

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P 44/09

Appellant : Mrs Girija Rajagopal
Managing Partner, Ceramic Designs,
Mini Industrial Estate
CHEMBARAKI , SOUTH VAZHAKULAM,
Ernakulam District

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Sub Division PERUMBAVUR

ORDER

Mrs Girija Rajagopal, Managing Partner, Ceramic Designs,
South Vazhakulam submitted a representation on 28.1.2009 seeking the following relief :

*Set aside the order no: CGRF-CR/Comp49/08-09/12.12.2008 of CGRF KSEB Ernakulam
Set aside the short assessment bill dated 6.1.2009 of Assistant Engineer Vazhakulam*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 24.6.2009.

M/s Ceramic Designs is an LT industrial consumer under Vazhakulam Section with Consumer number 10274 .The 3 phase meter installed in the premises was faulty being 'stuck up' from 12/2003 which was replaced on 1.4.2005 by KSEB. The Respondent had assessed average consumption based on previous available reading up to 7/04. There after the meter again began to show consumption. The APTS conducted inspection on 16.3.2005 and found that only one phase of the meter was recording consumption. They instructed to assess three times the recorded consumption less the actual assessment for 3 months commencing from 12/04 and continue this assessment until the meter is replaced.

Consumer paid the arrear assessment in installments. The audit wing conducted audit of the accounts in 2008 and found out that the assessment made from 12/03 to 1.4.2005 was grossly inadequate when compared to the actual consumption recorded after the change of meter. They instructed to revise the assessment at the rate of 6 months average from 1.4.2005. The additional bill was for Rs 4,31,468/- The CGRF, based on the petition of the Appellant, directed to limit the assessment to the period from 8/04 to 3/2005 since the period up to 7/04 had already been covered by billing at average rates earlier. The assessment was revised to Rs 2,02,738/- by this order. The consumer is not satisfied by this relief and hence approached the Ombudsman.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation and during the hearing are summarized below:

The inspection by APTS was conducted on 16.3.2005. The supply code was notified by the KSERC on 23.3.2005. Hence the clause 24(5) which empowers the Licensee to recover the under charged amounts on a later date should not be applicable for the claims. Limitations imposed by section 56(2) of the Electricity Act 2003 is applicable for the arrear claims.

There is no provision in the Act and Regulations to issue short assessment bill based upon Audit report especially when the team of APTS had limited the claim to just 3 months.

The regulations applicable for the period in question is the old Conditions of Supply Regulations Section 31(C) as the Supply Code and the new Terms and Conditions of Supply have not come into effect. This clause 31(C) provides for a review of the correctness of the meter by the Electrical Inspector. Due to the delay in claiming the arrears the Appellant is deprived of the statutory remedies available for getting the meter tested by the appropriate authorities.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

The arrear claim was not based upon the APTS inspection report. Hence the argument on section 24(5) of supply code is not correct. The assessment was based on an audit report which is a legitimate review under section 24(5) of Supply code. Limitations imposed by section 56(2) of the Electricity Act 2003 is not relevant as declared by various verdicts of several High Courts.

Discussion and Findings:

The arrear bill was issued by the Respondent following the instructions of the Audit party to cover/review the whole period from 12/03 to 3/05 with an average computed based on six months period after change of meter. The Regulations applicable for the period is the Conditions of Supply of Electrical Energy of KSEB published on 4.12.1989. Section 31(C) of the regulation deals with assessment for meter-faulty-periods and provides for

taking the 'correct quantity of energy' to be determined by taking 'the average consumption for the previous three months' with due regard to the conditions of working, occupancy etc. If this is not feasible the correct consumption will be computed based on the average for the succeeding three months. The section also provides for referring the matter to Electrical Inspector if any difference or dispute arises as to the correctness of the meter.

In the instant case the Respondent has already computed and billed for the period up to 7/04 based on the average of the previous months. Hence the decision of the CGRF that it is not proper to reopen the assessment for this period is correct.

The Appellant has already paid the above bills, apparently without protest. So also the Appellant has already paid the assessment based on the APTS formula also without dispute. Hence the contention that she had been denied the statutory remedies available for getting the meter tested by the appropriate authorities can not be admitted. Nothing has been brought out to prove that she had disputed under Section 31(C) of CSEE Regulations on the correctness of the meter before 7/04 or thereafter.

It has been reported that 'the stuck-up-meter started to record readings after 8/04' mysteriously and the APTS in March 2005 found that only one phase of the meter is recording consumption. One can not arrive at any reasonable conclusion whether the meter with such 'mysterious character' had recorded 1/3rd consumption through out from 8/04 to 3/05. Hence it would be appropriate to apply the Section 31(C) of CSEE for the periods from 8/04 to 31.3.2005, that is, take 3 months average from 1.4.2005 and apply it to the period 8/04 to 3/05.

The Respondent shall revise the assessment from 8/04 to 3/05 based upon the average for three months after 1.4.2005, adjust the payments already made and issue demand notice for the balance amounts. Interest shall be realized only for the periods after the due date fixed for this demand notice as per rules.

Orders:

Under the circumstances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The reliefs sought for are partially allowed and the short assessment shall be modified as explained above.*
2. *No order on costs.*

Dated this the 25th day of June 2009 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 44/09 / 273/ dated 26.06.2009

- Forwarded to:
1. Mrs Girija Rajagopal
Managing Partner, Ceramic Designs,
Mini Industrial Estate
CHEMBARAKI , SOUTH VAZHAKULAM,
Ernakulam District
 2. The Assistant Executive Engineer
Electrical Sub Division KSEB
PERUMBAVUR

Copy to :

1. The Secretary,
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2. The Secretary ,KSE Board,
Vaidyuthi Bhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF, KSE Board ,
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