

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/105/2017

(Present: A.S. Dasappan)

Dated: 22nd January 2018

Appellant : Sri. George C.M.
M/s Praveen Rubbers,
Thottakkad, Kunnathupady,
Kottayam

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

ORDER**Background of the case:**

The appellant is a consumer under Electrical Section Meenadam bearing Con.No.1923. The Electric supply given to the consumer is for the purpose of running an industrial unit in the name and style "Praveen Rubbers". Total connected load at the premises of the consumer is 72 KW. The tariff of the supply given to the consumer is LT IV Industrial. On 23.03.2017, the Anti Power Theft Squad of Kottayam unit and officials of Electrical Section Meenadam jointly inspected the premises of the appellant and detected that the B-phase meter was not recorded in the CT operated energy meter due to missing of contact consequent to accumulation of rubber dust on one of the CT secondary terminals (B- phase). A site mahazar was prepared, a short assessment bill amounting to Rs. 3,01,177/- was issued for a period from 02/2016 to 03/2017 for the portion of the energy consumed. Aggrieved by this, the appellant had approached the CGRF, Kottarakkara by filing a petition in OP No. 401/2017. The Forum dismissed the petition due to lack of merits.

Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of appellant:

An APTS inspection was conducted in the appellant's premises on 23.03.2017 and subsequently a short assessment bill for Rs.3, 01,177/- was given to the appellant. As per KSEBL the B phase current not recorded in the meter. The appellant is not admitting and accepting the non-recording of one phase because there is no change in the consumption pattern as alleged. As an Industry the consumption varies from 4000 units to 16000 units. This variation is due to the change in order pattern and work load. ·

Instead of taking the average value for assessing the consumption during meter faulty period (if it is so), the KSEBL have taken some data's from the meter and was calculating the amount arbitrarily. This procedure is not as per Supply Code 2014 and Electricity Act 2003 for the following reasons.

As per Electricity Act Sec.55 (1) 'No licensee 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.

Every month the Assistant Engineer/Sub 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 or if there is phase failure. 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. Hence the date of last reading should be consider as date of inspection.

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 CGRF never considered the appellant's argument of six month limitation. In the appellant's case the Site Mahazar itself says that one phase is not working due to defect in external connection between the CTs and energy meter by accumulating rubber dust on the terminal. So the portion of energy consumed left unrecorded. This will affect the accuracy of the Meter. Therefore this a clear case of Meter faulty. The penalisation is also regarding meter faulty, and the assessment period for Meter faulty is only six months.

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 have to be as per all Regulations such as 134(1) which permits licensee to collect the undercharged amount by issuing a bill. Regulation 115(9) which 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).

Relief Sought for by the appellant are:

1. To direct the KSEBL not to disconnect the supply till hearing and disposal of the petition.
2. To cancel the impugned bill.

Arguments of the respondent:

The electric connection to the premises of the appellant is given through a three phase CT meter of make "Secure-Meters Ltd", serial no. KSB30920 having CT ratio 200/5A. Every month Sub Engineer takes the reading of this consumer. The LED provided in this type of meter represents the meter accuracy and it is not for indicating the phase status.

On 23.03.2017, the Anti Power Theft Squad of Kottayam unit and officials of Electrical Section Meenadam jointly inspected the premises of Con.No.1923. During inspection it was detected that the B-phase meter was not recorded in the CT operated energy meter (Secure make SL.No.KSB 30920) due to missing of contact consequent to accumulation of rubber dust on one of the CT secondary terminals (B- phase). A site mahazar was prepared and Smt. Riney

George of M/s. Praveen Rubbers affixed her signature on the site mahazar in token of acceptance of the facts mentioned therein.

In order to make good the loss sustained by the Kerala State Electricity Board Limited owing to the above cause, a short assessment bill amounting to Rs.3,01,177/- was issued for a period from 02/2016 to 03/2017 for the portion of the energy consumed but remained 'unbilled due to non recording. The period of the bill was fixed as per the observation of APTS that there was steep downward fall in the consumption from 2/2016 onwards despite the fact that firm was functioning in full capacity. The issuance of the bill is in line with the provisions of Regulation 134(1) of Kerala Electricity Supply Code, 2014 and the same is in order. As per the provisions Board is entitled to recover the under charged amount from the consumer.

From the site mahazar it is clear that the B-Phase was missing due to defect in external connection between the CTs and energy meter by the accumulation of rubber dust on the terminal. As a result, a portion of energy consumed was 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.

It may also be noted that after removing the dust from CT terminals there was considerable increase in power consumption in the above premises. The average monthly consumption for the period from 2/2016 to 3/2017 is 7868 units. After clearing the defect in CT terminals the average consumption raised to 12894 units (considering 7 months consumption).

It is clear from the site mahazar that the B-Phase is missing due to defect in external connection between the CTs and energy meter by the accumulation of rubber dust on the terminal. As a result, a portion of energy consumed left unrecorded. There is no inherent fault occurred in the energy meter/CT. The energy meter is working correctly after removing the dust from the terminals and this matter is clearly mentioned in the site mahazar. Hence it cannot be considered as a case of meter faulty. The defect in external connection led to the under recording. In such cases the amount of electricity charges short collected by the licensee, if any, for the entire period during which such anomalies persisted, can be realized by the licensee without any interest. This is stated in Regulation 152 (3) of the Kerala Electricity Supply Code, 2014.

As per Regulation 134 of Kerala Electricity 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 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 record short of actual due to some external factors and also that there may occur some error or omissions in preparation of bill etc which should be rectified and set right, when brought to notice whether it is in favour of the consumer or the licensee. Moreover, Hon'ble High Court of Jharkhand vide AIR 2016 Jharkhand 98 held that limitation under 56(2) of Electricity Act 2003 is not applicable in undercharged cases.

