

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/090/2017
(Present: A.S. Dasappan)
Dated: 13th November 2017

Appellant : Sri. Pradeep Kumar S.R.
Assistant Manager, Projects,
Ascent Telecom Infrastructure,
Salamiya Buildings, Vyttila,
Ernakulam

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

ORDER

Background of the case:

The appellant is having an electric connection with Cons. No. 22397 of Electrical Section No.1, Muvattupuzha. The service connection of the appellant is under LT VI F tariff with a total connected load of 26 KW. The appellant is a company providing passive infra structure service to telecommunication service providers. While so on 15-12-2016, 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 2 years, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 6,39,600/-. The consumer filed objection before the Assessing officer, the Asst. Engineer, against the said assessment, which was rejected. Being not satisfied with the decision of the Assistant Engineer, the consumer approached the CGRF, Central, Ernakulam, with Petition No. 159/2016-17 and the Forum disposed of the petition with a direction to revise the short assessment by applying the calculation taken by the respondent for the period from 01/2015 to 09/2016, to the remaining period, vide its order 159/2017

dated 27-06- 2017. Aggrieved by the decision, the appellant has submitted the Appeal petition before this Forum.

Arguments of the appellant:

1. Appellant is a telecom infrastructure service provider which manages the Telecom Infrastructure of various service providers as per due business arrangements. It is submitted that the subject matter order is impugned for the Appellant regarding the findings of Consumer Grievance Redressal Forum (hereinafter referred as CGRF) with respect to bill dated 16-12-2016 for Rs. 6,39,600/-. The demand as per the bill was purely on the basis of alleged unauthorized load and the subsequent bill was with respect to alleged short remittance comprising penalty on alleged unauthorized additional load (UAL).

2. The APTS team inspected the premises of the petitioner on 15-12-2016 and the inspection report of the APTS team stated that the B phase of the energy meter was not recording the reading from 17-03-2012. Subsequently, a short assessment bill was issued by the licensee for 2 years for an amount of Rs. 6,39,600/-. In this regard, the petitioner had filed an objection before the AE stating that they have not followed the relevant statutory provisions with respect to declaration of faulty meter. Thereafter a hearing was conducted on 07-01-2017 by the Assistant Engineer Electrical Section, Muvattupuzha and the said authority had passed an order dated 23-02-2017 stating that that the impugned bill issued is in order and based on the request of the consumer, the disputed meter was sent to Electrical Inspectorate for testing. Based on the test report of the Electrical Inspector the meter is declared faulty by the respondent.

3. Under Section 55 of the Electricity Act it is the duty of the licensee to ensure supply of electricity through a correct meter. Hence, when the meter became faulty the licensee can issue average bills for a maximum period of 2 billing cycles as per Regulation 125(2) of the Supply Code. Therefore, it is submitted that the impugned bill was issued in gross violation of Section 55 of the Act and Regulation 125(2) of the Supply Code. The fault in the meter was found by the licensee after four years which is not the fault of the petitioner and that the same could have been checked and resolved by the Board in the initial stage itself.

4. Further, the petitioner contends that Section 56(2) of the Electricity Act 2003, states that "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity". Therefore, it is submitted that the licensee is restricted to reassess any amount after the lapse of 2 years from the date the

sum falls due. Further, it is submitted that the impugned bill reflects the alleged due amount as from 17-03-2012, which clearly shows that the alleged amount had fallen due 4 years back.

5. In the Supply Code, 2014 Regulation 136(3) states that no such sum due from any consumer on account of default in payment shall be recoverable after a period of 2 years from the date when such sum became first due unless such sum has been continuously shown as recoverable as arrear of charges for electricity supplied. Since the sum became due from 17-03-2012 which is above 4 years and so it cannot be claimed. Hence the petitioner requests the Forum to quash the illegal bill for Rs. 6,39,600/- issued by the licensee.

6. In view of the foregoing, the petitioner had approached the Hon'ble Consumer Grievance Redressal Forum to quash the impugned bill as it is illegal and contradicts the applicable legal provisions. However, the Hon'ble CGRF in its order dated 27-06-.2017 held that that the short assessment bill dated 16-12-2016 for Rs. 6,39,600/- is to be revised by applying the calculation taken by the respondent for the period from 01/2015 to 09/2016, to the remaining period and that the revised bill shall be issued to the petitioner and if the petitioner approaches the licensee for instalments, the same shall be considered. Aggrieved by this impugned order, the petitioner is filing this appeal.

