

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/073/2016
(Present: V.V. Sathyarajan)
Dated: 30th December 2016

Appellant : Sri. P. Viswanathan
'Shivalaya' SFCERA 12,
Mother Teresa Lane,
Kathrikkadavu, Kaloor,
Kochi 682017.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Palarivattom,
Ernakulam

ORDER

Background of the case:

The appellant is having a 3 phase domestic service connection with consumer no: 11898, under Electrical Section, Kaloor, Ernakulam. The gist of the complaint raised by the appellant is that on 13-04-2010 since there was an abnormal sound from the energy meter and observed that the meter was working at an extensively fast rate, even when the meter was switched off. Since the consumption recorded in the meter was more than 20000 units, the matter was reported to the Section Office in writing on the same day. An Overseer from the Section Office visited the premises on the same day and declared that the meter was faulty. It was also informed that there is shortage of meter and there are many similar cases are pending and hence the same will be replaced as and when the meter made available.

The appellant's grievance is that the licensee has not replaced the faulty meter even after a lapse of more than 6 years and charging at the rate of 280 units bimonthly, the average consumption of 3 billing cycles prior to the date of meter became faulty. The appellant was forced to pay this amount on threat of disconnection if not paid on due date. While so, the appellant was issued a short assessment bill for Rs. 5,506.00 for the period from 3/2010 to 5/2013 on the basis of the audit report of Regional Audit Officer by assessing the average

consumption as 344 units. Against this bill, the appellant submitted petitions dated 27-12-2013 and 24-1-2014 before the Assistant Engineer, Electrical Section, Kaloor. Later as per the proceedings dated 2-6-2016 of Assistant Engineer, Kaloor, the short assessment bill was cancelled.

The faulty meter of the appellant was replaced on 25-5-2016. The CGRF, Ernakulam, before whom the petition was filed by the appellant, with a request to refund the excess amount collected from 4/2010 onwards, has ordered to revise the bimonthly bills from 4/2010 based on average consumption of the 3 billing cycles after the installation of the new meter and to refund the meter rent collected from the petitioner during the meter faulty period. The appellant is challenging the decision of the CGRF regarding revision of bills based on average consumption of the 3 billing cycles after the installation of the new meter as he is of the opinion that it should be revised based on the fixed/minimum charges payable as per the tariff and to refund the excess amount collected and the meter rent collected with interest at the rate of 16% per annum. This appeal petition is filed as the appellant is aggrieved by the order dated 30-09-2016 in OP No: 44/2016-17 of CGRF, Ernakulam on the issue stated above among other things.

Arguments of the appellant:

The Hon'ble CGRF in its order dated 30-09-2016 has rightly observed that: *"Forum is of the opinion that if the respondents can accept the non occupancy of the premises during the meter faulty period, the request of the petitioner to minimize the average value of the units consumed should have been accepted. It is to be noted that the petitioner had requested to replace the meter in writing when the meter became faulty in 2010. It is the duty of the respondents to replace the faulty meter within two months, as per rules. Based on the above discussions, Forum decides to accept and admit the argument of the petitioner."*

In spite of this right observation, the appellant submit that the Hon'ble Forum is wrong in its decision: *"The respondents are directed to revise all the bills from 4/2010 based on average consumption of the 3 billing cycles after the installation of the new meter. It is also ordered that excess amount to be refunded to the petitioner within one month from the date of receipt of this order."*

The appellant argued that the licensee could not provide any reason for not changing the faulty meter for such a long period of more than 6 years, though as per Section 33(2) of Kerala State Electricity Board Terms and Conditions of Supply, 2005 (then prevailing), which reads as "If the Board is unable to raise a bill on meter reading due to its non recording or malfunctioning, the Board shall issue a bill based on the previous six months average consumption. In such cases the meter shall be replaced within one month. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the

consumption will be determined based on the meter reading in the succeeding three months after replacement of meter", they are bound to replace the faulty meter within one month. However the licensee has ignored above referred Section 33(2) and appellant's umpteen representations in oral as well as in writing for changing the faulty meter.

Being fully aware about the non-occupancy of the premises, the licensee illegally charged appellant for an average of 280 units per bimonthly period, for such a long period of 6 years 1 month and 12 days, for their unlawful gain. The appellant was forced to pay the amount on threat of disconnection, if the bill was not paid within the due dates. Since the licensee has failed to measure appellant's actual consumption and billed the appellant accordingly for 6 years 1 month and 12 days, due to its illegal acts. It has no right to charge anything in excess of the fixed/ minimum charges for all the bills from 4/2010 till 25-5-2016, when the faulty meter was replaced by the incense.

