 i.e. after rectification of the defects in the connections. The reassessment, if any, shall be done within one month from the date of receipt of this communication.

Having concluded and decided as above it is ordered accordingly. The appeal filed by the appellant is found having some merits and is allowed to the extent as ordered. CGRF order dated 21-5-2015 is set aside. No order as to costs.

### **ELECTRICITY OMBUDSMAN**

P/153/2015/ \_\_\_\_\_ /Dated: \_\_\_\_\_

1. Dr. K.M. Thomas, Proprietor, Periyar hospital, Kumily, Idukki
2. The Assistant Executive Engineer, Electrical Sub Division, Vandiperiyar, KSE Board Ltd, Idukki

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, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018