7) It is submitted that there had been no finding as about the exact usage rather on surmises the consumption attributable to B Phase had been attributed upon. The finding that the accuracy of the meter is in the order -34% cannot have a bearing in the subject matter issue.

8) There is no finding that the 3 phases were evenly distributed having equal load so as to have equal consumption. On baseless presumption equal consumption corresponding to each phase cannot be attributed. There is no verification in this regard. There is no basis for presumption that the disputed meter recorded only 2/3rd of the actual consumption. Even if there is equitable distribution of load among these phases there cannot be a presumption about equal balanced consumption of electricity. Load only corresponds to connected load and not to usage or consumption. It is undisputed that the period during which the meter was faulting could not be assessed.

9) In this circumstance since the default had been committed by respondent in ensuring the accuracy of its own electrical meter the thrusting of exemplary charges upon the petitioner is uncalled for. Therefore, the decision with respect to short assessment on alleged non-reading of phase B of electrical meter cannot be sustained and the composition of the short assessment charges cannot be sustained and the impugned bill produced herewith may be set aside declaring the impugned bill as illegal.

Nature of relief sought from the Ombudsman

1. The decision with respect to short assessment on alleged non-reading of phase 'B' of electrical meter cannot be sustained and the composition of the short assessment charges cannot be sustained and the impugned bill produced herewith may be set aside declaring the impugned bill as illegal.
- 2) Setting aside the impugned order dated 27-06-2017 in complaint No. CGRF-CR/Comp. 159/2016-17/134 to the extent the same is impugned against the appellant.

Arguments of the respondent:

The Anti Power Theft Squad unit of the respondent conducted an inspection in the premises of the appellant and the inspection revealed that one phase of the 3 phase meter installed in the premises was not recording. A detailed inspection of the meter was conducted and meter data was also downloaded. It was found that the B phase of the meter was not recording the consumption from 17-03-2012 onwards. Hence there was short fall in recording of energy consumption for the last four years and a short assessment bill for Rs. 6,39,600/- was issued to make good the charges of unrecorded portion of energy used by the appellant. The short assessment bill was prepared and served to the appellant under Regulation 134 of Kerala Electricity Supply Code, 2014.

The fact of non-recording of B phase of the meter from 17.03.2012 has been confirmed by the Electrical Inspector who tested the meter. The meter was declared faulty on 15.12.2016. The appellant was heard on 07.01.2017. Subsequently the bill was finalized to Rs. 6,39,600/- without any surcharge or penalty.

It is respectfully submitted that connection was effected through a correct meter. But it is not possible to identify a technical fault later developed by the Meter Reader/Sub Engineer who takes readings of the meter in a regular inspection. Such faults can be identified only after detailed inspection which was carried out by Kerala State Electricity Board Limited and the appellant was also convinced of the fault. Moreover the meter was sent to Electrical Inspectorate which revealed that the accuracy of the meter is of the order of -34% which also establishes that the meter has not recorded 1/3rd of total energy consumed by the petitioner. Hence the final short assessment bill issued is genuine in all aspects.

The averment that Regulation 136(3) of the Supply Code, 2014 is applicable is not true to facts and hence denied. Regulation 134 (1) of Kerala Electricity Supply Code, 2014 stipulates that 'if the licensee establishes either

by review or otherwise that it has under charged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill". Hence the short assessment bill issued by the respondent is in order and in accordance with law. Though the meter was not recording the actual consumption since 17-03-2012, the short assessment has been limited for a period of 2 years prior to the date of detection of the non-recording of B phase of the meter by the Hon'ble Consumer Grievance Redressal Forum. The averment that Section 56(2) of the Electricity Act 2003 is violated in the subject case is not true to facts. The true fact is that as per the downloaded data the short fall in consumption is from 17-03-2012 but the assessment was limited to 24 months. Section 56(2) of the Electricity Act, 2003 is applicable from the service of the bill. Limitation commences only from 2 years of service of the bill. If the argument is accepted for argument sake, the bill do not belonged to a period more than two years.

It is submitted that the decision of the Hon'ble Consumer Grievance Redressal Forum in Complaint No.159/16-17 is in order. The Forum analyzed the case in detail and directed the respondent Kerala State Electricity Board Limited to revise the short assessment bill from 01/2015 to 12/2016.

The downloaded data of meter reveals that one phase was not seen recorded from 17.03.2012. The meter was sent to Electrical Inspectorate for testing and the report from Electrical Inspectorate confirms the fact that the accuracy of the meter is of the order of -34%.

