

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/016/2017
(Present: V.V. Sathyarajan)
Dated: 30th March 2017

Appellant : Sri. Muhammed Rafeeque M.A.
Mampilly House,
Mudickal P.O.,
Perumbavoor,
Ernakulam

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

ORDER

Background of the case:

The appellant, Sri Muhammed Rafeeque M.A., is an industrial consumer with consumer No. 12042 having connected load of 47 kW under Electrical Section, Vazhakulam. On 16-03-2016, the APTS of KSEB conducted a surprise inspection in the above premises and found that voltage of R phase (out of 3 phases) was missing in the energy meter due to fault in the connection to the meter. When one phase voltage being not sensed by the energy meter, the energy recorded would be only 2/3rd of the actual consumption. Hence the appellant was served with a short assessment bill for an amount of Rs. 2,92,664.00 on 19-03-2016. In order to recover the charges for the unrecorded portion of energy, the assessment was made for the period of seven months, when the meter was found recording less than the actual consumption.

The appellant lodged complaint before the Assessing officer, the Assistant Engineer, against the said assessment, on 26-05-2016 which was disposed of with a direction to remit the assessed amount before 05-09-2016. Being not satisfied with the decision of the Assistant Engineer, the appellant approached the CGRF, Central Region, Ernakulam, with Petition No. OP 66/2016-17 and the Forum also dismissed the petition vide its order dated 31-12-2016. Feeling

aggrieved against the decision of the Forum, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant:

The appellant is an LT IV A consumer with a connected load of 47 kW bearing consumer No. 12042 under the Electrical Section, Vazhakulam and is a manufacturer of plywood products. The complaint before the CGRF was submitted being aggrieved by the illegal demand of short assessment issued to the appellant. The APTS had conducted an inspection in the appellant's premises on 16-03-2016 and had alleged that one phase was not recorded in the meter. A scene mahazar was prepared. The meter was found working and the security seals were intact. It is submitted that no tampering or theft had been detected by the Squad. On 19-03-2016 the Assistant Engineer issued a demand notice with a calculation statement, demanding a sum of Rs. 2,92,664.00 computed as being the charges for the electricity allegedly not recorded from September 2015 onwards. The appellant requested to the Assistant Engineer for the details which the respondent had down loaded from the meter, and a calibration certificate for the test meter (ACCUCHECK) of the respondent. The Assistant Engineer provided the downloaded printouts but failed to provide the calibration certificate of the test meter. The appellant had raised an objection to the assessment bill on various grounds.

Based on the complaint, the Assistant Engineer conducted a hearing on 28-07-2016 and the appellant had filed a written statement. The Assistant Engineer disposed the objection confirming the provisional assessment bill. The respondent had submitted a statement of facts dated 04-10-2016, before the CGRF. The appellant has submitted an argument note dated 12-10-2016. The appellant has also filed a reply.

The appellant has also adduced the following arguments in his appeal petition.

1. For that the CGRF has not examined the facts, the legal grounds raised and have not considered the documents produced by the appellant.
2. For that the CGRF has not relied on relevant matters and has relied on irrelevant matter to arrive at the conclusions o the impugned order.
3. For that the CGRF has not applied its mind. The order passed by the CGRF is a non speaking order.
4. For that the licensee sends an authorised employee, who is a Sub Engineer in the appellant's case, to take meter reading for billing purpose every month. The Sub Engineer has not reported any kind of defects like reversal or absence of voltage/current. Hence the contention that the irregularity was existed for an extended period is baseless. The electronic

meter records and displays reading/current/voltage and other parameters. The Officials ought to have noticed defect, if any. No such defect having been notice, the presumption is that the meter was working properly.

