

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/92/2017  
(Present: A.S. Dasappan)  
Dated:21st October 2017

Appellant : Sri. Anu Binod  
Ashish Polymer Products, MIE,  
Amayanoor P.O.,  
Kottayam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd., Manarcadu,  
Kottayam.

### **ORDER**

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

The appellant is an industrial consumer under LT IV A tariff in Electrical Section Ayarkunnam vide Cons No. 5024, with a connected load of 83 kW and contract demand of 92 kVA. The appellant is running an industrial unit in the name and style "Ashish Polymer Product" in the premises. The APTS Unit of Kottayam conducted an inspection in the premises on 26-12-2016 along with Sub Engineer of Electrical Section, Ayarkunnam 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 provisional short assessment bill, assessing for the period from 11/2015 to 11/2016, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 1,58,910/-. On receiving the request of the consumer to allow instalment facility, he was permitted to make the remittance in 12 equal instalments vide Order No. RB15/2016-17/inst/113/Pallom dated 10-01-2017 of the Executive Engineer, Electrical Division, Pallom. After remitting the first instalment, the appellant approached the CGRF, Kottarakkara, with Petition No. OP 354/2017 and the Forum upheld the assessment bill issued and directed to remit the amount. Aggrieved by the decision, the appellant has submitted the appeal petition before this Forum.

**Arguments of the appellant:**

On 26.12.2016 an APTS inspection was conducted in the appellant's premises and subsequently a provisional bill of Rs. 1,58,910/- dated 31-12-2016 was issued. Against which the appellant submitted a complaint with CGRF in OP No. 354/2017. The following points are noted in the complaint: -

1. As per Electricity Act Sec.55 (1) 'No license shall supply electricity, after the expiry date of two years from the appointed date, except through installation of correct meter in accordance with the regulations to be made in this behalf by the Authority. It is the liability of the KSEBL to provide correct meter and maintain it correctly.

2. Every month the Assistant Engineer is coming for taking the reading. On a single glance it will be revealed that the phase is not working (either voltage or current) if it is so. It is also his liability to check the healthiness by monitoring the LED as per Reg. 110 (7) of the Supply Code 2014. If it was done, the consumer would not have been in trouble.

3. As per Supply Code, 2014 Reg.115 (9), which, states that 'In case the meter is found to be faulty, revision of the bill on the basis of the test report shall be done for a maximum period of six 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 the two subsequent bills'. KSEBL cannot charge more than 6 months, if the meter is found faulty. The meter is not tested using MRI and data's are not downloaded to conclude from which date onwards one neutral CT circuit is not recording. The conclusion that the KSEBL have undercharged is also wrong and false because comparing with another meter it is stated that 37.18% is not recorded. It can never be like that because if one phase is not reading the elapsed energy will be one third of the total conception that is 33.3%, here it is 37.18 which show that the connected load is unbalance and the error in calculated value will be more than 0.5.

4. As per the CEA Regulations, 2006, 2(P) "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 (CVT) necessary for such purpose'. Here as per KSEBL the fault is in line connecting the current line which is a part of meter and hence the proceedings for the meter faulty period can only be adapted while claiming the short assessment bill. KSEBL, in case of certain consumers have declared arbitrarily that the meter was faulty for certain periods and they were collecting average charges as per their will and wish. Without test the meter in an Accredited Lab and to have the test certificate to confirm that the meter was faulty.

5. As per the Site Mahazar and KSEBL's claim letter the CT connection is disconnected and in open condition for a long time. It is a well-known fact that if CT is kept in open in a circuit it will be burned and charred. Hence the claim of KSEBL that the CT was disconnected for a long time is wrong and false.

6. A poor consumer cannot be made liable for noncompliance of the directive by the Kerala State Electricity Board officials.

The appellant also contended the following grounds for consideration.

- a. The Regulation 115(9) which reduces maximum period of back assessment as 6 months, in case of meter faulty even if the meter faulty is more than 6 months.
- b. It is true that Regulation 134(1) permit KSEB to collect the undercharged amount 'If the KSEB 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 case at least thirty days shall be given to the consumer for making payment of the bill'. But nowhere is it mentioned that KSEBL can have a claim after operational violation of Regulation and non-compliance of directives. KSEBL can collect the payment only in compliance with Regulations 115(9).

