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APPEAL PETITION NO. P/052/2016

(Present: V.V. Sathyarajan)

Dated: 25<sup>th</sup> October 2016

Appellant : Sri. Raju M. Varkey,  
Eattical House,  
Mundiappally,  
Pathanamthitta

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd, Mallappally,  
Pathanamthitta.

### **ORDER**

#### **Background of the case:**

The service connection with consumer No. 12143, under Electrical Section, Mallappally stands in the name of Sri Raju M. Varkey, the appellant, with a connected load of 10296 Watts under domestic tariff. A short assessment bill for Rs. 9,901.00 was issued to the appellant, reassessing him, for the meter faulty period from 7/2015 to 9/2015 based on an audit report of Regional Audit Officer. Aggrieved against the impugned bill, the appellant filed a complaint before the CGRF, Kottarakkara on 28-03-2016. But the Forum in its order in OP No. 42/2016 dated 30-05-2016 dismissed the petition since the bill issued by the respondent was found in order. Not satisfied with the decision of CGRF, the appellant has submitted this appeal petition before this Authority.

#### **Arguments of the appellant:**

The appellant has raised the following arguments in his petition filed before this Authority.

The order of the CGRF is wrong, contrary to law and opposed to the facts of the case. The electricity meter at appellant's residence has been faulty for a long time as it always showed a very high bill in spite of a lower than average usage. The appellant raised this issue many times with the local

KSEB office but no action was taken regarding this. The appellant paid all the bills even though the appellant did not agree with the amounts as the appellant did not want the service to get disrupted. In the official letter to the CGRF from the Assistant Executive Engineer dated on 28th of March 2016, the KSEB have admitted to being aware that the meter was found faulty on 19-09-2015. According to the Kerala Electricity Supply Code, 2014, 117-2(a), 'If the meter was owned by the licensee, the licensee shall replace the meter with a correct meter within seven working days.' As all parties involved are aware, the meter was only replaced on 30-01-16 which is the root cause of all the confusion and dispute regarding the billing amounts.

The meter eventually gave up and stopped working and instead of inspecting it within 5 working days as stated in the official KSEB Supply Code 166(v), they started charging the appellant an average bill (652 units average per month) for the next 6 months. Not only did the respondent fail to replace the meter and solve the issue, the average bill that they started charging appellant was calculated based on amounts that the faulty meter produced. This is the main issue at this point in time. The Pathanamthitta auditor sent an additional bill (952 units average). According to the additional bill, the auditor decided that the average charges that appellant was charged was low as per the book of accounts which was based on his assumptions that the meter was sluggish (which is not a term used in the official Kerala Electricity Supply Code, 2014, 118 that covers the replacement of damaged meters) and not as per the meter or appellant's past usage records.

The appellant disagree with the following assumptions made by the Pathanamthitta auditor (as they do not have any valid base) regarding the additional bill:

- (i) The meter is sluggish. As previously mentioned in point 1, the fault of the meter was that it was running faster and not slower (as the Oxford dictionary definition of sluggish means slow moving or inactive). According to the Kerala Electricity Supply Code, 2014, 166 (1). The licensee shall periodically inspect and check the meter and associated apparatus. (2). If the meter is found defective, the licensee may test it at site, if feasible, and if not feasible, the meter shall be replaced with a correct meter and the defective meter shall be got tested in an accredited laboratory or in an approved laboratory to the best of knowledge, both of this was not done.
- (ii) The consumer has the capacity to use the average bill charged of 952 units and therefore the consumer has consumed 952 units. Though the property can accommodate more people (as it was built for the appellant's extended family who visit for extremely short lengths of time once or twice a year maximum of a week one time), there are only two people residing at this address and the appellant's energy consumption is extremely low.

- (iii) The fault with the meter is that it is sluggish in spite of multiple complaints by the consumer that the meter is running faster than it should.
- (iv) KSEB incurred a loss because of this situation and the consumer needs to be penalised to recover the loss.

As per the official procedure, appellant escalated this issue with the CGRF as the KSEB was unable to resolve this issue. In the letter from the Assistant Executive Engineer to the CGRF, it is stated that on receiving the complaint from appellant, an inspection was conducted at the premises by the Sub Engineer, Electrical Section, Mallappally on 19-03-2016 and verified the connected load being used by the consumer. As per the inspection report, the reading of the meter at the time was 618 units for 49 days. On verifying the consumption pattern, it is clear that the use of electricity at the above premises is comparatively high and average consumption after changing the faulty meter is also on the higher side.

