

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/066/2016

(Present: V.V. Sathyarajan)

Dated: 09th January 2017

Appellant : Sri. K.A. Abraham
Managing Partner,
J & J Rubbers, Poovanthuruthu,
Kottayam

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Pallom,
Kottayam.

ORDER**Background of the case:**

The appellant is having an industrial service connection (LT-IV tariff) for manufacturing of Rubber Waste Powder with consumer No. 6787 under Electrical Section, Nattakom. While so on 09-05-2006, the APTS of KSEB Kottayam conducted an inspection in the premises and found that one phase of the 3 phase CT meter was not recording energy consumption due to the defect of CT connected in that phase. Accordingly, the appellant was served with a short assessment bill for Rs. 1,67,261.00 for the period from November 2005 to April 2006. The appellant lodged complaint before the Assessing Officer, the Assistant Engineer, against the said assessment on 31-01-2006. But the Assistant Engineer directed the appellant to remit 1/3rd of the assessed bill and to file appeal before the Deputy Chief Engineer, APTS, HQ, Thiruvananthapuram.

Aggrieved by the decision of the Assistant Engineer, the appellant filed WP(C) No. 15153/2006 before Hon'ble High Court. The Hon'ble High Court vide judgement dated 12-06-2006 directed CGRF, KSEB Ltd. to hear the complaint and dispose the same. The CGRF, Kottarakkara dismissed the complaint filed by the appellant as per order dated 14-07-2006. Aggrieved by the order of CGRF, Kottarakkara, the appellant filed WP(C) No. 23780/2006 before the Hon'ble High Court and the petition was disposed by the Hon'ble High Court vide judgement dated 16-08-2016. In the judgment dated

16-08-2016, the Court directed the appellant to approach this Authority for redressal of his grievances. Accordingly, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant:

1. The appellant is the Managing Director of M/s J. J. Rubbers, which is a partnership firm, engaged in the manufacturing of Rubber Waste Powder. The appellant is a Low Tension consumer of electricity under LT IV (Industrial) tariff under Electrical Section, Nattakom.

2. While so, on 09-05-2006, Regional unit of APTS Kottayam has conducted an inspection in the premises of the appellant and prepared a mahazar alleging that one phase of the meter was not recording the energy. Based on the aforesaid inspection the Assistant Engineer, Nattakom has issued a short assessment bill dated 11-05-2006 demanding an amount of Rs. 1,67,261.00. In the communication attached with the said demand notice it was mentioned that the additional bill is based on the 50% of the consumption recorded during the period of six months immediately preceding to the date of the inspection.

3. As the issuance of the aforesaid bill was without any basis and the appellant has submitted an objection before the respondent herein as contemplated under Regulation 24 of the Supply Code, 2005.

4. Later, the appellant received a communication from the respondent directing the appellant to approach the Deputy Chief Engineer, APTS Thiruvananthapuram by filing an appeal by remitting 1/3 of the demand. As it is not a case coming under Section 126 of the Electricity Act, 2003 and as such no appeal was maintainable as contemplated under Section 127 of the Act, 2003. Therefore the appellant has submitted a complaint as contemplated under Regulation 24 of the Supply Code before the CGRF Ernakulam under the bonafide belief that it is the appellate authority, which is having the territorial jurisdiction. Later, the CGRF Ernakulam has forwarded the said complaint to the CGRF Kottarakkara, as the territorial jurisdiction over Kottayam District was the said Forum.

5. Since there was a threat of disconnection of power supply to the appellant pending consideration of the above appeal, the appellant was constrained to file a Writ Petition (C) No. 15153/2006 before the Honourable Court. The above Writ Petition was disposed of vide judgment dated 12-06-2006 directing the appellate authority to pass appropriate orders on the said complaint within a period of six weeks from the date of receipt of copy of the judgment. The disconnection of power supply was also directed to be kept abeyance till the disposal of the appeal on condition that the appellant shall pay an amount of Rs. 40,000.00 without prejudice to his contentions within

three weeks. The appellant has already remitted Rs. 40,000.00 within the period stipulated the said judgment.

6. Thereafter, in compliance of the said judgment, the CGRF has conducted a hearing on 14-07-2006. However, without properly appreciating any of the contentions raised by the appellant CGRF was pleased to pass an order dismissing the appeal, and confirmed the invoice issued by the 3rd respondent.

