

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/019/2018
(Present: A.S. Dasappan)
Dated: 18th May 2018

Appellant : Sri. Abdul Gafoor B.P.
M/s Fab Wood Industries,
Thuruthi, Pappinisseri,
Kannur

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Pappinisseri,
Kannur

ORDER

Background of the case:

The appellant is an industrial consumer bearing consumer 12205 under the tariff LT IV (A) of Electrical Section, Pappinisseri, running the industrial manufacturing unit namely M/s Fab Wood Industry, Thuruthi, Pappinisseri, having a present connected load of 121645 watts and contract demand 90 kVA. The connected load of electric connection had been enhanced from 40150 watts to 121645 watts with effect from 16-05-2015 resulting replacement of CT with ratio 100/5 to 200/5. While so, on 25-10-2017, the factory premise was inspected by the APTS of KSEB and detected wrong application of Multiplication Factor (MF) of 20, instead of actual 40, for converting the meter readings into true energy consumption. The CT's at the time of the inspection in the premise of the consumer was tested at the meter testing laboratory and the ratio of each CT was confirmed as having 200/5 i.e. 40. The consumer was issued a short assessment bill of Rs. 12,33,436 /- dated 31-10-2017 towards the cost of 'energy loss' occurred to KSEB due to mistake in the MF. Upon receiving short assessment bill for Rs. 12,33,436 /-, the consumer approached and filed a petition before CGRF, Kozhikode on 21-11-2017 vide OP No. 156/2017-18. The Forum issued an order on 08-03-2018 to revise the short assessment bill by reducing the period from 29 months to 24 months from 10/2015 to 09/2017 and giving 15 days' time for remittance as per the Regulation 152 of Kerala Electricity Supply Code 2014. The Forum also granted

12 numbers installments for the revised short assessment bill, if the appellant made a request for the same. Aggrieved by the said order, the Appellant has filed the Appeal Petition, before this Authority.

Arguments of the appellant

The appellant have an electric connection under LT IV A tariff. On 25-10-2017 an APTS inspection conducted in the premises, subsequently a huge and exorbitant bill for Rs. 12,33,436/- dated 31-10-2017 was given to the appellant. As per KSEBL the meter is faulty. They have checked with the parallel meter. They stated that Multiplication factor of CT meter is 40 instead of 20. Instead of taking the average value for assessing the consumption during meter faulty period the KSEBL have taken all monthly readings. The CGRF never consider the argument of six month limitation.

The appellant being plywood manufacturers decide on the rate of the product after considering all the expenditures and selling products by fixing a meager profit. In its calculation, the appellant have taken the exact amount KSEBL had given as the expenditure towards electricity supply. It is not 'fair and just' to claim such huge amount for their mistake. It will cause heavy damage to the industry which is appellant's only livelihood.

The claim of such amount would have been valid if it were the appellant himself took the reading and calculated the bill. But it was the KSEBL employee who took the reading every month. If such an anomaly had occurred, the KSEBL should have informed of the same earlier itself. The huge amount of Rs. 12,33,436/- is unacceptable.

As per Electricity Act Section 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 can be revealed that the phase is not working (either voltage or current or phase reversal) if it is so. It is also his liability to check the healthiness by monitoring the LED as per Regulation 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 just before APTS inspection should be considered as date of inspection,

KSEBL can claim only average value for assessing the consumption during meter faulty period, instead of taking all monthly readings.

The Electricity Act 2003 Section 50 is very clear and specific in assigning the duty and responsibility to specify in 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 under Regulation 115(9). This limits the period of assessment as previous 'six months'. Here KSEBL can collect the undercharged amount as per Regulation 134(1) but should be limited for a period of six months as per Regulation 115(9).

The exact date of change of CT and Meter is not known, the Site Mahazar is also silent about it. The KSEBL have several times replaced the Meter and CTs. They cannot arbitrarily claim for a longer period. In the similar case, Consumer Grievance Redressal Forum, Kozhikode, has already directed to have the assessment for 12 months only. Even though the appellant pointed out the same the CGRF did not consider it.

The calculation carried out by KSEBL is wrong and false. Complying with Supply Code Regulation 152 [3) 'Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to 12 months. Also as per Supply Code 2014 Regulation 153(4), "The consumer may be given installment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of installment".

Since the date of anomalies or incorrect multiplication factor cannot be established accurately, the collection of amount should be limited to 1 year. Also since the Supply Code permits the collection of the amount in installments, the appellant requested the CGRF to direct KSEBL to limit the short assessment bill to 1 year and to provide installments.

Relief Sought

1. To direct KSEBL, not to disconnect the supply till hearing and disposal of the petition.
2. To cancel the impugned bill or limit the assessment to one year or six months.
3. To allow installment facility for 24 months.

Arguments of the respondent

As the change of CT (Current Transformer) from 100/5A capacity to 200/5A while enhancing the connected load from 40150 watts to 121645 watts on 16-

05-2015, was not effected in the billing software, the electricity bills raised by the system were under charged due to the wrong application of multiplication factor from 6/2015 to 10/2017. The appellant was well aware of this very factum and having convinced of the same signed the site mahazar prepared by the respondent Board. Furthermore, Section 70 of the Indian Contract Act, 1872 states in unambiguous terms the obligation of the person who enjoys the benefits of a non-gratuitous act. Whereas the appellant herein takes shelter under the umbrage of certain regulations of Kerala Electricity Supply Code, 2014 (herein after called the Code) like Regulations 110 (7), 115(9) etc. which have little or no bearing on the present dispute.