Please note the following issues with this claim.

- i. As per the official bill (1140753), the reading on 18-03-2016 was 652 units. How is it possible that the reading on 19-03-2016 was 618 units? This sadly proves that the statement above submitted by the Sub Engineer is false and misleading based on their own statements and bills both of which are attached with this letter.
- ii. The meter inspection was done on 22-03-2016 and not on 18-03-2016 as written on the bill. Appellant was present when a KSEB employee arrived to take the meter reading and both saw the reading was at 652 units. Instead of noting the reading and handing over the bill to appellant like it is usually done, the employee went back to his office and brought a bill for 773 units dated 18-03-2016 which made absolutely no sense as both the date and the reading was incorrect.
- iii. When a complaint was submitted regarding this, the KSEB argued that they were referring to another meter reading taken by a meter examiner on 19-03-2016 which is not possible as the house and gate are locked when appellant is not at home which makes the premises inaccessible to anybody.
- iv. The subsequent bill (4623160511119 dated 18-05-2016) after the faulty meter was changed (ignoring the above disputed bill) was not the higher side as they claim as the current bill (which is attached) but is at 644 units for 60 days which is significantly lower than the Auditor's calculation based on an average of 952 units for 60 days.

- v. Bill calculated based on a wrong date which leads to incorrect calculations.

The new meter was installed on 30-01-2016 and the reading was taken on 22-03-2016. However, the appellant received a bill dated on 18-03-2016 which means the reading was taken 52 days after the installation of a new meter but was read as 48 days to calculate the charge for 60 days. The resulting calculation is as follows:  $(4/48) * 100 = 8.33$  which is not a negligible percentage difference.

The appellant highlighted the main issues as detailed below.

- a) As per Kerala Electricity Supply Code, 2014, 116, the licensee shall periodically inspect and check the meter, this was not done and when a technical fault was identified the books of accounts was referred to rather than checking the meter. The fault with the meter was that it was running fast, not slower as is evidenced by the reading with the new meter which is 644 units for 60 days not 952 units as claimed by the Auditor.
- b) As per Kerala Electricity Supply Code, 2014-116 (5), the licensee shall inspect and correctness of the meter within 5 working days which was not done in this case.
- c) As per Kerala Electricity Supply Code, 2014-118 (4), the time frame to replace a faulty meter is 15 days. The meter was not replaced for 6 months after the fault was identified which, as above, has led to many additional issues.
- d) As per Kerala Electricity Supply Code, 2014, the licensee (KSEB) is fully responsible for supplying and maintaining the electric meter. They have not only failed in their responsibility as a service provider but are attempting to penalize the appellant for their errors.
- e) The CGRF failed to send appellant a copy of their official judgement. The Mallappally KSEB sent a letter which threatened to disconnect appellant's service before the appellant received the official letter from the CGRF.
- f) The average bill estimation has to be taken in the period when the meter runs correctly not when it is faulty (Kerala Electricity Supply Code, 2014-125). Kindly cancel the additional bill issued by the KSEB auditor Pathanamthitta.

**Arguments of the respondent:**

The respondent has filed the counter statement against the complaints contained in the appeal petition, stating that all the averments in the petition except which are admitted, are false and hence denied.

The service connection (3 Phase) bearing Consumer No 12143, effected from Electrical Section, Mallappally, under LT I(a) (domestic tariff), currently having contracted connected load to the tune of 10296 Watts, belongs to the appellant, Sri. Raju. M. Varkey. The appellant has precedently preferred OP No: 42/2016 and OP No: 65/2016 consecutively before the Honourable Consumer Grievance Redressal Forum (South), Kottarakkara, impugning 'Short Assessment' invoice amounting to Rs. 9,901.00 (Rupees Nine Thousand Nine Hundred and One only) issued on 01-01-2016 and subsequent regular invoice for the billing cycle ended on 03/16, amounting to Rs. 5,337.00 (which was revised on receiving the complaint vide OP No. 65/2016 to Rs. 5,109.00) served on him from Electrical Section, Mallappally. After taking evidences and hearing both the sides, the Honourable Consumer Grievance Redressal Forum (South) arrived at the conclusion that both the invoices in question were legal and sustainable. The Forum summarily dismissed both the petitions of the appellant.

