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APPEAL PETITION No. P/86/2017  
(Present: A.S. Dasappan)  
Dated: 07<sup>th</sup> November 2017

Appellant : Sri. Abdul Sathar Sait,  
Mukkukavala, Peringala,  
Kayamkulam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd, Kayamkulam,  
Alappuzha.

### **ORDER**

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

The appellant is having an electric connection with Consumer No. 9013 of Electrical Section, Kayamkulam East for running his wholesale hardware shop named HHYS Infra Mart under LT VII A commercial tariff. While so, on 07-07-2016, the APTS of KSEBL conducted an inspection in the premises and found that the energy used in one phase (out of 3 phases) was not recording in the meter. Accordingly, the party was served with a short assessment bill, assessing for 831 days, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 7,50,688/-. The consumer filed objection before the Assessing officer, the Asst. Engineer, against the said assessment. The appellant approached the Hon'ble High Court filing W.P. (C) No. 26548/2016 and the Hon'ble High Court directed the respondent to consider the reply filed by the appellant and pass appropriate order after hearing the appellant. Being not satisfied with the decision of the Assistant Engineer, the consumer approached the CGRF, Central, Ernakulam, with Petition No. 138/2016-17 and the Forum disposed of the petition with a direction to revise the short assessment by limiting the period of assessment as 24 months vide its order dated 9<sup>th</sup> May 2017. Aggrieved by the decision, the appellant has submitted the Appeal petition before this Forum.

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

1. Appellant is a consumer of the Kerala State Electricity Board having Consumer NO.1155312009013 of Kayamkulam East Model Electrical Section.

Appellant is running a wholesale hardware shop namely HHYS Infra Mart in the said building, who promptly paying the electricity bills.

2. On 07-07-2016 the Sub Engineer, Anti Power Theft Squad, KSEB, Alappuzha along with a squad inspected the appellant's premises where Consumer NO.1155312009013 electricity connection is installed, and noted that 'R' phase of the energy meter installed in the above consumer number is not recording electric supply through the meter. The squad opened the seal with the permission of this appellant's representative and downloaded the report using a digital meter reading instrument. The details of the electrical equipments which are using electric supply through the meter were also recorded. It was allegedly found that due to the fault in the 'R' phase of the meter, loss has occurred to the board and a mahazar was prepared.

3. It is noted in the mahazar itself that the above alleged loss occurred due to defectiveness of 'R' phase of the meter. The respondent issued notice numbered as AE-KYLME/APTS/2016-17 dated 12-07-2016 under Regulation 134(1) of the Kerala Electricity Supply Code, 2014. The demand made in the notice is an amount of Rs.7,50,688/-.

4. The demand was made by the respondent stating that when the data recorded in the meter was downloaded using digital meter reading instrument and on analyzing the downloaded data, it was noted that 'R' phase of the meter had not recorded the current through the meter for the last 831 days. The above amount was arrived by a short assessment of consumption of electricity as 74328 units during the 831 days. Further, an assessment bill was issued on 13-07-2016.

5. The appellant filed a reply to the notice on 04-08-2016.

6. Apprehending disconnection of the service, the appellant approached the Hon'ble High Court filing W.P. (C) No. 26548/2016. After hearing the arguments raised by the appellant the Hon'ble High Court stayed the coercive steps initiated against the appellant and directed the respondent to consider the reply filed by the appellant and pass appropriate order after hearing the appellant. The respondent issued a notice to the appellant on 07-09-2016 inviting the appellant for hearing on 20-09-2016.

7. The appellant made detailed submissions before the respondent seeking withdrawal of the assessment order issued to the appellant as per Regulation 134(1) of the Kerala Electricity Supply Code, 2014 dated 12-07-2016. However, appellant received an order on 04-02-2017 which was dated 03-02-2017 in which the respondent upheld the short assessment bill of Rs. 7,50,688/- and directed the appellant to remit the said amount within 15 days.

8. Being aggrieved by the order dated 03-02-2017, the appellant filed an appeal before the Consumer Grievance Redressal Forum, Central Region formed under Section 42(5) of the Electricity Act, 2003. The appellant out of caution pre-deposited an amount of Rs. 3,75,344/-, out of Rs. 7,50,688/-, without prejudice to his contentions in the appeal. The appellant also filed a detailed argument note on behalf of the appellant. A hearing was held before the Forum on 25-03-2017 and on 11-04-2017 wherein the Counsel for the appellant made detailed oral submission tendered copies of Judgments of the Hon'ble High Court of Kerala.

