

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/128/2017
(Present: A.S. Dasappan)
Dated: 28th February 2018

Appellant : Sri. M.C. Suryakumar
Surya Rubber Industries,
Vellanikkara, Mangode,
Thrissur

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Limited,
Mannuthy, Thrissur

ORDER

Background of the Case

The appellant is having an electric connection with Cons. No. 7511 of Electrical Section, Mannuthy. The service connection of the appellant is under LT IVA tariff with a total connected load of 127 KW. While so on 28-03-2008, 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 151 days, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 48504/-. The appellant approached the CDRF, Thrissur, with Petition No. CC 247 of 2008 and the Forum disposed of the petition with a direction to convince the complainant that the bill is legal/genuine for which fresh bill should be prepared as per KSEB Norms, with detailed working sheet, vide its order dated 30-03-2017. Thereafter the appellant filed a complaint before the Consumer Grievance Redressal Forum, Ernakulam vide complaint No 38/2017-18, which was dismissed on 26.10.2017 due to the lack of jurisdiction. Aggrieved by the decision, the appellant has submitted the Appeal petition before this Forum.

Arguments of the appellant:

On 28.08.2008, a short assessment bill of Rs.48, 504/- was issued to the appellant, alleging non-recording consumption in R phase for 150 days prior to the inspection. Against the short assessment bill the appellant have approached CDRF and finally on 30.03.2017 CDRF came out with an order (CDRF, Thrissur no. CC 247 /08) directing KSEBL to 'convince the genuinely/legality of the bill to the complainant. There was a clear direction to prepare a fresh bill as per KSEBL norms with detailed working sheet for convince the consumer that the bill is legal/genuine. But KSEBL didn't give a detailed bill, as per the direction of CDRF. KSEBL simply issued a notice with a copy of short assessment bill dated 28.03.2008, which was already considered by CDRF and rejected. In this bill KSEBL never had shown the supporting Act, Rules, Regulations or inspection details like Site Mahazar.

In the letter dated 22.07.2017, along with short assessment bill of Rs.48,504 /- dated 29.03.2008, KSEBL have refer an order [B.O.D (D, S&GEJ No.1658/2017(LD.II/3799/2017) dated TVPM 28.06.2017), which is not known to appellant. Along with the claim letter KSEBL have mentioned surcharge; but here surcharge is not applicable for these periods because this case was pending before CDRF for a long time. KSEBL never considered the CDRF order.

1.As per Electricity Act 2003, 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.

2. Every month the 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 a non-recording of consumption in one phase.

3.The CGRF dismissed the petition on the lack of jurisdiction. After 2003 Act the jurisdiction for solving the grievance of consumer is CGRF and ombudsman there are several High court direction and orders conforming the jurisdiction for CGRF and Ombudsman.

Reliefs Sought for:

1. Direction may be given to the KSEBT not to disconnect the supply' of above consumers till hearing and disposal of the complaint

2. Direction maybe given to the KSEBL, to cancel impugned bill

Arguments of the respondent:

The appeal is against the short assessment bill issued based on the APTS inspection in their premises on 28.3.2008. In the site mahazar it was specifically mentioned that one phase of the energy meter was not recording for a prior period of 151 days from the date of inspection, as per downloaded data from that CT energy meter with multiplication factor 40. The defect in the recording of the meter was clearly mentioned in the site mahazar prepared in the presence of the manager of that firm.

The recorded consumption for other two phases for above mentioned period was $688 \times 40 = 27520$ units. So, the consumptions for one phase comes to $(688 \times 40) \times 1/2 = 13760$ units, which was the unrecorded portion of the actual energy used by the consumer. So this consumption was billed at normal industrial tariff of Rs.3.25/unit amounting to Rs.44720/- and corresponding Electricity duty comes Rs.3784/- resulting a short assessment bill of Rs.48504/- and served to the consumer.

The consumer hasn't made any complaint against the bill at this office or requested for any installment facility for the above bill, as per available office records. They had not made any payment against this bill under protest in the case of any dispute as stipulated in the Act/regulation. But they approached the Hon'ble CDRF, Thrissur vide complaint No. CC247 of 2008.

The Hon'ble CDRF vide the order dated 30.3.2017, specifically mentioned that "the complainant and the Forum strongly believes that the cost of energy used should be remitted by its consumer" and issued direction to the opposite parties to convince the complainant that the bill is legal/genuine for which fresh bill should be prepared as per KSEB Norms, with detailed working sheet. It is also directed to allow installment facility if necessary.

As per the concurrence of the Board vide order No.BOD (D,S&GE) No. 1658/2017 (LD II/3799/2017) dated Tvm 28.6.2017 to comply the order of Hon'ble CDRF, the corresponding bill and detailed calculation sheet has been served to the consumer. Since the amount as per this bill was due from the date of issuance of the short assessment bill which was under dispute before the Hon'ble CDRF, Thrissur and consumer had not made any payment against this bill under protest in the case of any dispute as stipulated in the Act/regulation, it was directed to remit the amount along with up to date surcharge as per rules. These details have been explained and communicated to the complainant.

The appellant filed a complaint before the Consumer Grievance Redressal Forum, Ernakulam vide complaint No 38/2017-18, which was dismissed on 26.10.2017 due to the lack of jurisdiction.