The Electricity Act, 2003 Sec. 50 is very clear and specific in assigning the duty and responsibility to specify Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, etc, and hence KSEBL cannot have their own discretion in billing and collection of payment. While issuing a bill it has to be as per all Regulations such as 134(1) which permits licensee to collect the undercharged amount by issuing a bill, Reg. 115(9). This limits the period of assessment as previous 'six months'. Here KSEBL can collect the undercharged amount as per Reg.134(1) but should be limited for a period of six months as per Reg.115(9).

The CGRF never consider appellant's argument of six month limitation. In CEA Regulations Installation and Operations of Meter - Amendment 2010, Reg. 3 (2)'specification of meters, the standard reference voltage, voltage range, frequency, basic current, accuracy class, power factor, etc.... are mentioned. In appellant's case the Site Mahazar itself says that one phase is not working due to rat attack in the wire. So the standard voltage range will change accordingly. This will affect the accuracy of the Meter. There for this a clear case of Meter faulty. The penalisation is also regarding meter faulty, and the assessment period for Meter faulty is only six month.

Relief Sought

1. To direct KSEBL, to limit the assessment period for six months.
2. To direct KSEBL to provide the appellant instalment facility for payment.

3. Direction may be given to the KSEBL not to disconnect the supply of above consumers till hearing and disposal of the complaint.

**Arguments of the respondent:**

The electric connection to the above premises given through a three phase CT meter of make "Secure Meters Ltd" having CT ratio 200/5A i.e., the reading shown by the meter is to be multiplied by 40 to get actual consumption. Every month Sub Engineer is taking the reading of this consumer. The LED provided in this type of meter is used to test the meter accuracy only and not indicating the phase status.

On 26-12-2016, the Anti Power Theft Squad of Kottayam unit and officials of Electrical Section, Ayarkunnam jointly inspected the premises of Consumer No. 5024. During inspection it was detected that the wires from R-phase CT to the energy meter is broken due to the act of rat/rodents and hence the energy consumed through this R-phase is not recording in the energy meter.

On testing the energy meter using a standard reference meter it was revealed that an error of 37.18% is occurring with the consumption recorded on it. That means only 62.82% of actual energy consumption is recording in the meter.

A site mahazar was prepared and Sri. Binod Mathew of M/s. Ashish Polymer Products affixed his signature on the site mahazar in token of acceptance of the facts mentioned therein. On perusal of meter reading register, it is revealed that this fault was continuing from November 2015 (from the reading taken on 01-12-2015) onwards. Due to this Kerala State Electricity Board Limited had undercharged the consumer by 37.18% from December 2015 onwards. Regulation 134 of the Kerala Electricity Supply Code, 2014 on undercharged bills and overcharged bills stipulates that "(I) 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 30 days shall be given to the consumer for making payment of the bill'.

As per the request of the consumer obtained on 06-01-2017 instalment facility was given to the appellant to make the remittance in 12 equal instalments vide Order No. RB15/2016-17/inst/113/Pallom dated 10.01.2017 of the Executive Engineer, Electrical Division, Pallom. The appellant has remitted the first instalment without any protest and then filed complaint before the Hon'ble Consumer Grievance Redressal Forum, Kottarakkara. It is revealed from the site mahazar (duly accepted by the witness of appellant's industry) the R Phase is missing due to broken external connection between the CTs and energy meter by the action of rat/rodents and a portion of energy

consumed left unrecorded. There is no inherent fault occurred in the energy meter/CT. As per provisions made in Regulation 152 of the Kerala State Electricity Supply Code, 2014 the amount of electricity charges short collected for the entire period during which such anomalies persisted can be realized by the licensee without any interest.