9. However, on 16-06-2017 the appellant received an order dated 09-05-2017 bearing No. CGRF-CR/Comp.138/2016-17/73 of CGRF, Central Region upholding the assessment bill while limiting the assessment to 24 months (hereinafter referred to as the "impugned order"). The Forum did not consider or appreciate the contentions of the appellant. As per the direction in the order dated 09-05-2017, the respondent issued a an order dated 05-07-2017 bearing No.BB/ES/KYLME/2017-2018 along with a revised bill and calculation details, for an amount of Rs. 6,62,965/- (Rupees Six Lakhs Sixty Two Thousand Nine Hundred and Sixty Five). Being aggrieved by the orders dated 09-05-2017 of the CGRF, Central Region and the order dated 05-07-2017 issued by the respondent, the appellant prefers this appeal on the following among other:

A. The impugned order and the consequent order dated 05-07-2017 issued by the respondent are illegal, arbitrary, unsustainable and liable to be set aside. The Forum has not even dealt with all the arguments of the appellant. The Forum has merely recorded some of the submissions of the appellant without giving any finding on them.

B. The Forum erred in holding that the appellant had not complained about the missing phase. The Forum erred in holding this against the appellant without appreciating the fact that the appellant could never have discovered the defect/damage in the "R" phase. The appellant does not have the expertise to verify proper functioning of the meter, nor is he supposed to meddle with the meter. In fact, in a subsequent paragraph of the impugned order, the Forum holds that the person who takes the monthly reading is duty bound to observe and report error if any in the meter at the appropriate time and that his failure to notice the same amounts to a serious lapse on the part of the licensee. Despite such an observation against the licensee, the blame was sought to be shifted to the appellant by holding that he failed to complain about the missing phase. The appellant learned about the missing phase only on 07-07-2016 when the licensee discovered the same.

C. The Forum erred in holding that non-functioning of one CT does not mean that the meter is defective in any way. The Forum failed to appreciate that the terms "defective" and "damaged" used in Regulation 125 of the Kerala Electricity Supply Code, 2014 is broad and will also issue of non-functioning of

the "R" phase in the meter. The Black's Law Dictionary defines "defective" as follows:- "Lacking in some particular which is essential to the completeness" The Oxford Dictionary defines "damage" as follows: "Physical harm that impairs the value, usefulness, or normal function of something." Clearly the non-functioning of the 'R' phase is a defect or damage to the meter, which impaired its normal functioning.

D. The Forum failed to appreciate that the respondent does not have a case that the appellant tampered with the meter. It is specifically mentioned in the mahazar that the appellant has not tampered with the meter. The respondent does not have a case that the defect in the meter arose on account of any act, neglect or default on the part of the Appellant. Neither does the respondent have a case that the appellant has committed theft of electricity. Therefore what was detected during the inspection on 07-07-2016 was a defect in the meter that has not in any manner been attributed to any fault on the part of the appellant.

E. The Forum failed to appreciate that the contention of the respondent that the present case is not one of defective or faulty meter and therefore Regulation 125 of the Kerala Electricity Supply Code, 2014 cannot be applied, is unsustainable. The Code of 2014 only contemplates cases where meters are damaged/faulty and cases where meters have been tampered with by the consumer. In the present case since there is no allegation of tampering or theft, it has to be categorized as a case of damaged/faulty meter. Admittedly the damage/fault is not attributable to the appellant. Hence the procedure prescribed in Regulation 125 alone can be adopted to calculate the unrecorded consumption during the defective period.

F. The Forum failed to appreciate that instead, the assessment order has been issued under Regulation 134(1) of the Kerala Electricity Supply Code, 2014. The assessment that the meter has been defective since 831 days prior to the inspection and that during this 831 days Appellant consumed an additional 74238 units, is without any basis whatsoever. The methodology adopted to arrive at the assessment is in violation of the procedures contemplated by law. The Respondent has arrived at such a conclusion on the basis that 1/3 of the consumption has not been recorded on account of the defect in the meter. On that basis the figure of 74328 units has been arrived at by a consumption based on the total units consumed between 26-03-2014 and 07-07-2016.