Moreover, the Hon'ble High Court of Kerala in its judgment in M/s. T. Abdulla Haji. Vs. Kerala State Electricity Board Limited case with OP No.15833 of 1999, in which the same contention raised by the petitioner, ordered that "As there is no defect in the meter, no question arises as to whether the meter is correct or not. It is evident from the Ext P1 mahazar, Ext P3 appeal and Ext.P4 order that the meter itself was not defective or faulty and it was only because of the defect in the open circuit pressure coil that the B Phase of the meter was not recording the energy consumed. The respondents were therefore not bound to refer the dispute to the fourth respondent. For the reasons stated above. I hold that there is no merit in the OP. The OP is accordingly dismissed". In consonance with the above decision of the Hon'ble High Court, the Hon'ble ombudsman may please be dismissed the subject petitions and permit the licensee to realize the energy charge of unrecorded portion of consumption in order to compensate the revenue loss sustained for Board. Regulation 115(9) mentioned in the 5th para of the appeal petition is relevant only in meter faulty cases. But here the meter is not faulty and CT fault occurred due to the accumulation of dust particles on one of the CT Secondary Terminal. The short assessment bill issued is as per the existing regulations and there is no dereliction on the part of Kerala State Electricity Board Limited in issuing the bill. It is submitted that the appellant is not charged with actions like tampering of installations and hence neither penalty nor interest is inflicted upon. Short assessment bill is only for the unrealised revenue due to unrecorded portion of energy supplied. The issuance of the bill is purely in line with the spirit and the substance of the contract agreement executed between the party and licensee.

Hon'ble CGRF (S) in its order dated 19-08-2017 observed that the consumption is very low during the alleged CT faulty period and it was very high after rectification of CT fault. Thus ordered that the short assessment bill issued for a period of one year is genuine and sustainable. Thus the bill issued is in order. Hence the appellant is liable to pay the bill amount.

Analysis and Findings: -

The hearing of the case was conducted on 19-12-2017, in the Office of the State Electricity Ombudsman, Edappally, Kochi and the appellant was represented by Sri. Shaji Sebastian and Smt. Ligimole V. Varghese, Assistant Executive Engineer, KSEB Ltd Manarkadu 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. 3,01,177/- towards the non recording of consumption in one phase of the 3 phase meter due to missing of one phase current, 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 failure of the CT connection was from 02/2016 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 02/2016 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 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. Thereby wiring is also there for this metering system. This coordinates for computing energy is lead to the processing unit of the meter 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 a Accucheck Test Certificate. But the quantum of loss calculated based on 1/3rd missing of current is not established conclusively.

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. 301177/- as per Regulation 134(1) of Supply Code, 2014.

Here in this case, the respondent declared that current through one number of CT connected to the meter is detected as missing on the basis of the inspection conducted in the premises on 23-03-2017. Though the respondent has claimed missing of CT current in one phase of the energy meter from 02/2016 onwards, the load survey data from that date is not available.

From the site mahazar, it is revealed that the failure of recording energy in one phase was due to missing of current in the CT terminal connected to one phase of 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. Considering these facts, an assumption of missing of 1/3rd consumption during the disputed period cannot be sustained.

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 23-03-2017 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 23-03-2017, but not confirmed the missing of one phase current at the rate of 1/3rd continuously from 02/2016 onwards, as argued by the respondent.

The respondent has issued the short assessment bill for a period from 02/2016 to 03/2017 by taking 50% of the recorded consumption/demand for 14 months following the inspection conducted on 23-03-2017 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 whether meter recorded actual consumption.

Further this Authority is of the opinion that if the data was downloaded during the inspection of the metering system on 23-03-2017 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. The appellant's contention that as an Industry the consumption varies due to the change in order pattern and work load is also to be considered in this case.

From the site mahazar, it is understood that proper contact between the CT terminal and meter terminal was prevented by the 'Rubber dust' in the contact point. The period from such prevention started cannot be ascertained as the deposit of 'Rubber dust' gradually developed and acted as an insulator in the contact point.

In the load survey of the meter dated 23-03-2017, the data for three days are available. In each data current in one phase is always zero whereas the other two phases have readings. But the data covers a period of around six weeks prior to the inspection on 23-03-2017. According to the respondent, the period of the bill was fixed because there was steep downward fall in the consumption from 2/2016 onwards despite the fact that firm was functioning in full capacity. But on going through the consumption pattern of the appellant, it is found that it is not consistent. During the period from 7/2015 to 9/2015, the appellant's consumption were 7200, 7560 and 7320 units respectively. During the allegation period of steep downward fall of consumption from 02/2016 onwards, in certain months of 08/2016, 11/2016 and 01/2017, the recorded consumption of the appellant were 10640, 13040 and 9480 units respectively. Hence it is not conclusively proved the missing of current in one phase from 02/2016 onwards.

Decision: -

From the findings and conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 3,01,177/- issued to the

appellant. The respondent is directed to revise the bill for the consumption for the period of 6 months prior to the inspection dated 23-03-2017. The respondent shall issue a revised bill within a period of 15 days from the date of receipt of this order.

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 401/2017 dated 19-08-2017 is set aside. No order on costs.

Electricity Ombudsman

Ref No: P/ 105/ 2017/ _____ /dated _____

Forwarded to:

1. Sri.George C.M., M/s Praveen Rubbers, Thottakkad, Kunnathupady, Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Manarkadu, Kottayam

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum, (South), Vidyuthi bhavanam, Kottarakkara 691506.