7. Challenging the said order the appellant filed W.P(C) 23780/2006 before the Honourable High Court of Kerala. The Honourable High Court was pleased to admit the said writ petition and also passed an interim order on 01-09-2006 staying the disconnection of power supply on condition that the appellant deposits and amount of Rs 25,000.00. The said condition is also complied with by the appellant.

8. Now as per judgment dated 16-08-2016, the Honourable Court was pleased to dispose of the said writ petition by directing the appellant to approach this Honourable Forum for redressal of his grievances.

In the above circumstances, being aggrieved by the order dated 14-07-2006 in O.P. No 60/2006 passed by the CGRF, Kottarakkara the appellant is submitting this representation on the following among other:

- A. The CGRF failed to exercise its jurisdiction in a proper manner. The allegation that the meter was not recording the energy properly is incorrect and unsustainable. In the mahazar it is recorded that the meter has been displaying an error code "skt00030" along with then reading 11003.9 kWh. The Sub Engineer has checked the meter and recorded the reading twice during April 2006. During the above checking as well as the recording of readings every month from 02-11-2005 any error code display was not seen in the meter and any such defect was recorded in the premises card. Therefore it is clear that the error code has displayed in the meter only after the reading on 29-04-2006 was recorded. Therefore the CT has become defective on a day after 29-04-2006 but before the inspection date on 09-05-2006. The additional assessment for prior six months from 02-11-2005 is made on the basis of mere presumption without analyzing these facts and evidences. There is no convincing reason or statutory provision put forward to justify such assessment for a prior period. There is no allegation that the meter is tampered by the consumer. As such the non recording pointed out in the inspection report is due to inherent defect of CT.
- B. The findings therein are against the provisions of the Kerala Electricity Supply Code, 2005 as well. Electricity Act, 2003 does not contain any specific provision regarding the assessment of energy when there is an allegation of faulty meter. The only provision which deals with the above is Regulation 19(2) of the Kerala Electricity Supply Code which reads as

follows: “If the 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 previous 6 months' average consumption. In such cases, the meter shall be replaced within one month”. There are two aspects in the above provision. Firstly the only way open to licensee to issue a bill when the meter is faulty is to assess the charges on the basis of average consumption recorded during the past 6 months of inspection. Secondly, the said provision only provides for a prospective assessment and does not empower the licensee to reopen the assessment, which had already completed. In this case on the allegation that the meter was not recording the energy correctly the respondents have reassessed the charges for the previous 6 months period. It is respectfully submitted that merely because of the reason that the meter was found to be faulty at the time of inspection, it cannot be assumed that the meter was in the very same condition for the past 6 months. Therefore, in the absence of any statutory right available to the licensee it is not justifiable on their part to issue short assessment invoice with retrospective assessment.

- C. Similarly the assessment is also high exorbitant and is against the consumption pattern of the appellant. The only reason for the respondent to come to the conclusion that the meter was not recording the energy properly was that there was a reduction in the consumption from 8/2004 onwards. It is respectfully submitted that the consumption depends upon various factors and any reduction in consumption need not necessarily be on account of the default in the meter. During the period after 8/2004 the production in the factory of the appellant was very low and the same has resulted in low consumption of energy. Therefore, the reassessment of the invoices merely on the above ground is not at all justifiable. Therefore, at any rate, short assessment and the order upholding the same are liable to be set aside.
- D. Even though the appellant has highlighted serious errors made by the respondents in assessing the energy allegedly short assessed, none of the said grounds were considered by the CGRF in a proper manner.

5. Nature of the relief sought from the Ombudsman

To set aside order dated 14-07-2006 passed by the Honourable Consumer Grievance Redressal Forum, Kottarakkara

Arguments of the respondent:

M/s J & J Rubbers, Industrial Development Plot, Poovanthuruthu is an industrial consumer under LT IV tariff with a connected load of 75 kW under Electrical Section, KSEB Ltd, Nattakom. The Anti Power Theft Squad of KSEB Ltd, Kottayam unit conducted a surprise inspection in the premises of the appellant on 09-05-2006 and detected that one phase of the 3 phase CT meter

was not recording energy consumption due to the defect of CT connected in that phase. A detailed site mahazar was prepared during the course of inspection and was acknowledged by Sri Sunny T.P., Supervisor of the industrial unit.