G. The Forum failed to appreciate that as per Clause 50(5) of the K.S.E.B. Terms and Conditions of Supply, 2005, even in cases where the assessing officer has reached a conclusion that unauthorized use of electricity has taken place, it shall presume that such unauthorized use of was continuing for a period of six months immediately preceding the date of inspection, unless the onus is rebutted by the person/occupier or possessor of such premises or

place. Therefore when even in a case where there is allegation of unauthorized use, a maximum only of six months preceding the date of inspection can be considered for assessment. In the Forum has erred in permitting assessment for a period of two years.

H. The Forum failed to appreciate that the computation adopted by the respondent does not take into consideration the actual consumption before the defect arose or after the defect was cured. It is for this reason that this mechanism of computation has been held to be erroneous by the Hon'ble High Court in the Judgment dated 11-04-2013 of the Division Bench in Writ Appeal No. 99 of 2013. That was a case where 2 out of 3 phases were found to be not working and there was no allegation of tampering or theft. In that case, the assessment that was done for a period of 6 months on a presumption that the meter was faulty for a period of 6 months was rejected by the appellate authority by considering the actual consumption pattern. The 6 month period was reduced to 3 months on the basis of the consumption pattern. The order passed by the appellate authority was challenged before the Hon'ble High Court. The learned Single Judge rejected the assessment done on the basis of a calculation similar to the one done in this case. In that case the calculation was done by multiplying the units recorded by during the defective period by two, since only one out of the three phases were found to be working. The learned single Judge rejected the calculation and reduced the units for the defective period by considering past consumption pattern. In appeal, the Hon'ble Division Bench upheld the finding of the learned single Judge had held that, "The consumer cannot be penalized for the failure on the part of the Board to keep the meter functional and without fault. So long as the consumer had not done anything to commit theft of electrical energy or to make a meter dysfunctional, normally, he cannot be penalized demanding a very huge amount from him.' The Forum failed to appreciate that the issue involved in the present case is squarely covered by the said Judgment of the Hon'ble High Court, though a copy of the said Judgment was tendered during the hearing held before the Forum.

I. A Division Bench of the Hon'ble High Court by its Judgment dated 13.02.2014 in Writ Appeal 114 of 2013 has held that Regulation 24(5) of the Kerala Electricity Supply Code, 2005 cannot be applied to cases like the present one since that provision pertains only to cases where the licensee has undercharged the consumer i.e. where the meter has recorded the actual consumption, but the licensee has not realized its charges accurately. Regulation 24(5) of the Code of 2005 is *pari materia* to Regulation 134 (i) of the Code of 2014, which has been invoked in the present case. The present case is not one where the consumer has been undercharged despite the meter recording the correct reading, but this is a case where the meter has not recorded correct reading on account of the defect. Hence going by the dictum of the said Judgment, the Respondent cannot rely upon Regulation 134(1) of the Code of 2014 for the purpose of assessment in the present case.

J. As per Regulations 34, 113 and 116 of the Kerala Electricity Supply Code, 2014 the board shall provide the meter to the consumer and also conduct the periodical inspection or testing and calibration of the meter, as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006. The Appellant is not an authority to test the calibration of the meter. The finding that the 'R' phase of the meter is not functioning for last 831 days is absolutely wrong. The officials of the board were conducting periodical testing and inspection on the meter and have not found any default in any of the phases in the meter. The Forum has correctly found lapse on the part of the licensee in this regard. However, the Forum erred in shifting the blame to the appellant by holding that he did not complain about the missing phase.

K. The procedure regarding reading of the meter is stipulated in Regulation 110 of the Kerala Electricity Supply Code, 2014. It is specifically provided that in case for any reason, the meter is not read during a billing cycle the licensee shall prepare a provisional bill based on the average consumption of previous three billing cycles when readings were taken. The procedure contemplated under Section 110 has to be adopted for preparing a provisional bill itself.

L. The department has not issued any notice under Regulation 66(4) of the Kerala Electricity Supply Code, 2014 and therefore the department has to follow the provisions provided in Regulation 125 and Regulation 110(11) of the Kerala Electricity Supply Code, 2014.