The version of the respondent against the contentions in the appeal petition is as follows. While on taking energy meter reading at the premises by the designated Meter Reader on 19-09-2015, it was inferred that the energy meter installed at the premises turned faulty prior to. Thereon as stipulated under Regulation 125(1) of the Kerala Electricity Supply Code 2014, it was constrained to make assessment on the basis of average consumption for the past 3 billing cycles immediately preceding the date of the meter being found defective. Thus taking into account the actual recorded consumption for the 3 immediately preceding billing cycles ended in 03/2015, 05/2015 and 07/2015, the average consumption at the premises was reckoned as 662 units per billing cycle, and bill issued to the appellant accordingly.

Whilst, the routine inspection of Books of Accounts by the Regional Audit Officer at Electrical Section, Mallappally, during 09/2015 & 10/2015, having inferred from the consumption pattern of the respective consumer that the bimonthly average consumption arrived as 662 units is barely sufficient, as the Audit reasonably affirmed from the consumption pattern for the preceding period that the energy meter at the premises turned sluggish earlier from 07/2015. Thus the actual consumption for the 3 billing cycles immediately precedent to 07/2015 i.e., the consumption for 01/2015, 03/2015 and 05/2015 were taken for. The computation of the healthy average consumption at the premises, and the Audit arrived at the resultant average bimonthly consumption as 995 units, warranting invocation of Regulation 134(1) of the Kerala Electricity Supply Code 2014, towards realization of the undercharged amount quantified to the tune of Rs. 9,901.00 (Rupees Nine Thousand Nine

Hundred and One Only) for the period from 07/2015 to 09/2015 from the appellant. A copy of the respective Audit Report of the Regional Audit Officer as well as a statement showing the consumption pattern of the consumer /appellant is produced herewith.

It is apparent enough that any instance of undercharging could be established by the licensee only through a review of the state of affairs and such review could be possible only through monitoring of history of events and records. Regulation 134 of the Kerala State Electricity Supply Code, 2014, on undercharged and overcharged bill stipulates that (1) 'if the licensee established 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'.

Here in this case as the Kerala State Electricity Board Limited is having a mechanism of routine inspection and review by the Regional Audit Wing, and during such an inspection from the Regional Audit Office at Electrical Section, Mallappally during 09/2015 and 10/2015, it was duly substantiated that the consumer has been undercharged during two consecutive billing cycles ended on 07/2015 and 09/2015 respectively, because of inclusion of sluggish consumption during 07/2015 in arriving at the healthy average consumption. In line with the above factual position an invoice amounting to Rs. 9,901.00 (Rupees Nine Thousand Nine Hundred and One Only) was served on the consumer/appellant on 01-01-2016 from Electrical Section, Mallappally, along with the detailed calculation statement.

Pursuant, impugning such an assessment towards realization of the undercharged amount, the consumer/appellant has preferred OP No: 42/2016 before the Honourable Consumer Grievance Redressal Forum (South), and therein after taking evidences and hearing both the sides, the Forum reasonably upheld the assessment as legal and sustainable, and in result dismissed the petition. It is pertinent to bring before that the Honourable Consumer Grievance Redressal Forum (South) on perusal of the consumption pattern of the consumer/appellant, in obvious terms held that (the average consumption prior to 07/2015 was 995 units. But there is huge dip in consumption from 07/2015 which is due to none other than meter faulty. Moreover the petitioner also did not adduce any evidence as to prove that they had only less consumption during the alleged period'. Thus the appellant is having no reason to dispute the assessment, and he is legally and ethically bound for the remittance of the amount actually under charged for the period.

As the OP No. 42/2016 covering dispute regarding the assessment of average consumption as well as amount actually undercharged was under consideration of the Honourable Consumer Grievance Redressal Forum (South), it was constrained to continue the assessment against the consumer based on the lesser/wrong average of 662 units, during 11/2015 and 01/2016

also pending decision and disposal of the petition under consideration before the Forum then. Whereas the energy meter at the premises which was inferred to be faulty was replaced with a new one on 30-01-2016 with initial reading '0'. While issuing the bimonthly invoice for the succeeding billing cycle ended on 19-03-2016 i.e. 19-01-2016 to 19-03-2016 the appellant had filed a complaint vide OP No. 65/2016 before the Hon'ble CGRF, Kottarakkara in which it is stated that the reading at the premises was taken on 22-03-2016 and the date mentioned in the bill is 18-03-2016 and, the consumption calculated is not correct.