Hence the decision of the Forum *"The respondents are directed to revise all the bills from 4/2010 based on average consumption of the 3 billing cycles after the installation of the new meter"* has to be set aside and the Honourable Ombudsman may please issue favourable orders directing the respondents to revise all the bills from 4/2010 till 25-05-2016 based on the fixed/minimum charges payable as per the tariff (It was Rs. 80.00 in 2010 and at present it is Rs. 200.00). The appellant also prays that the excess amount thus collected should be refunded with interest as per *Regulation 37 (6) of Kerala State Electricity Board Terms and Conditions of Supply, 2005 which reads as "If it is established that after payment of the bill, the Board has overcharged the consumer, the excess amount shall be repaid within two months with interest at twice the bank rate"* or by Regulation 158 (18) of Supply Code, 2014 which reads as *"In case the amount payable as determined by the appellate authority is less than the amount already deposited by the consumer, at the time of filing the appeal, the excess amount shall be refunded along with Interest at the rate of sixteen percent per annum compounded every six months from the date of such deposit till the date of refund."*

Though the Hon'ble Forum has rightly ordered that *"The respondents are also directed to refund the meter rent collected from the meter faulty period"*, It went wrong by not awarding the interest payable by the licensee (KSEB), as per Rule 158 (18) of Supply Code, 2014 to the appellant.

On the above grounds the Hon'ble Ombudsman may please issue favourable orders by:

1. setting aside the Order of Hon'ble CGRF, Ernakulam and directing the respondents/ licensee (KSEB) to revise all the bills from 4/2010 till 25-05-2016 (when the faulty meter was replaced) based on the fixed/minimum charges payable as per the tariff and refund the excess amount collected from the

appellant within one month with interest at the rate of 16% per annum compounded every six months from the dates of such deposit till the date of refund.

2. Directing the respondents to refund the meter rent collected for the faulty meter for the meter faulty period within one month with interest at the rate of 16% per annum compounded every six months from the dates of such deposit till the date of refund.

Arguments of the respondent:

The respondent stated that all averments in the appeal are denied, except those which are specifically admitted hereunder. All the averments and allegations in the appeal except that are specifically admitted hereunder are denied being false. Consumer No.11898 is a domestic consumer having connected load of 10 kW with 3 phase connection. Inspection of Regional Audit Office, Ernakulam, during 07/2013 to 12/2013, detected that meter faulty average fixed was wrong and it should be 344 units instead of 280 units. Regional Audit Officer assessed that unit consumption with effect from 09/09 to 01/10 that is 344 units ($414 + 332 + 285 = 1031/3 = 344$ units). Consequently short assessment bill with effect from 03/10 to 05/13 for Rs. 5,506.00 dated 12-12-2013 was served with the appellant.

Consumption pattern is given as follows.

Month	FR	Units
May-09	11839	450
Jul-09		441
Sep-09		414
Nov-09		$332 > = 1031/3 = 344$ units
Jan-10		285
Mar-10	13531	220
05/2010 to 05/2016	SF.	Avg. 280 units

The appellant protested against the bill and it was kept in dispute. Appellant continued to remit the bill @ the average of 280 units, which is already assessed by the meter reader. During the Division conference, Executive Engineer directed to settle all the pending cases pertaining to the Section Offices. As a part of this drive the appellant was called for a hearing on 24-05-16.

The appellant pointed out that he was rarely using the premise since 03/10 to till date, even though he was billed @ 280 units bimonthly. He also submitted the copy of water bills, which shows considerable decrease. He also demanded the refund which is paid excessively. Considering the facts bill for

Rs. 5,506.00 was cancelled as per AE/KLR/proceedings/2016-17/Con. No. 11898/30 Dt. 02-06-16. Appellant also complained about the wrong address shown in this electricity bill. As soon as it was noticed, the undersigned corrected the same with immediate effect. Faulty meter was also changed in next day of the hearing i.e. 25-05-2016.

As the appellant's premise was door locked, concerned Lineman could not attain the signature of the receiver in the copy of proceedings delivered to the appellant. Later on 25-07-16 the appellant received the duplicate copy of the proceedings. Appellant filed a complaint before CGRF (CR) vide Comp.No. 44/2016-17. In the hearing the appellant argued that he is entitled for the refund of illegally collected amount of 37 bills with effect from 03/10 to 24-05-16. After hearing both sides the Hon'ble CGRF (CR) issued an order dated 30-6-2016, against which this appeal is filed.

The appellant paid all the said 37 bills without any objection. So his demand for refund of the said 37 bills is not acceptable and against natural justice. He is liable to pay the electricity charges and meter rent billed as per the rules and regulations. The appeal is not entitled for any of the relief as sought for in the above appeal. The above appeal is not maintainable either in law or on facts and is filed on an experimental basis. On the above submitted facts, the Hon'ble Forum may be pleased to accept this version.