M. The billing for the failure period of the meter shall be done as per the procedure laid down by the commission as per Regulation 15(l)(d) of the Central Electricity Authority (installation and operation of meters) Regulations 2006. The Electricity Supply Code, 2014 is the regulation issued by the Kerala State Electricity Regulatory Commission in exercising of the powers conferred by the Section 50 and Section 181 of the Kerala Electricity Act, 2003. Therefore any notice issued on the basis of an assessment arrived in violation to Regulation 125 and Regulation 110(11) of the Kerala Electricity Supply Code, 2014 is in violation to the provisions of the Central Electricity Authority (installation and operation of meters) Regulations, 2006. For these and other grounds to be urged at the time of hearing, the appellant to set aside the order dated 09-05-2017 bearing No. CGRF-CR/Comp.138/2016-17/73 of Consumer Grievance Redressal Forum, Central Region and the order dated 05-07-2017 bearing No.BB/ES/KYLME/2017-2018 along with the revised bill issued by the respondent.

**Arguments of the respondent:**

2. The appellant is a consumer bearing Consumer No.1155312009013 under Electrical Section, Kayamkulam East. In the inspection conducted at the

premises of the Appellant on 07-07-2016 by the APTS wing, it was found that the R phase of the meter was not seen recording the consumption. Site Mahazar was prepared and a copy of the same handed over to the concerned. The down loaded data obtained through the Digital metering instrument displayed that R phase of the Energy meter was not recording the consumption for the last 831 days. The omission of unbilled energy for 831 days was assessed as 1/3<sup>rd</sup> of total consumption and issued short assessment bill for Rs. 7,50,688/- as per Reg.134(1) of Kerala Electricity Supply Code, 2014 on 13-07-2016. Aggrieved by the issue of this bill the appellant filed petition before Hon'ble High Court of Kerala in WP(C) No. 26548/2016 and Hon'ble Court disposed the case on 10-08-2016 by directing the Assistant Engineer to consider the objection and dispose the same after hearing. After hearing, the bill amount was finalized to Rs. 7,50,688/- and directed the petitioner to remit the amount. Instead of remitting the amount the appellant filed Complaint No.138/2016-17 before Hon'ble Consumer Grievance Redressal Forum (Central Region). After analyzing the petition and version of the Board Hon'ble Forum ordered to limit the period to 24 months and revise the bill accordingly. Aggrieved by this the appellant filed this appeal before this Hon'ble Forum.

A. The order of the Hon'ble Consumer Grievance Redressal Forum is legal to the extent of admitting the claim of under charged bills issued for 831 days. Regulation 134(1) of Kerala Electricity Supply Code, 2014 empowers the licensee to recover the undercharged amount from the consumer on establishment of the same on review. In this case the under charged amount was clearly established scientifically, by down loading the data through Digital metering instrument. But limiting the billing period for 24 months is against the prevailing regulation on issue of short assessment bills on undercharged amount. As per regulation 152(3) the amount of electricity charges short collected by the licensee shall be realized for the entire period during which the period of anomaly persisted. The limitation of 24 months shall be applied only in cases where the period of anomaly is not known or cannot be reliably assessed. In this case, the short collection and period is clearly established scientifically and hence the order is to be amended to that extent.

B. This respondent and Kerala State Electricity Board Limited are duty bound to inspect the meter and connected equipments periodically to verify the correctness of the recording of consumption. The defect in the CT connected to the meter was detected on such an inspection and the appellant was demanded to remit the undercharged amount for the energy actually consumed by him. There is no relevance of detecting the defect earlier for remitting the current charge actually consumed by him.

C. The meter is not damaged or defective as alleged in the Appeal. The short assessment bill undercharged for the amount was issued for non-functioning of CT (Current Transformer) connected to the meter. On detection of the defect the CT was changed and after the replacement of CT all three phases are

working normally. It may be noted that the same meter has been used to measure the consumption before and after replacement of CT. Hence the non-functioning of the CT cannot be attributed to the meter and declare the meter as faulty.

D. The demand notice was issued as per Regulation 134(1) of Kerala Electricity Supply Code, 2014 and not under Section 126 & 135 of the Electricity Act, 2003. Allegations contrary to it are false and hence denied.