5. For that the test certificate of the check meter was not provided to the complaint, which leads to a doubt regarding the accuracy of the test meter. The licensee is bound to produce the test certificate of Accucheck meter used during the inspection. As the pattern of down loaded data, when seen along with the reading by Accucheck meter, indicates an error in Accucheck meter rather that the 4 meters installed in the appellant's premises (which are the subject matter of separate proceedings).
6. For that under Regulation 134 of the Supply Code, 2014 the licensee has to establish that they have undercharged the Appellant. The data down loaded does not establish the case of the KSEB Ltd.
7. The event name in the downloaded data does not show any consistent pattern which would lead to the conclusion that voltage in 'R' phase was missing as alleged by the respondent.
8. The kWh reading for periods prior to September 2015 and subsequent period show no appreciable difference. Therefore the allegation that 1/3rd of consumption was missing is clearly erroneous.
9. For that as per Regulation 109(20) of Supply Code, 2014 it is the duty of the licensee to maintain the meter and to keep it in good working condition at all times. The licensee cannot be permitted to benefit from their own wrong. This is a well established legal principle.
10. For that the appellant cannot be punished without doing anything wrong. The appellant has not conducted any theft or has not done any tampering in the meter.
11. For that the licensee is misusing its monopoly position to harass and threaten the appellant into meeting illegal demand.
12. For that the licensee cannot make any unlawful gain at the expense of the appellant.
13. For that the respondent cannot act in contravention of the license granted by the Regulatory Commission, the provisions of the Electricity Act 2003, the Code or specific orders of the KSERC. In this case the licensee is in gross violation of Kerala State Electricity Regulatory Commission orders.

14. For that the respondent being a body under the State cannot act illegally or unfairly, and attempt to make illegal gain from out of its own mistake.
15. For the above and the other grounds to be urged at the hearing of the case, the Ombudsman may be pleased to grant the appellant the following reliefs:

Nature of relief sought for:

Setting aside the impugned order of the CGRF and holding that:

1. To quash demand dated 06-08-2016 and the order dated 31-12-2016 of CGRF
2. To pass such other appropriate orders or directions that this Forum may deem fit and proper to grant on the facts and in the circumstances of the case and in the interest of justice.
3. To grant costs of these proceedings to the appellant. The Ombudsman may be pleased to impose a stay on the short assessment bill and also stay the order of the CGRF pending the disposal of this Representation.

Arguments of the respondent:

A surprise inspection was conducted in the appellant's premises on 16-03-2016, jointly by the Section authorities and the APTS, Ernakulam unit. It was found that voltage of the 'R' phase was missing in the energy meter due to fault in the connection from that particular line to the meter. So as per the electrical engineering principle of 3 phase power measurement (3 Watt meter method), when one phase voltage is being not sensed by the energy meter the energy recorded would be only the 2/3rd of the actual consumption. Hence to realise the lost revenue, due 'to the wrong recording, a short assessment bill amounting Rs. 2,92,664.00 was issued to the appellant, as per the provisions in Section 134 of the Supply Code, 2014. The appellant raised an objection for this and the Assistant Engineer, Electrical Section, Vazhakulam and after conducting a hearing and verifying all records dismissed the objections vide proceedings dated 06-08-2016 and demanded the appellant to remit the amount.

Aggrieved by this the appellant has approached the Hon'ble CGRF vide complaint 66/2016-17. The CGRF vide its order dated 31-12-2016 dismissed the complaint in favour of the respondent. In the meantime the appellant has remitted the amount. Regarding the averments in the appeal it may be noted that appellant was not charged for any tampering or theft. In the inspection it was established that the voltage of 'R' phase was not reaching the energy meter due to the failure in connection and hence the energy used in this phase was missing from the energy recorded in the meter. Regulation 134(1) of Supply Code, 2014 states that "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 it was established that the appellant was undercharged, the next step was to decide for what period KSEB can recover the short collected amount. For that the Supply Code, 2014 Regulation 152 describes that

(1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months. To assess the duration of voltage missing in R phase, KSEB has downloaded the meter data using the Accucheck meter. From the downloaded data it is clear that the R phase voltage missing is continuing from September 2015. Regarding the test certificate of Accucheck meter, it is true that the Assistant Engineer could give only the downloaded data, but the recent test certificate of the Accucheck meter, as it was not available with the APTS unit.

But it has not much relevance in this case. Accucheck meter is used here to assess the duration of short billing only and not to check the accuracy of the energy meter. If the consumer is challenging the reliability of the Accucheck meter in assessing the period of short fall, the only option is to fix the duration as per the provisions in the Supply Code. As per Regulation 152(3) of Supply Code, 2014, "if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months".