Analysis and findings

The hearing of the case was conducted on 09-12-2016, in my chamber at Edappally. Sri. Viswanathan has presented his arguments during the hearing. Smt. Latha, Assistant Executive Engineer, Electrical Sub Division, Palarivattom represented the respondent's side. 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.

It is an established fact that the meter was faulty from 4/2010 onwards and the same was replaced only on 25-04-2016 and the appellant was charged at an average consumption for 280 units bimonthly for a period of more than six years. The inordinate delay in replacing a faulty meter even after getting a written complaint cannot be justified in any manner. Version of the respondent is that the average consumption of 280 units fixed during the months from 3/2010 to 5/2013 was wrong and hence revised to 344 units (average consumption based on preceding six months consumption) as per the direction of Regional Audit Officer. Consequently short assessment bill for an amount of Rs. 5,506.00 was issued to the appellant and the same was kept in dispute due to the objection from the appellant's side. However, the appellant remitted the bill for an average consumption of 280 units already assessed. Taking into

consideration of appellant's statement that he was rarely staying in the premises since 03/2010 the short assessment bill issued for Rs. 5,506.00 was cancelled by the Assistant Engineer, Electrical Section, Kaloor. Since the appellant remitted all the 37 bills without any objection, the request of refund cannot be entertained. Further, the appellant is liable for remitting the electricity charges and meter rent as per rules and regulations.

In order to evaluate the issue, it is essential to look into the relevant provisions contained in the Supply Code, 2005 existed at that time. As per Regulation 19 (2) of Supply Code, 2005, ***"If Licensee is unable to base a bill on meter reading due to its non-recording or malfunctioning, the Licensee shall issue a bill based on the previous six months average consumption. In such cases the meter shall be replaced within one month."*** Also as per Regulation 118 of the Supply Code, 2014, ***"(1) If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall be immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid future damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee."***

(2) The consumption during such period in which the supply was restored as per the above sub regulation, shall be computed based on the average consumption during the previous billing cycle.

(3) The bypassing shall be removed by replacement with a correct meter within the least possible time, at any rate within three working days for LT meters and within fifteen days for HT meters.

(4) If the meter is damaged due to the 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."

In this case, though the respondent has detected the meter as faulty from 4/2010 the same was replaced only on 25-05-2016 i.e., after a period of six years. Though the dispute originated in 4/2010 and continued till 5/2016, the respondent miserably failed to settle the issue as per the provisions of Supply Code, 2005 or Supply Code, 2014 which came in force with effect from 01-04-2014.

Further, according to 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. In the instant case, it is pertinent to note that the respondent has not followed the procedures prescribed above before charging the appellant as meter faulty.

Regulation 125 of Supply Code, 2014 speaks about the procedure for billing in the case of defective or damaged meter.” (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.**

Provided that the average shall be computed from the 3 billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available.

Provided further that any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average.

(2) Charges based on the average consumption as computed above shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter.”

In this case, records prove that the appellant raised complaint against the excess consumption from 2010 onwards but the respondent has not resorted to any effective measures to redress his grievance. Hence the appellant approached the CGRF and the Forum has ordered to revise the bills from 4/2010 based on average consumption of three billing cycles after replacement of faulty meter and excess amount to be refunded. Further, it is also directed to refund the meter rent collected from the appellant during the faulty meter period. The appellant challenged the decision of Forum to revise the bill from 04/2010 based on average consumption of three billing cycles after the replacement of faulty meter. As per Regulation 125(2) charges based on average consumption shall be levied only for a maximum period of 2 billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter. So, on an overall view of the facts and evidences produced by both sides this Authority is of the view that the above Regulation is applicable in this case and hence it is ordered accordingly.

Decision

Under the above mentioned circumstances it is held that the respondent is directed to issue revised bill based on the average consumption of 3 billing cycles immediately preceding the date of meter being found or reported defective as per Regulation 125(1) of Supply Code, 2014. However, the charging of appellant during the meter faulty period based on average consumption shall be limited for a maximum period of two billing cycles from 4/2010 as per Regulation 125(2) of Supply Code, 2014. It is made clear that the appellant is liable for making payment of fixed / minimum charges for the remaining period up to 5/2016 as per the applicable tariff in force. The excess amount collected from the appellant by way of energy charges and meter rent during the meter faulty period shall be refunded with interest as per Regulation 134 (3) of Supply Code, 2014. This shall be done at any rate within a period of 30 days from the date of receipt of this order.

The appeal is disposed of accordingly. The order of CGRF dated 30-09-2009 is modified to the extent as ordered above. No order as to costs.

ELECTRICITY OMBUDSMAN

P/073/2016/_____ /Dated:_____

Delivered to:

1. Sri. P. Viswanathan, 'Shivalaya' SFCERA 12, Mother Teresa Lane, Kathrikkadavu, Kaloore, Kochi 682017.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Palarivattom, Ernakulam

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.