

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/049/2017
(Present: A.S. Dasappan)
Dated: 28th July 2017

Appellant : Sri. Muhammed Farook
River View, Thottinkara,
Karichara, Pallipuram P.O.,
Thiruvananthapuram

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Kadakkal,
Kollam.

ORDER

Background of the case:

The appellant, Con.No.25667 is a consumer under Electrical Section, Kadakkal. It is a single phase service connection with registered connected load of 2800 watts and the assigned tariff is LT VII A. On 04-11-2016, KSEBL served a demand notice for Rs.23690/- towards the recovery of revenue loss due to meter not functioning correctly for the period from 05/2014 to 01/2015, based on an Audit report of the Internal Audit Wing of the licensee. Aggrieved by the bill, the consumer preferred a petition before the CGRF, Kottarakkara which was partly allowed by quashing the impugned bill dated 4/11/2016 for Rs.23690/- and directing the respondent to revise the bill for the meter faulty period of two billing cycles from 12/2014 to 01/2015 based on the average consumption of succeeding three billing cycles after the meter replacement vide Order OP No. 313/2016 dated 14-03-2017. Being aggrieved by the said order, the appellant has submitted this Appeal Petition before this Authority on 27/04/2017.

Arguments of the appellant:

The appellant has been imposed an additional bill for the amount of Rs. 23690/-. But the appellant had not consumed the electricity to this extent in the previous period before providing the new meter. So, the appellant approached to the Chairperson, CGRF, Kottarakkara with a request to exempt him from remitting the excess amount imposed. But the bill amount was only reduced from Rs. 23690/- to Rs. 17266/-. This action was taken

by the Electricity Board, (CGRF, Kottarakkara) without hearing his part. Neither the appellant had got any letter or telephone call from that office for the hearing even though he had given his telephone number to intimate the date of hearing.

So, the appellant had submitted a further request to the Chairperson, CGRF on 28-03-2017 requesting to give him a chance to explain his grievances and to give an exemption from remitting the bill. Instead of exemption an order was issued by the Chairperson, CGRF. In this order, the Forum says that further appeal may be submitted before the Electricity Ombudsman.

So, the appellant requests to be kind enough to issue orders exempting from remitting the excess amount imposed upon because he is not at all responsible for the delay to replace the faulty meter.

Arguments of the respondent:

During the inspection of the Regional Audit team of the licensee in the Electrical Section, Kadakkal, it was reported that the consumption pattern of the consumer was declining from 09/2012 onwards and ceased the working of the meter from 05/2014 to 01/2015 and an average of 2 units was taken for billing during that period. Subsequently the meter was changed on 20/02/2015. The reading pattern after the meter change was as follows:

05/2015 - 1164 units
07/2015 - 1011 units
09/2015 - 773 units

From the same it is clear that the consumer was under charged from 09/2012 onwards. As the previous reading was not available, average consumption of the succeeding three months after changing the meter was taken (05/15 - 1164 units, 07/15-1011 units, 09/15-773 units, average--983 units) and a short assessment bill for Rs.23690/- was issued for the previous three billing cycles as per Regulation 125 (1) of the Supply code 2014. Though the consumption was for the period of 09/2012 onwards, short assessment bill was issued only for three billing cycles before changing the meter. Hence maximum justice was given to the consumer .

Aggrieved by the short assessment, the consumer had approached the Hon'ble CGRF (South) vide petition OP No.313/2016. The forum after conducting hearing issued its order on 14.03.2017, directing to quash the impugned bill dtd. 4/11/2016 and directed to issue a revised bill for the meter faulty period of two billing cycles from 12/2014 to 01/2015 based on the average consumption of the succeeding three billing cycles after the meter replacement.

Accordingly the short assessment bill was revised to Rs.17266/-. Being aggrieved by the same, the consumer has filed this appeal petition before

this forum. Regulation 134 (1) of the Supply code 2014 permits the licensee to recover the undercharged amount from the consumer. The internal audit wing of the licensee, in its audit, it was reported that the consumer was undercharged and based on the same the short assessment bill was issued. The appellant hadn't produced any evidences for establishing the reason for the considerable reduction in the consumption.

Considering the above the Hon'ble State Electricity Ombudsman may be pleased to dismiss this appeal as it is totally against facts and rules and to direct the appellant to approach the Appellate Authority, as it is the statutory authority constituted under section 127 of the Act 2003 to file appeal against the assessment made under section 126 of the Act.

Analysis and Findings:

Hearing of the case was conducted on 11/07/2017 in the Court Hall of CGRF, Kottarakkara. Sri Muhammed Ansar represented the appellant. Sri. Shibu R, Assistant Executive Engineer, Electrical Sub Division, Kadakkal appeared for the respondent.

On examining the Petition and argument notes 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 final decisions thereof.