The downloaded data of the meter establishes that it recorded only 2/3rd of actual consumption from 17-03-2012 onwards. The fact is also confirmed by the report of the Electrical Inspectorate.

The earlier bills issued did not include 1/3rd of the actual consumption of energy. After verifying the downloaded data of the meter and testing of meter by Electrical Inspectorate it was confirmed that one phase of meter was not working. Hence the respondent issued the short assessment bill which is legally due to Kerala State Electricity Board Limited.

Therefore, it is humbly prayed that this Hon'ble Forum may accept this reply and dismiss the complaint with costs.

Analysis and Findings: -

The Hearing of the case was conducted on 19.09.2017, in my chamber at Edappally. Sri. Pradeep Kumar, represented the appellant's side and Sri. P.B. Ali, Assistant Executive Engineer, Electrical Sub Division, Muvattupuzha, represented the respondent's side.

On perusing the Appeal Petition, the counter statement 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.

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. 6,39,600/- as per Regulation 134(1) of Supply Code, 2014.

The appellant has raised the main contentions in his petition and during the hearing that the average consumption taken for calculation and the period for which the short assessment bill prepared is not correct.

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 voltage in one phase. According to him, the dip in consumption from 03/2012 is the result of non-recording of consumption by one phase of the meter. 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 APTS has conducted an inspection of the consumer's premises on 15-12-2016 and detected that there is no recording of energy in one phase of the energy meter. The APTS has counter checked the working of the meter by connecting a standard meter and confirmed the said discrepancy. Further the same meter was sent for test to the Lab at Electrical Inspectorate, Ernakulam, and the Test Report issued by the Electrical Inspector, also states that one phase is not recording energy in the Meter. In the 'Remarks' column, it is stated as follows;

"Percentage errors are not within limit, meter is Faulty".

On perusing the Mahazar, this Forum feels that the contention regarding the defect noticed in one phase of the meter 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.

Another important argument of the appellant is that the claims were apparently time barred as the KSEB preferred to raise the same abruptly after a lapse of many years. The main contention of the Appellant is based on the

Limitation of the bills, under Section 56(2) of Electricity Act, 2003, which reads “The licensee shall not recover any arrears after a period of two years from the date when such sum become first ‘due’ unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied”. This ‘due date’ is an important date for both consumer and KSEB (Licensee). This is because after a period of two years from the ‘due date’, the arrear bills are time barred and the consumer is not liable to pay the sum even if it is a legitimate claim otherwise. Therefore it is a boon to the consumer and a loss to the Licensee. For an upright and bonafide consumer, he need not worry of ‘Bills’ of long pending dues after a period of 2 years, if it is not shown continuously in the regular bills of the consumer. On the other hand, in the case of Licensee he should be more vigilant and smart in preferring the bills in time, otherwise he has to suffer the loss for the laxities and omissions occurred on his part. Since this issue has been dealt with, analyzed and given a firm opinion by the Upper Courts of Law/Jurists, we may follow the same. As such, I have before me the Judgment in the Petition filed, before the Hon: High Court, Bombay, vide No: 3784/2007, which has dealt the ‘due date’ issue in detail and pronounced its considered opinion. In this, it was spelt by Hon: Judge as follows;

‘In construing the expression “due” the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1)& (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him’.

Thus the period of two years as mentioned in Sec. 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. In the same Case it was further clarified by Hon: High Court that;

“Amount of charges would become due and payable only with the submission of the bill and not earlier. Word ‘due’ in this context must mean due and payable after a valid bill has been sent to the consumer”, (Brihatmumbai Municipal Corporation Vs Yatish Sharma etc-2007 KHC 3784:2007).

In this case, the bill is seen raised on 16-12-2016 and has become due thereafter and time period of two years start from 16-12-2016 only and hence

the appellant's argument is not maintainable under the bar of limitation. Further, it is the electricity charge, for the unrecorded portions of the energy actually used by the consumer when the meter was faulty and the consumer was being billed at an arbitrary value of previous average. As per the Agreement executed by the consumer with KSEB, the consumer is bound to pay the charges for the true electricity he has consumed. As the bill was issued in 12/2016 only, I am of the view that Section 56(2) is not attracted in this case.

Another argument raised by the appellant is that there is no finding that the 3 phases were evenly distributed having equal load so as to have equal consumption and there is no basis for presumption that the disputed meter recorded only 2/3 of the actual consumption. Even if there is equitable distribution of load among these phases there cannot be a presumption about equal balanced consumption of electricity. 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 1/3rd missing of current is not established conclusively. There is no 3 phase load in the premises since the firm comes under general category of tariff LT VI F.