APTS had checked the energy meter using a standard reference meter which is duly suited for testing purpose and obtained certificate for accreditation from NABL. As per provisions made in regulation 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulation, 2006 standard reference meter can be used for site testing of consumer meters up to 650 Volts. The test is conducted at consumer's premises. The energy consumption per phase depends on load, impedance, power factor, voltage, current etc. At standard condition, due to one phase missing the ellipsed energy will be one third of total consumption that is 33.33%. In this case there is a chance for connecting single phase load to the system, unbalanced load, difference in phase voltage, power factor etc. In that condition consumption is varied at each phase. It is proved on site testing that the meter was showing a reduction around 37.18% when put to 'Test' the disputed meter and the standard reference meter in parallel. Hence the short assessment bill is calculated for the unrecorded portion of the energy consumed accordingly.

As stated in the site mahazar there is chance to enter rat/rodents through the open window glass portion of the box housing the energy meter. As per Regulation 13 of Central Electricity Authority (Installation and Operation of Meters) Regulation 2006 read with Regulation 21 of Electricity Supply Code, 2014 the consumer shall as far as circumstances permit; take precaution for the safety of the consumer meter installed in his premises belonging to the licensee. Here the meter box is placed inside the premises of the appellant and the consumer is also responsible for the safety of the metering system located in his premises.

Regarding the contention of the appellant that if CT is kept open in a circuit it will be burned and charred is not normally happened in the case of LT CTs.

As per Regulation 152 of Kerala Electricity Supply Code, 2014, anomalies attributable to the licensee which are detected on inspection at the premises of the consumer shall not attract the provisions of section 126 of the Act or Section 135 of the Act. 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. Here in this case as per the above regulation only short assessment charges were demanded from the consumer without penalizing the consumer. Also instalment facility was given to the consumer (12 instalments) for the

remittance of such amount of short collection. The appellant has remitted seven instalments till date.

It is established that the consumer had been undercharged due to missing of one phase for the period from November 2015 to November 2016 as per the APTS inspection and records in the meter reading register. Accordingly short assessment bill for Rs. 1,58,910/- has been issued. As a registered consumer of Kerala State Electricity Board Limited, the consumer is bound to obey Kerala Electricity Supply Code, 2014 and its amendments. The appellant is liable to pay the short assessment amount pending against this consumer number. It is highly pertinent to note in this context that the licensee (KSEBL) has invoiced the amount actually under charged alone.

It may be noted that as per the site mahazar (duly accepted by the witness of the appellant's industry and not disputed by him) the R-phase is found missing due to broken external connections between the CT and energy meter by the action of rat/rodents (which is beyond the control of appellant/officials of KSEB) and a portion of the energy consumed left unrecorded. There is no inherent fault occurred in the metering equipments like CT/meter. Hence it cannot be treated as faulty meter. The broken connection leads to inaccuracy in metering of the premises of Con.No.5024. In such cases the amount short collected for the entire period during which such anomalies persisted can be realized by the licensee without interest. This is provided in Section 152(2), (3) of the Kerala Electricity Supply Code, 2014. In this case it was established that the consumer had been under charged due to missing of one phase for the period from November 2015 to November 2016 as per the Anti Power Theft Squad Inspection Dt. 26-12-2016 and records in the meter reading register.

On perusal of meter reading register, it is revealed that this fault was continuing from November 2015 (from the reading taken on 01-12-2015) onwards. Due to this KSEBL had undercharged the consumer by 37.18% from December 2015 onwards. The licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making payment of the bill. This clause does not stipulate any limitation for the recovery. The intention is that the consumer is bound to pay the charges for the actual energy he has consumed. There are chances that electric devices like meter may go wrong and also that there may occur some error or omission in preparation of bill etc. which should be rectified and set right, when brought to notice whether it is in favour of consumer or the licensee. Moreover Hon'ble High Court of Jharkhand vide A.I.R 2016 Jharkhand 98 held that limitation under 56(2) of Electricity Act 2003 is not applicable in under charged cases.