The contention of the appellant is that he had not consumed the energy as billed in the short assessment bill. Further he contended that he was imposed excess amount due to the delay to replace the faulty meter. The finding of the Assessing Officer that the meter was faulty during the period from 09/2012 to 01/2015 after a period of 29 months is only an imagination and hence the short assessment bill is not sustainable. On the other hand the respondent argued that the consumption pattern confirmed that the meter became faulty during September 2012 itself. So, average energy consumption was arrived as per Regulation 125(1) of the Kerala Electricity Supply Code, 2014 and issued demand as contemplated in Regulation 125(3) of Supply Code, 2014. Further, the appellant could not produce any evidence to show that there was variation in the consumption pattern in their premises.

The point to be decided in this case is as to whether the issuance of revised short assessment bill for Rs. 17266/- to the appellant after reassessing on the basis of average consumption of 983 units per bimonthly is in order or not?

On going through the records it can be seen that the respondent had issued bimonthly bills based on the recorded consumption and the appellant remitted the same without any fail. It is to be noted that the respondent has detected that the meter was faulty for the period from 05/2014 to 01/2015 and a lesser consumption was recorded during that

period. It is pertinent to note that even without conducting any inspection or checking the appellant's meter, the respondent declared the meter as suspected faulty for the previous period due to the reduction in consumption.

Regulation 125 of Supply Code, 2014 stipulates the procedure for billing in the case of defective or damaged meter. *"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".

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. *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".* Here in this case, the respondent declared the meter as faulty that too even without conducting any testing. There is no justification for issuing such a demand for a previous period from 05/2014 to 01/2015 as there is no allegation of any willful misuse by the appellant.

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, 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 succeeding months' consumption which was made after a lapse of 30 months. The respondent's contention is that the meter showed decrease in consumption which might have been a result of meter becoming faulty. It is found that the appellant was billed for the recorded consumption for the months in dispute and the appellant remitted the amount. Hence the argument of sluggishness from 09/2012 onwards cannot be proved conclusively without conducting testing of the meter. 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 declaring the meter as faulty. There is patent illegality in issuing the short assessment bill to the appellant. Without complying with the statutory formalities, the assessment now made in this case is not sustainable before law and liable to be quashed.

In this case, the respondent assumed that the meter is sluggish from 09/2012 and it was replaced only on 20-02-2015 without conducting testing of the alleged faulty meter in an accredited lab. According to the respondent the monthly consumption shows enormous decrease from 07/2013 onwards. 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 succeeding the date of meter being found or reported defective. If there is an omission or error on the part of respondent, it has to be set right in time with a notice to the appellant giving him an opportunity for being heard. The appellant is bound to pay the electricity charges for his actual consumption.

Here in this case, the respondent argued that the appellant failed to produce any evidence to show that there was variation in their consumption pattern. But the appellant has argued that during the period from 06/2013 to 02/2015, the building was not given to the college students for monthly rent, as alleged by the respondent. The building was rented out to a doctor during this period. It is pertinent to note that during the period from 07/07/2013 to 04/03/2014, the consumption was 1 to 6 units bimonthly and the status of meter shown 'working'. There is no material to show that the respondent has conducted any detailed checking of the appellant's meter. In this background, the issuance of short assessment bill on the appellant merely on the basis of presumption and succeeding consumption pattern cannot be justified before law and liable to be quashed. But at the same time, the appellant has not denied the occupation of the premises during the period in dispute. On going through the consumption details from 06-03-2012 onwards, it is found that the consumption of the appellant varies considerably. Though the appellant has not given any evidence about the conditions of working and occupancy of concerned premises during the said period, the argument of the respondent regarding the sluggishness of the meter from 09/2012 onwards is not established conclusively. Hence the previous consumption of three billing cycles of the appellant for the period from 5/11/12 to 5/5/2013 shall be taken for computation of the average consumption for billing from 04/03/14 to 03/07/2014.

The appellant has also requested to change his tariff from commercial to domestic. It is prima facie revealed that the appellant is providing lodging facilities to students on monthly basis. From the records and the arguments submitted by the appellant it is evident that the appellant is letting out 18 rooms for accommodating students. So in this factual position the only tariff applicable to the appellant's connection is commercial (LT VII A) because the activity is of commercial nature which comes under the Schedule of Tariff and Terms and Conditions for Retail Supply issued by the Commission. Hence the request of the appellant for tariff change is rejected.

Decision

From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

1. The order dated 14-03-2017 issued by the CGRF, Kottarakkara, in Op No. 313/2016 is set aside.
2. The revised short assessment bill for Rs.17266/- is quashed. The respondent is directed to reassess the bill based on the average consumption of 239 units for billing from 04/03/14 to 03/07/2014.
3. The respondent is directed to revise the bill as decided above and shall issue to the consumer with thirty days time (due date) given for making the payment.
4. The request of the appellant for tariff change from LT VIIA to LT 1 A is rejected.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/045/2017/ _____ /Dated: _____

Delivered to:

- 1 Sri Muhammed Farook, Rear View, Thittankara, Karichira, Pallipuram P.O., Thiruvananthapuram
- 2 The Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kadakkal, Kollam

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.