Instead Kerala State Electricity Board Ltd has issued this short assessment bill for only seven months (from September 2015 to March 2016). The consumption pattern before & after the inspection on 16-03-2016 is self explanatory that the recorded consumption has increased almost by 50% of the previous consumptions.

Month	Consumption	Remarks
09/2015	11080	
10/2015	14360	
11/2015	11000	
12/2015	13640	
01/2016	16800	
02/2016	15080	
03/2016	17480	Inspectionon16-03-16
04/2016	30840	
05/2016	30360	

It is clearly established from the above that the consumer was undercharged due to the R phase voltage missing in the energy meter. The claim of the appellant, that the licensee was benefited from their own wrong is not correct. The licensee has not got any additional benefit here. The demand made was the cost of the energy actually sold to the appellant. No penalisation was done and the amount demanded was without interest also.

Analysis and findings:

The hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 07-03-2017. The learned Advocate Sri Ziyad Rehman, has appeared for the appellant and Sri. Bijumon M.A., Assistant Executive Engineer, Electrical Sub Division, Perumbavoor, represented the opposite side. Both sides have presented their arguments on the lines stated above. On examining the Petition of the appellant, the statement of facts filed by the respondent, the arguments made 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.

On a detailed evaluation of the pleadings and the documents produced by both sides it can be found that an inspection was conducted in the appellant's premises on 19-03-2016. A site mahazar is seen prepared detailing the irregularity detected at the time of inspection including the non-recording of voltage of 'R' phase in the energy meter. Apart from that the respondent had issued a short assessment bill for an amount of Rs. 2,92,664.00 towards the charges for the unrecorded portion of energy. The respondent made reference to Regulation 134(1) of Supply Code, 2014 provides that ***"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 and in such cases at least thirty days shall be given to the consumer for making payment of the bill."*** So the respondent contented that the appellant is liable for making payment of the short assessment bill as per the above Regulation.

Refuting the above contentions the appellant argued that the data downloaded from the meter does not establish the meter was faulty from September 2015 onwards. Moreover, the respondent failed to provide the calibration certificate of the test meter (Accucheck). Hence the appellant challenged the validity of that data which shows intermittent variations in the parameters is given as proof to the claim of the respondent to charge such a huge amount. It is pertinent to note that the appellant has never cared to raise any dispute with regard to the procedure for testing of meter as per Regulation 115(8) of Supply Code, 2014. So, there is no vehemence in the arguments on insisting the test certificate of test meter (Accucheck) at this time.

In 3 phase energy meter, when one phase voltage is not sensed, the energy recorded would be only 2/3rd of the actual consumption. So the contention urged by the respondent is that being a licensee they are entitled to recover the short collected amount from a consumer and reference is made to Regulation 152 which reads as under.

Regulation 152 deals with *Anomalies attributable to the licensee which are detected at the premises of the consumer.*

(1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or Section 135 of the Act.

(2) In such cases the amount of electricity charges short collected by the licensee if any shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies are detected may be realized by the licensee without any interest.

Provided that if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of such short collection of electricity charges shall be limited to 12 months.

Here in this case, the non recording of one phase of the energy meter in the appellant's premises was detected by the respondent during the inspection conducted on 16-03-2016 but the appellant was charged only for 7 months instead of 12 months as per the above Regulation. The actual consumption recorded in the meter itself was taken for assessing the unrecorded portion of energy. The increase in consumption recorded after the rectification of defects clearly indicates and justifies the respondent's claim that the appellant was

undercharged for the period from 09/2015 onwards. So, a probable conclusion can be arrived at in this case is that the voltage of 'R' phase was missing from September 2015 onwards as per the downloaded data. Under the above circumstances the short assessment issued by the respondent is found in order.

Decision

In view of the above factual and legal position, I don't find any reason to interfere with the short assessment bill dated 19-03-2016 issued for Rs. 2,92,664.00. Hence the appeal is dismissed. The order of CGRF in OP No. CGRF-CR/Comp.66/2016-17 dated 31-12-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/016/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Muhammed Rafeeqe M.A., Mampilly House, Mudickal P.O., Perumbavoor, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Perumbavoor, Ernakulam

Copy to:

3. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
4. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
5. The Chairperson, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.