The appellant has contended that if the failure of the meter was from 17-03-2012 onwards as detected, 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.

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. Regulation 134 (1) of Supply Code, 2014 is extracted here under for ready reference.

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.

In the site mahazar it is stated that while inspecting the meter, the voltage in each phase is measured at 108 volts, 202 volts and 13.77 volts, but the system voltage in the premises is more or less in rated values. As such there is no recording of actual consumption due to the voltage variations. The appellant arranged testing of the meter in the Meter Testing and Standards Laboratory of Electrical Inspectorate and found that the meter is faulty and error is in the range of -34%. The cumulative data of events was downloaded from the meter on 16-12-2016 and found that "current without volts starts in L3 on 17-03-2012 and yet not restored". Also the mahazar shows that voltage at L1 @ 228 volts, L2 @ 240 volts and L3 @ 12 volts, Line current at L1 10.8 amps, L2 0.60 amps and L3 13.2 amps. The site mahazar justifies missing of required voltage 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 15-12-2016, but it cannot be proved the missing of one phase voltage at the rate of 1/3rd 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 24 months following the inspection conducted on 15-12-2016 and detecting of non-recording of energy in one phase.

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.

After replacing the faulty meter on 16-01-2017, the consumer was seen to using an average consumption of 8139 units per month, taking the succeeding three months average after changing the meter, i.e. for the period of 2/2017 to 4/2017. In the hearing the appellant stated that the connected load was enhanced from 19 kW to 26 kW one month before the date of inspection,

16-12-2016. As directed in the hearing, the respondent submitted the details of connected load enhancement. As per the statement the connected load on 28-09-2010 is 18360 Watts and on 08-11-2016, 25680 Watts. Inspection conducted on 16-12-2016 and meter changed on 16-01-2017. Connected load enhancement is seen done in the period of meter faulty period. Even at the time of verification of connected load for the enhancement, the respondent had not made an attempt to check the metering system, whether healthy or not. Hence it is not justifiable to take this average for calculation of his consumption during the faulty period.

The energy recorded in the new meter after installing on 16-01-2017 is the consumption proportionate with the connected load 26 kW. The short assessment of energy was done based on the consumption recorded in a meter having -34% error for 21 months and thereafter for 3 months based on the reading of a testing meter. The assessment was revised by the respondent as per the order of CGRF, Central Region, Ernakulam by taking the energy consumption in the faulty meter for the period of 24 months. Accordingly the bill amount reduced from Rs. 6,39,600/- to Rs. 5,05,682/-.

The short assessment based on the consumption recorded in the faulty meter is not correct. The assessment can be done based on the average of the consumption recorded for 3 months in the meter. But the connected load is 25680 Watts during the meter healthy period and 18360 Watts in the meter faulty period. Hence it will be better to arrive at the average consumption of 18360 Watts for the actual consumption recorded for 25680 Watts during 2/2017, 3/2017 and 4/2017. Average consumption is $(7678 + 6495 + 10244) / 3 = 8139$ units for 25680 Watts.

Average consumption for 18360 Watts	=	8139 Units x 18360 Watts/25680 Watts
During 2/2017, 3/2017 and 4/2017	=	5819 Units
Reassessed from 1/2015 to 12/2016	=	5819 Units x 24 months
	=	139656 Units
Actually billed Units	=	102158 Units
Balance to be billed	=	139656 – 102158 Units
	=	37498 Units

Therefore, I fix the true average consumption of the consumer as, say 5819 units per month during the disputed period and for two years it will be $(5819 \times 24 \text{ months}) = 139656$ units.

Decision

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 639600/- and the revised short assessment bill for Rs. 505682/- 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 15-12-2016 by taking an average consumption of 5819 units. Accordingly the respondent shall raise a bill for 24 months, with the difference of (139656-102158) = 37498 units and issue the revised bill to the consumer within fifteen days. Sufficient instalments may be allowed, if the appellant desires so. No interest is payable by the appellant during the petition pending period before the CGRF and this Authority.

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 159/2016-17 dated 27-06-2017 is modified to this extent. No order on costs.

ELECTRICITY OMBUDSMAN

P/090/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Pradeep Kumar S.R. Assistant Manager, Projects, Ascent Telecom Infrastructure, Salamiya Buildings, Vyttila, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Muvattupuzha, Ernakulam.

Copy to:

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