On receiving the complaint through the Hon'ble CGRF it has been verified and noted that in connection with the former complaint of this petitioner i.e. OP No. 42/2016 an inspection was conducted by the Sub Engineer, Electrical Section, Mallappally on 13-03-2016 at the premises of the complainant and the reading on that date was 618. Since the reading 19-03-2016 was obtained, the regular bill of consumer No. 12143 for 3/2016 has been revised with the same for a consumption of 739 unit and the bill amount comes to Rs. 5,109.00. For the issuance of this revised invoice it was resorted to rely upon the pro-rata average consumption for the period from 19-01-2016 to 30-01-2016 (the date on which the faulty meter changed) which comes to the tune of 121 units for 11 days, and the exact consumption of 618 units recorded from the date of replacement of the energy meter on 30-01-2016 to the date of subsequent reading on 19-03-2016 in the new meter. More precisely, the calculation of consumption for the billing cycle ended on 03/2016 is as follows.

Billing Cycle; 19-01-2016 to 19 -03-2016

- |     |   |                     |
|-----|---|---------------------|
| (a) | Consumption for the period from 19-01-2016 (beginning of the cycle) to 30-01-2016 (date on which the energy meter replaced) > 11 days |                     |
|     | => <u>662 units (previous Average consumption)</u> x 11 days  | = 121 units         |
|     |   | 60 days             |
| (b) | Actual recorded consumption in the new energy meter for the period from 30-01-2016 to 19-03-2016                                      | } 618 units.        |
|     | Total consumption for the billing cycle   | } <u>739 units.</u> |

Obviously, the invoice for the billing cycle ended on 19-03-2016 was for 739 units, amounting to Rs. 5,109.00 (Rupees Five Thousand One Hundred and Nine Only). In OP No: 65/2016 also the Hon'ble CGRF upheld the assessment.

A true copy of the site mahazar prepared by the Sub Engineer on 19-03-2016, in proof of the connected load in use as well as recorded reading in the energy meter at the premises, is produced herewith. In the appeal petition the appellant objected the reading and inspection on 19-03-2016 as the same is

not possible since their house and gate were locked and their premises inaccessible to anybody that they do not let in. It may be noted that in the OP No. 65/2016 Dt. 23-03-2016 the appellant has stated that two staff from KSEB Mallappally came and checked his house a few days before and yesterday (22-03-2016) an employee came to check the meter and found the reading as 652. Hence the argument of the appellant is not correct. It is evident that modern amenities and high energy consuming devices including Air Conditioners and Water Heaters are in regular use at the premises, causing massive energy consumption. It is also equally important among that the consumer/appellant at no point put forward any valid reason for the apparent dip in actual consumption for the period from 07/2015 to 01/2016. The Honourable Consumer Grievance Redressal Forum (South) has also observed this factual position.

- 1) There is no dispute over the point that energy meter at the premises was faulty from 07/2015. The Honourable Consumer Grievance Redressal Forum (South) also has reasonably asserted this fact in OP No: 42/2012.
- 2) As per the procedure for billing in the case of defective or damaged meter provided under Regulation 125 of the Kerala Electricity Supply Code, 2014, the consumer/appellant is bound to remit the energy charges on the basis of the average consumption for the past three billing cycles immediately preceding the date of the meter being found or reported faulty. Herein the energy meter turned faulty from 07/2015, the appellant is liable to be assessed on the basis of the average recorded consumption during the billing cycles ended on 01/2015, 03/2015 and 05/2015 respectively.
- 3) As contemplated in the Regulation 134 of the Kerala Electricity 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. As the consumption pattern over the preceding and succeeding periods amply substantiates that there was an apparent dip in consumption over the period from 07/2015 & 09/2015, the consumer/appellant is bound to make good the amount actually undercharged for the period on the basis of the average recorded consumption during 01/2015, 03/2015 and 05/2015 respectively.
- 4) As it was constrained to maintain the status quo as regards the regular assessments during 11/2015 and 01/2016, prevented by the fact that the Petition filed by the consumer/appellant before the Honourable Consumer Grievance Redressal Forum (South), challenging the assessment of actual average consumption as well as the amount actually undercharged, was pending disposal, the consumer/appellant is



legally bound to make good the loss sustained to the licensee during the respective period also.

- 5) The consumer/appellant is legally bound to remit the bill for his actual consumption of electricity.

### **Analysis and findings**

The hearing of the case was conducted on 14-10-2016 in my chamber at Edappally, Kochi and Sri. Raju M. Varkey, was present for the appellant's side and Smt. Saija P.V., Assistant Executive Engineer, Electrical Sub Division, Mallappally appeared for the respondent's side. On examining the petition and the argument notes filed by the appellant, the statement of facts of the respondent, perusing all the documents filed and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The appellant's contention is that the energy meter was in the custody of the licensee and having absolute control and authority over the same. If at all any defects were noticed in the working of meter, it is the duty of the respondent to rectify such defects. Moreover, the staff of the respondent who takes the meter reading every month only knows if there is any leakage in the premises. But the respondent's contention is that they noticed a decline in the consumption recorded in the meter only at the time of taking meter reading in 9/2015. The sluggishness of the meter was confirmed and immediate action was taken to replace the energy meter and a new meter was installed on 30-01-2016.