E. The meter is functioning normally before and after replacement of CT. On inspection by the APTS it was found that R phase of the meter was not recording consumption. But after replacement of CT connected to it, the meter has been recording consumption of all 3 phases. Hence the procedure to be followed under Regulation 125 has no relevance in this case.

F. Out of the three phases connected to the meter R phase was seen not recording the consumption for the last 831 days. As such only 2/3<sup>rd</sup> of the energy have been recorded through the meter and billed during the period. Considering the unrecorded energy as 1/3<sup>rd</sup> the total consumption the short assessment bill was issued for that period. It may also be noted that the defect in the CT was rectified on 12-07-2016 and after rectification of defect there is proportionate increase in consumption which justifies the assessment. The average consumption prior to the inspection (01/2016 to 07/2016) is 4403 units whereas after rectification of the defect (08/2016 to 01/2017) is 6605 units. In addition to this it is the duty of the consumer to balance the load in all three phases (Regulation 14 Supply Code 2014).

G. There is no relevance for clause 50(5) of Kerala State Electricity Board Limited Terms and Conditions of Supply 2005 in this case as the impugned bill was issued towards short collection and the same regulation have already been repealed by the Introduction of Supply Code, 2014.

H. The observation made by Hon'ble High Court of Kerala in WA No. 99/2013 is not sustainable in this case and hence denied. The cause of action in WA No. 99/2013 arose on 29-05-2004 and in the inspection conducted by the APTS, Thiruvananthapuram they could not ascertain the period of non-recording of consumption for 2 phases and hence assessed the short collection for 6 months as per rules prevailing on that date. The meter was changed as part of rectifying the defect. In this case the period of non-functioning of CT has been already ascertained as 831 days through Digital metering instrument and the bill was issued as per Regulation 134 of the Supply Code, 2014. The meter is same before and after replacement of defective CT. As such quoting the same dictum in an entirely different case is not correct and hence denied.

I. The facts and circumstance under WA No. 114/2013 is not same and hence denied. In WA No. 114/2013 one phase of the meter was running in a



reverse manner as the meter became faulty. Moreover Hon'ble High Court denied the application of Regulation 24(5) of the Supply Code, 2005 in the Judgment. In addition to this the Supply Code, 2005 was repealed due to introduction of Supply Code, 2014. The intention of the appellant is to label the case as assessment during meter faulty period and to get undue benefit from it. But the meter is intact and still using to measure the consumption. The bill was issued to recover the under charged amount for the fixed period of 831 days. The Appellant is legally bound to remit the bill for the energy actually consumed by him.

J. As explained earlier the meter is not faulty and hence testing the same is not necessary.

K. Regulation 110(11) empowers licensee to issue provisional bills in case of circumstances where meter reading could not be taken for any billing cycles. Hence this provision is not applicable in this case.

L. Regulation 66(4) is related to damages to the equipment caused by the consumer and hence denied as inapplicable.

M. Regulation 151(01) of CEA (Meter Regulation) contains provision related to billing for meter faulty period to 'interface meters'. This provision is not applicable to undercharged assessment where 'consumer meter' is intact. There is no valid ground for filing this appeal. For these and others reasons to be urged at the time of hearing it is respectfully prayed that this Hon'ble Ombudsman may dismiss the appeal and order may be issued to remit the bill amount with interest from due date.

### **Analysis and Findings: -**

The Hearing of the case was conducted on 19.09.2017, in my chamber at Edappally. Sri. Arjun Venugopal, advocate and Sri. Rasheed V.K., Manager represented the appellant's side and Smt. Sreedevi R, Assistant Executive Engineer, Electrical Sub Division, Kayamkulam, represented the respondent's side.

On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

1.1. The APTS has inspected the consumer's premises on 07.07.2016 and found that one phase of the Current Transformer (CT is a device for measuring high values of electric Current on a proportionate reduced scale), was not feeding the 'current inputs' to the Meter, thus resulting in the recording of a lower consumption than what is actually consumed. Hence, the

appellant was issued a short assessment bill to recover the energy escaped from billing due to CT's fault in one phase. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable and hence the consumer is liable to pay the amount.