Regulation 24(5) of Kerala Electricity Supply Code 2005, Regulation 37(5) of the KSEB Terms & Conditions of Supply, 2005 and Regulation 134 (1) of

Supply Code 2014 empowers the Licensee to demand the amount undercharged from the consumer. No sort of penalty was included in the bill for the undercharged period. Hence the bill issued is as per rules for the actual energy consumed by the consumer which was undercharged and hence the appellant is liable to pay the same along with the surcharge.

Analysis and Findings: -

The Hearing of the case was conducted on 19.12.2017 in the Office of the State Electricity Ombudsman, Edappally, Kochi 24. Sri M.C. Surya kumar, the appellant was present and argued the case on the lines stated above. The respondent was absent and direction was given to the respondent to appear before this Authority on 26-12-2017 for hearing. Sri. K.H. Sadique, Assistant Executive Engineer, Electrical Sub Division, Mannuthy and Sri. Sebin Joy T., Assistant Engineer, Electrical Section, Mannuthy were represented for the respondent's side and a hearing conducted on 26-12-2017.

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.

The APTS has inspected the consumer's premises on 28-03-2008 and found missing of voltage in one phase of the three phase energy 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 voltage failure in one phase. But the appellant had filed a petition before the Hon'ble CDRF, Thrissur vide complaint No. CC 247of 2008 which was disposed of vide the order dated 30.3.2017, by directing the respondent that the opposite parties are bound to convince the complainant that the bill is legal/genuine for which fresh bill should be prepared as per KSEB Norms, with detailed working sheet. It is also directed to allow installment facility if necessary. The appellant's contention is that the KSEBL didn't give a detailed bill, as per the direction of CDRF and simply issued a notice with a copy of short assessment bill dated 28.03.2008, which was already considered by CDRF and rejected.

The appellant has contended that if the failure of the CT connection was from previous period 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. Another grievance of the appellant is that the KSEBL have claimed surcharge; but here surcharge is not applicable for these periods because this case was pending before CDRF for a long time.

The complaint submitted by the appellant before the Consumer Grievance Redressal Forum, Ernakulam vide complaint No 38/2017-18 was dismissed on 26.10.2017 due to the lack of jurisdiction. The CGRF has observed that the subject matters in the complaint was already adjudicated by a judicial forum i.e., CDRF, Thrissur and there is no need to interfere in the order of CDRF.

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. 48504/-, for non-recording of energy due to failure of voltage of the R phase, for 151 days, by taking the lost energy as 50% of the recorded energy. On perusing the Mahazar, this Forum feels that the contention regarding the failure of voltage for measuring energy in one phase of the meter noticed during inspection by KSEB was correct, since the mahazar was duly witnessed and the appellant has not disputed the mahazar. Thus it is convinced that the energy recorded in the Meter during the disputed period was not correct.

Refuting the contentions of the appellant, the respondent has averred that the total period of phase failure was obtained by downloading from the meter. Here in this case, the respondent declared that the voltage in one phase of the meter is detected as missing/abnormal on the basis of the inspection conducted in the premises on 28-03-2008.

The site mahazar justifies missing of 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 28-03-2008 for a period of 151 days as proved from the down loaded data, but not confirmed the missing of energy in one phase at the rate of 1/3rd of the consumption. This estimation is true in the case of balanced load in all the 3 phases. But such a condition is rare and usually it is observed that there exists some unbalance in industries where other single phase loads also exist. Another method of assessment is based on the average consumption of previous 6 months energy consumption obtained and if the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding three months after replacement of meter. This method is suggested under Reg. 33(2) of KSEB T &C of Supply, 2005.

It is established that the Meter was recording a lesser energy consumption than the actual value due to missing of measuring voltage to the Meter. The respondent has assessed the consumer at 50% of the energy recorded, by the simple reason that one phase of the meter is not getting voltage. This method lacks fairness as there is single phase loads in the premise and all the phases are not balanced always.

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.

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.

Considering all the above facts, this Authority is of the view that the respondent shall strictly comply the KSEB terms and conditions existed during the period and also shall issue a revised bill with a detailed calculation statement to the appellant as directed in the orders issued by the CDRF, Thrissur.

Decision:

From the findings and conclusions arrived at as detailed above, the respondent is directed to comply the orders of CDRF as per the KSEB norms by revising the bill for 5 months by taking the average of the consumptions for the months from 04/2007 to 09/2007, i.e., consumption prior to the date from which the missing of voltage commenced as per downloaded data. The respondent shall issue a revised bill within a period of 15 days from the date of receipt of this order. No interest or surcharge need be levied on the consumer during the petitions/appeal pending periods before the CDRF, CGRF and this Authority and up to the due date of the revised bill ordered now. The consumer may be allowed suitable installments if requested for, but will carry interest for installments from the due date of revised bill to the date of payment.

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. No order on costs.

Electricity Ombudsman

Ref No: P/ 128/ 2017 _____ dated _____

Forwarded to:

1. Sri. M.C. Suryakumar, Surya Rubber Industries, Vellanikkara, Mangode, Thrissur
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Mannuthy, Thrissur

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, Central Region, 220 KV Substation Compound, HMT Colony P.O., Kalamassery 683 503