Average consumption for the past 3 billing cycles preceding billing cycles ended in 03/2015, 05/2015 and 07/2015 was issued to the appellant as per Regulation 125(1) of Kerala Electricity Supply Code, 2014. But, revised bill based on average consumption for the 3 billing cycles immediately precedent to 07/2015 i.e. 01/2015, 03/2015 and 05/2015 was arrived as 995 units warranting invocation of Regulation 134(1) of Supply Code, 2014 as per the direction of audit party. Accordingly short assessment bill for an amount of Rs. 9,901.00 (Rupees Nine Thousand Nine Hundred and One only) was issued for the period from 07/2015 to 09/2015.

***The point to be considered in this case is as to whether the revised assessment bill amounting to Rs. 9,901.00 issued for the period from 07/2015 to 09/2015 is in order or not?***

The perusal of records reveals that the respondent issued bill for 662 units based on the average consumption of past 3 billing cycles preceding the billing cycles ended in 03/2015, 05/2015 and 07/2015 as per Regulation 125(1) of Supply Code, 2014. The procedure for billing in the case of defective

or damaged meter shall only be done as per Regulation 125 of Supply Code, 2014. As per Regulation 125(1) in the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of meter being found or reported defective.

**As per Regulation 117 (2) (a) of Kerala Electricity Supply Code, 2014, if the meter was owned by the licensee, the licensee shall replace the meter with a correct meter within seven working days.** But in the instant case the respondent replaced the meter only on 30-01-2016 which shows a clear lapse on the part of the respondent.

As per **Regulation 116 of the Kerala Electricity Supply Code, 2014,**

**(1) the licensee shall periodically inspect and check the meter and associated apparatus.**

**(2) If the meter is found defective, the licensee may test it at site, if feasible, and if not feasible, the meter shall be replaced with a correct meter and the defective meter shall be got tested in an accredited laboratory or in an approved laboratory. Both of this was not done.**

It remained a fact that the meter reading showed a gradual decline for the month of 7/15, but the respondent failed to conduct testing of the meter and also not taken any action to replace the meter immediately on getting the report of sluggishness of the meter. After replacement of the meter, the reading of the consumer is as follows:

31-01-2016 to 18-03-2016	=	618 units
18-03-2016 to 18-05-2016	=	644 units
18-05-2016 to 19-07-2016	=	705 units

Hence the argument of the appellant that energy meter installed at the appellant's residence has been faulty for a long time as it always showed a very high reading in spite of his actual usage can be admitted. The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL in this case. **Regulation 115 (9) says that in the case the meter is found to be faulty, revision of bill on the basis of test report shall be done for a maximum period of 6 months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in two subsequent bills.** The respondent simply revised the bill without conducting any testing of the meter under dispute and even without observing the Regulations in this regard.

Further, as per Clause 18(2) of Central Electricity Authority (Installation and Operation of Meters), Regulations, 2006, *“the testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of the consumer meters up to 650 Volts.”* There is no mechanism for the appellant to know whether the meter is working properly or not. In the instant case, the respondent has not followed the procedures prescribed above before charging the appellant as meter faulty.

The assessment made in this case is relying on an audit report of Regional Audit Officer. The statutory requirement of testing of the meter in an accredited lab or with a standard reference meter with better accuracy class is not done before issuing the short assessment. There is patent illegality in issuing the short assessment bill to the appellant. Without complying with the statutory formalities, the assessment made in this case is not sustainable before law and liable to be quashed.

### **Decision**

In view of the above discussions, there is no justification for issuing a revised bill to the appellant even without conducting any testing of the energy meter. Hence the impugned bill is hereby quashed. The respondent is directed to issue revised bill for the period from 07/2015 to 09/2015 at any rate within 30 days from the date of receipt of this order based on average consumption for the 3 billing cycles after the meter is replaced and the excess amount, if any, shall be adjusted in the future bills. The appeal petition is allowed. The order of CGRF is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/052/2016/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri. Raju M. Varkey, Eattical House, Mundiappally, Pathanamthitta.

2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Mallappally, Pathanamthitta

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