It was established during the above inspection that one phase of the 3 phase CT meter had not been recording energy consumption due to the defect of C T connected to that phase. Hence only 2/3rd of actual energy consumption had been recorded by the meter and balance 1/3rd portion being unrecorded. KSEB Ltd has every right to realize the current charges for the unrecorded portion of energy, as per section 24(5) of Kerala Electricity Supply Code, 2005. On perusal of meter reading register of consumer No. 6787, it is found that there was considerable reduction in consumption from November 2005 till APTS inspection. Hence it is very clear that the current transformer had become defective during November 2005. Accordingly a short assessment bill amounting to Rs. 1,67,261.00 was issued to the appellant, being current charges for the unrecorded portion of energy for the period from November 2005 to April 2006.

The appellant had submitted an objection against the issuance of short assessment bill to the Assistant Engineer, Electrical Section, Nattakom on 31-05-2006. The short assessment bill issued to the appellant was as per rules and as directed by APTS. Aggrieved by the issuance of short assessment bill and not satisfied with the reply of Asst. Engineer, the consumer filed WP(C) No.15153/2006 before Hon'ble High Court. The Hon'ble High Court vide Judgement dated 12-06-2006 directed CGRF, KSEB Ltd. to hear the complaint and dispose the same. The consumer had remitted Rs. 40,000.00 at Electrical Section, Nattakom as per the Judgement, in order to avoid disconnection. The CGRF, Kottarakkara dismissed the complaint filed by Sri K A Abraham and justified the issuance of short assessment bill amounting to Rs. 1,67,261.00 as per order dated 14-07-2006. Aggrieved by the order of CGRF, Kottarakkara, the Appellant filed WP(C) No. 23780/2006 before the Hon'ble High Court and the petition was disposed by the Hon'ble High Court vide Judgement dated 16-08-2016.

With regard to the grounds raised in the petition, it is respectfully submitted that a surprise inspection had been conducted by the special inspection team of Electrical Circle, Kottayam on 26-04-2005 at the premises of appellant and detected that two phases of the three phase CT meter were not recording energy consumption due to the defect in the wiring of C T of that phase. Consequently a short assessment bill amounting to Rs.3,54,932.00 was issued to the appellant. The defect of the metering equipments was rectified on 05-05-2005 by replacing the broken pressure coil wires of two CTs. Subsequently both the electromechanical meters, viz. Power meter and light meter, were replaced with new static meters as part of replacing all electro mechanical meters. The consumer filed WP(C) No.15751/2005 before the Hon'ble High Court challenging the issuance of short assessment bill. The High

Court ordered the appellant to file appeal before Deputy Chief Engineer, Electrical Circle, Kottayam after remitting Rs. 1 Lakh. The Dy. Chief Engineer heard the appeal and disposed of it by ordering to revise the short assessment bill to Rs. 4,07,815.00.

Aggrieved by the order of Dy. Chief Engineer, the appellant filed WP(C) 27206 before the Hon'ble High Court. The Hon'ble High Court passed interim order of stay against disconnection, on condition that the appellant should pay Rs. 1 Lakh. The appellant paid Rs. 1 Lakh and the writ petition is still pending disposal. It can be seen that after replacement of meters, the average monthly consumption during the period from 6/2005 to 10/2005 is 22812 units. But the average monthly power consumption from 11/2005 to 4/2006 is only 15817units. It is humbly submitted that the decrease in the power consumption during the period from 11/2005 to 4/2006 without any change in the operating pattern in the industry is a conclusive evidence to prove that the decrease in consumption was occurred due to the defective CT in one of the phases of the 3 phase CT meter.

The defect of the CT detected during the inspection conducted by APTS on 09-05-2006 was rectified in 16-05-2006 by replacing all the three 100/5 CTs with 200/5 CTs. It is pertinent to note that the power consumption for the period from 16-05-2006 to 03-06-2006 is 12640 units (i.e. 18 days consumption) and hence the consumption for one month amounts to 21067units.