Normally, the respondent is bound to rectify the defect of the CT's to the Meter or renew the CT's or the CT meter itself, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 7.50,688/-, for non-recording of energy due to defects of the R phase CT's, for 831 days, by taking the lost energy as 1/3<sup>rd</sup> of the recorded energy. On perusing the Mahazar, this Forum feels that the contention regarding the one No. of CT's defects noticed during inspection by KSEB was correct, since the mahazar was duly witnessed and the appellant has not disputed the mahazar. Also, a rise in energy consumption obtained after the replacement of the defective metering equipment, corroborates the same findings. Thus it is convinced that the energy recorded in the Meter during the disputed period was not correct.

The appellant has contended that if the failure of the CT connection was from 03/2014 onwards as assumed by the licensee, it could be easily found out by the Sub Engineer who had taken the monthly readings regularly. Since it was not reported by the Sub Engineer during the meter reading, the period of failure cannot be established. According to him, "Inaccuracies in metering" means only accurate meter reading is not taken or the meter reading is erroneous and hence billing is erroneous or billing is erroneous in some other way. "Inaccuracies in metering" cannot and shall not be translated to defect in meter. If "inaccuracies in metering" also meant defect in meter, or improper recording of consumption due to some imperfection, fault in any of the components of the meter, there was no need for the KSEB to bring in Clause 125 of Supply Code, 2014, exclusively for the case of "defective or damaged" meter in which, the method of billing for defective period etc are well explained.

Further the appellant also contended that Regulation 134 (1) of Supply Code, 2014 is not at all applicable in this case of meter defective case. According to the appellant, this provision applies in only a case where the KSEB has under charged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately. It is stated that this provision not deals with a situation where the meter is inaccurately recording the energy consumed on account of a wrong connection given to the meter.

Refuting the above contentions, the respondent has averred that the total period of phase failure was obtained while downloading the meter. The respondent relied upon the down loaded data and consumption pattern for establishing the period of phase failure and missing of current in one phase. According to him, the dip in consumption from 03/2014 is the result of the CT failure. It is submitted by the respondent that the meter installed in the

premise is not reported as defective or damaged. The CT current in one phase was found missing (somehow) and Regulation 125 of Supply Code, 2014 is not applicable in this case. Under charging of prior bill is established due to an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 134(1) is applicable. It was also contended that the downloaded data was convinced by the CGRF.

The issue arising for consideration in this appeal is whether the period assessed and the quantum of energy loss computed are in order and the appellant is liable for the payment of short assessment for Rs. 7,50,688/- as per Regulation 134(1) of Supply Code, 2014.

Here in this case, the respondent declared that the current in one of the CTs connected to the meter is detected as missing/abnormal on the basis of the inspection conducted in the premises on 07-07-2016. The data is downloaded on 07-07-2016 by the APTS. It is also found that the consumption of the appellant before and after the disputed period and during the disputed period is not in a consisting pattern.

From the site mahazar, it is revealed that the CT connected to one terminal of the meter was failed and thereby consumption by the load connected to that phase in the premises was not recorded by the meter. The meter will record the time and date of tampers, and the same can be downloaded using MRI/Laptop and can be analyzed. Date of occurrence of CT open/bypass/short, voltage missing/low voltage/ unbalance etc can easily be found out using downloaded data. Considering these facts, an assumption of missing of 1/3<sup>rd</sup> consumption during the disputed period cannot be sustained.

The site mahazar also justifies missing of current in one phase of the appellant's metering equipment in the appellant's premises. In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording in two phases of actual consumption on the inspection date of 07-07-2016, but not confirmed the missing of one phase current at the rate of 1/3<sup>rd</sup> consumption.

Further this Authority is of the opinion that if the respondent had to inspect the metering system soon after the recorded consumption decreases considerably during the disputed period, it can be easily detected the defect in the metering and to avoid the loss if any occurred to the licensee.

The respondent has issued the short assessment bill for a period of 24 months by taking 50% of the recorded consumption for 831 days following the inspection conducted on 07-07-2016 and detecting of non-recording of energy in one phase. Later the respondent has revised the short assessment bill for a period of 24 months as directed by the CGRF amounting to Rs. 6,62,965/-. But

the consumption for the 3 months prior to 02/2015 is 5900 units, 7120 units, 5500 units and after 07/2016, it is 7260 units 5520 units and 6440 units.