In the order dated 28-06-2017 of the Honourable Consumer Grievance Redressal Forum, Kottarakkara in OP No. 354/2017 observed that Kerala State

Electricity Board Limited followed all statutory formalities in this case. Meter and metering devices were tested and found that one phase of CT is missing. Consumption pattern during this period also shows reduction in consumption. Further this Forum may kindly note that the appellant has already applied for instalments and had remitted one instalment of the assessment. It is the settled principle in law that one cannot approbate and reprobate.

In the above circumstances it is most respectfully prayed that this Hon'ble Forum may be pleased to dismiss the above appeal.

**Analysis and Findings: -**

The hearing of the case was conducted on 19-09-2017, in the Office of the State Electricity Ombudsman, Edappally, Kochi and the appellant was represented by Sri. Shaji Sebastine and Smt. Ligimole V. Varghese, Assistant Executive Engineer, KSEBL Manarcadu Sub Division appeared for the respondent and they have argued the case, mainly on the lines stated above.

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 appellant was served with a short assessment bill for Rs. 1,58,910/- towards the non recording of consumption in one phase of the 3 phase meter due to missing of current in one phase, as per Regulations 134 (1), 152 (2) and 152 (3) of the Kerala Electricity Supply Code, 2014. 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.

The appellant has contended that if there was failure of the CT connection was from 11/2015 onwards as assumed by the licensee; it could be easily found out by the Sub Engineer who had taken the monthly readings regularly. 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 he has undercharged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately.

Refuting the above contentions, the respondent has averred that the total period of phase failure was obtained on the basis of the consumption pattern. The respondent relied upon the consumption pattern for establishing the period of phase failure and missing of current in one phase. According to him, the dip in consumption from 11/2015 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 terminal of the CT was found missing (somehow) and Regulation 115(9) 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) and Regulations 152(2) and 152(3) are applicable. The respondent has an argument that, the meter is not defective, to attract Clause 115(9) 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 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 current in one phase 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.

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.

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 an Accucheck Test Certificate. But the quantum of loss incurred on the basis of an exact period is not established conclusively for want of the downloaded data.

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 revised short assessment for Rs. 1,58,910/- as per Regulation 134(1) of Supply Code, 2014.

Though the respondent has claimed the failure of one phase current missing from 11/2015 onwards, the load survey data is not available. From the site mahazar, it is revealed that the failure of current in one phase was due to missing of one phase of the CT connected to the meter terminal. 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.

The missing of current in one phase of the appellant's metering equipment in the appellant's premises was detected by the licensee during the inspection conducted on 26-12-2016 and the site mahazar also justifies these facts. In view of the above facts it is clear from the site mahazar that the energy meter installed in the appellant's premises was faulty on the inspection date of 26-12-2016, but not confirmed the missing of one phase current from 11/2015 onwards, as argued by the respondent.

The respondent has issued the short assessment bill for a period of 13 months by taking 37.18% towards the unrecorded consumption following the inspection conducted on 26-12-2016 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 in its strict sense.

Further this Authority is of the opinion that if the data was downloaded during the inspection of the metering system on 26-12-2016 itself, the period of defect could have been detected and convinced by the appellant. Moreover, 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 meter was faulty and it cannot come under the purview of inaccuracy in metering under Regulation 152 of Supply Code, 2014.

While verifying the consumption pattern for the short assessment period from 11/2015 to 11/2016, the recorded consumption during peak time and off peak time varies from zero to six units in 05/2016 to 11/2016 and comparatively low during normal times. The appellant has agreed with the rate of 37.18% taken for the assessment of the actual consumption as not recorded in the meter. Also a considerable reduction in consumption in all the three zones are seen from April 2016 onwards.

### **Decision**

From the conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 1,58,910/- issued to the appellant. The respondent is directed to revise the bill for the unrecorded portion of 37.18% on actual consumption to be recorded for the period from 04/2016 to 11/2016 and issue the revised bill to the consumer within fifteen days. The respondent shall allow sufficient instalments, if the appellant applies for the same. 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 disposed of as ordered above. The order of CGRF in OP No. 354/2017 dated 28-06-2017 is set aside. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/92/2017/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Anu Binod, Ashish polymer Products, MIE, Amayannor P.O., Kottayam.

2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Manarcadu, Kottayam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.