It is evident from the material facts that one of the CTs had become defective during 11/2005. Therefore KSEB Ltd is fully justified in the issuance of short assessment bill amounting to Rs. 1,67,261.00 towards current charges for the unrecorded portion of energy for the period from 11/2005 to 4/2006. Since there is convincing evidence to establish that KSEB Ltd. has under charged the consumer, KSEB Ltd. has every legal right to recover the amount under charged from the consumer by issuing a bill, as per Regulation 24(5) of Kerala Electricity Supply Code 2005. Hence the short assessment bill amounting to Rs. 1,67,281.00 issued to the appellant is as per rules are legal and the appellant is liable to pay the same.

Analysis and findings

The hearing of the case was conducted on 30-12-2016, in my chamber at Edappally. Advocate Ziyad Rehman, represented the appellant's side. Sri P.V. Pradeep, Assistant Engineer, Electrical Sub Division, Nattakom 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.

The pleadings and materials on record would show that on 09-05-2006 the APTS, Kottayam unit along with KSEB officials inspected the appellant's premises and detected that one phase of the three phase CT meter was not recording due to defect in the CT connected in that phase. Based on the findings a short assessment bill for Rs. 1,67,261.00 was issued to the appellant for the period from November 2005 to April 2006. The appellant's plea is that the findings of the respondent are against the provisions of Kerala Electricity Supply Code, 2005. Moreover, Electricity Act, 2003 does not contain any specific provision regarding the assessment of energy when there is allegation of faulty meter. The only provision which deals with the above is Regulation 19(2) of the Kerala Supply Code, 2005 which reads as follows. ***"If the 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 previous 6 months' average consumption. In such cases, the meter shall be replaced within one month"***.

On examining the connected documents regarding the case, meter reading statements, consumption pattern etc., it is seen that there is a decreasing trend of consumption from 08/2004 onwards and the meter was seen replaced after rectifying the CT wiring on 05-05-2005. Thereafter the CT was found faulty in the inspection conducted by the APTS on 09-05-2006 and it was rectified on 16-05-2006. The appellant contended that the drop in energy use was due to low production in the factory with corresponding reduction in energy use. The respondent computed the consumption for reassessing the unrecorded portion of energy from 02-11-2005 to 29-04-2006.

In the mahazar it is recorded that meter had been displaying an error code "skt00030" along with the then reading "11003.9 kWh". The Sub Engineer who takes the reading every month had not noticed any error code display in the meter even at the time of taking reading on 29-04-2006. It is pertinent to note that the error code display in the meter was only detected by the APTS during their inspection on 09-05-2006. If the Sub Engineer who is prudent in verifying the error code display in the meter this sort of issue could have been avoided. Therefore, the argument of the appellant that the CT became defective on a day after 29-04-2006 but before the inspection by the APTS on 09-05-2006 cannot be fully admitted.

Since the meter was not recording one phase due to technical fault the actual energy consumed by the appellant could not be assessed properly. On going through the consumption pattern after rectification of the defect there was an increase in consumption which justifies the arguments of the respondent that one phase was not working. As per Clause 42 of KSEB Terms & Conditions of Supply, 2005, when the meter is faulty, the consumer has to be assessed for the meter faulty period, based on the average consumption obtained for the succeeding six months period after the meter replacement, if the previous average is not dependable. Here in this case, the previous average is found as not dependable and hence decided to consider the other provision

that “succeeding six months period after the meter replacement”. From the meter readings furnished by the respondent, it is noticed that the average consumption has reduced considerably from the month of 3/2006 onwards. So, this Authority is of the opinion that the meter might have gone faulty from 3/2006 onwards and the back assessment shall be limited to March 2006 to 16-05-2006 i.e., the date of replacement of the CT on the basis of the average consumption of the succeeding six months after rectification of defective CT.

Decision

In view of the above observations, it is hereby ordered that the short assessment bill issued stands cancelled. However, it is made clear that the respondent is directed to reassess the appellant for the period from March 2006 to 16-05-2006 on the basis of the average consumption of the succeeding six months after rectification of defective CT. The appeal is disposed of accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/066/2016/_____ /Dated:_____

Delivered to:

1. Sri. K.A. Abraham, Managing Partner, J & J Rubbers, Poovanthuruthu, Kottayam
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Pallom, Kottayam

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.