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 recoding correct consumption.

The respondent has an argument that, the meter is not defective, to attract Clause 125 of Supply Code, 2014. Meter defined as under Supply Code, 2014 is extracted here under for ready reference,

2. (57) "**meter**" means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system; and shall include, wherever applicable, other equipment such as current transformer (CT), voltage transformer (VT), or capacitance voltage transformer (CVT) necessary for such purpose;

The meter is not a recording or display unit only but as defined above all the components above including lead wires include a meter. Moreover, this is not a whole current meter but a CT operated meter, where external CT is connected with metering unit using lead wires and phase voltage from all three phases are tapped from the source of supply and then connected with the same metering unit. There by wiring is also there for this metering system. This coordinates for computing energy is lead to the processing unit of the meter unit from different components of the meter then various electrical quantities are processed then recorded cumulative or otherwise and displayed in the display unit. Any defect in any part or component of meter is defect in meter. The fact of the matter is, the meter was defective since one CT was defective and hence one phase current was missing in the meter. Under the regulation 113, sub clause (7) of Supply Code, 2014 requires the licensee to test the CT, PT and the wiring connections, where ever applicable while testing the meter.

In the judgment in WA. No. 114 of 2013 in WP(C) 5614/2007 dated 13-02-2014, the Hon: High Court of Kerala ordered and held that:-

*“5. Insofar as Clause 24(5) of the Supply Code is concerned, that provision states that if the licensee establishes that it has undercharged the consumer either by review of the bill or otherwise, the licensee may recover the amount undercharged from the consumer. It is true as contended by the learned counsel for the appellant this provision does not specify any limitation on the period up to which the recovery is permitted. However this provision also may not have much relevance insofar as this case is concerned because this provision takes in only a case where the licensee has undercharged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately. Therefore, none of the aforesaid three provisions pointed out by both the sides specifically deal with a situation where the meter is inaccurately recording the energy consumed on account of a wrong connection given to the meter”.*

Regulation 134 (1) of supply Code, 2014 is almost a verbatim reproduction of Regulation 24 (5) of Supply Code, 2005. Regulation 24 (5) of Supply Code, 2005 and Regulation 134 (1) of Supply Code, 2014 is extracted here under for ready reference.

**Clause 24 (5) of Supply Code, 2005:-** *If the Licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the Licensee shall specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account.*

**Clause 134 (1) of 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 and in such cases at least thirty days shall be given to the consumer for making payment of the bill.*

In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board then in the case of under charging, the Board shall have a right to demand an additional amount and in the case of over charges, the consumer shall have the right to get refund of the excess amount provided at that time such claims were not barred by limitation under the law then in force.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Hence revision of the bill on the basis of the test report is not possible in this case. Here in this case, the respondent confirmed the non recording of one phase on the basis of the inspection conducted in the premises and load survey/tamper

report down loaded. But the quantum of loss calculated based on 1/3<sup>rd</sup> missing of current is not established conclusively. There is no 3 phase load in the premises. Majority of the load is that of lights, fans, air conditioners, computers etc and the firm is a commercial establishment functioning only in day time.

### **Decision**

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 7,50,688/- and the revised short assessment bill for Rs. 6,62,965/- issued to the appellant. The respondent is directed to revise the bills for the consumption for the period of 24 months prior to the inspection dated 07-07-2016 by taking an average consumption of 6407 units i.e. the average consumption of 08/2016, 09/2016 and 10/2016. Accordingly the respondent shall raise a bill for the meter faulty period from 08-07-2014 to 07-07-2016, with the difference of (153768-129969) = 23799 units and issue the revised bill to the consumer within fifteen days. The excess amount collected, if any, shall be refunded by adjusting it in consumer's future bills. Applicable interest, for the excess amount so collected, shall also be refunded to the consumer.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed as ordered and stands disposed of as such. The order of CGRF in 138/2016-17 dated 09-05-2017 is modified to this extent. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/86/2017/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri. Abdul Sathar Sait, Mukkukavala, Peringala, Kayamkulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kayamkulam, Alappuzha.

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.