In a joint surprise inspection conducted on 25-10-2017 by the officials of the Electrical Section, Pappinisseri and the Anti Power Theft Squad of Kerala State Electricity Board Ltd., it came to light that the capacity of current transformer (CT) attached to the installation is 200/5 ratio and both the energy meter and CT are in good condition. But it was found that the multiplication factor for computing energy consumption was being taken as 20 instead of the correct value of 40 for billing purpose. Accordingly, a site mahazar was prepared which was amply witnessed by the appellant himself who was absolutely convinced of the fact that there was a wrong application of the multiplication factor when the inspection team demonstrated the appellant on the said factor using various methods. On verification of office records it was found that the connected load of electric connection had been enhanced from 40150 watts to 121645 watts with effect from 16/05/2015 resulting the change of CT with 100/5 ratio to 200/5. Since this change had not been updated in the data of the billing software due to inadvertent mistake, the current charges were undercharged by way of wrong application of multiplication factor during the period from 6/2015 to 10/2017. Subsequently, by invoking Regulation 134 (1) of Kerala Electricity Supply Code 2014, which states that "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.", a short assessment bill amounting to Rs. 12,33,436/-has been issued to the consumer with details and giving 30 days for making payment.

The appellant is deliberately diverting the attention of this forum to a situation of meter faulty and consequential average billing for 'six months" by highlighting Regulation 115(9). The appellant's reliance on Regulation 115(9) is totally out of place and has nothing to do with the dispute on hand as the said regulation mainly dealt with defective meters. The case on hand, there is no denying the fact that the meter is a sound one which the appellant himself is well aware of, but an inadvertent error in not effecting the change in the CT value to the billing software on time when the actual change was made consequent to a load enhancement on 16-05-2015. At the time of inspection, the appellant had no hesitation to appreciate the real facts, but the complaint

before the CGRF and the appeal before this Forum are precisely precipitated by an afterthought.

The appellant's allegation on KSEBL setting its own rule for billing and collection of payment is a farfetched one as being a distribution licensee; KSEBL is under the strict surveillance of the State Regulator, KSERC and is strictly following the Kerala Electricity Supply Code, 2014 made by the Regulator in the area of operation of distribution of supply. The appellant is trying on various options and relying on various provisions of the Regulations which are quite contrary to each other and have little or no relevance here. At last, the appellant accepted the findings of the CGRF that the relevant Regulation applicable in the situation on hand is Regulation 152(3) but to second proviso by contenting that the actual date of occurrence of the anomaly is not known.

The respondent had made neither penalization nor penalty for the aforesaid mistake but made a short assessment bill strictly in compliance with Regulation 152 read with Regulation 134 of the Code. It is only a short assessment for the amount short collected by the Board due to wrong application of the multiplication factor for which there is no irregularity or illegality. This respondent has acted well within the purview of the rules and regulations in vogue.

It is trite law in legal jurisprudence that no one is permitted to make unlawful enrichments at the expense of others mistakes. Being a public utility KSEBL is duty bound to ensure 24 x 7 uninterrupted power supply and in the midst of a wide range of activities, it is not humanly possible to detect defects like wrong application of multiplication factor then and there and to inspect and examine each and every electric meter on a routine basis. In a power starved state like Kerala, after availing electricity that too sourced at exorbitant rates from across the nation, how another business firm can shirk from its moral and legal obligation to honour the bill by citing certain flimsy and unwarranted grounds. Moreover, KSEBL being a Public Sector Company, is the custodian of the public property and has a moral and legal obligation to safe guard its Master's (people of the land) interest by not allowing a business firm to make unlawful enrichment. In this context, it deserve special mention to advert into Section 70 of the Indian Contract Act, 1872 wherein it is specifically stated that "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered". Moreover, the legal obligation to remit the short assessment bill is no more *res Integra*. The Honourable High Court of Kerala had occasion to look into similar issue in WP(C) No.90/2009 (P.SUNDERDAS V KSEB) and the Honourable High Court of Jharkhand in LPA No. 665/2015 (M/ Sheo Shakti Cement Industries V Jharkhand Urja Vikas Nigam Ltd.) and categorically asserted that licensee is

empowered to realize the short assessment amount even at a later stage which is not at all hit by Section 56 (2) of the Act. Besides, Regulation 134 of the Code empowers the licensee Board with blanket provision to recover the undercharged amount.

Analysis and Findings

The Hearing of the case was done on 08-05-2018 in my chamber at Edappally, Kochi and Sri. Shaji Sebastian represented the appellant's side and Sri. P.R. Raji, Assistant Engineer in charge, Pappinisseri represented the respondent's side. On examining the Petition, the counter of the Respondent, perusing the documents attached and the arguments in the hearing and considering the circumstances and facts of the case, this Authority comes to the following conclusions leading to the decisions.

According to the respondent, the meter and CTs were found working properly and only the Multiplication Factor (MF) taken for calculating the true energy consumption was wrongly applied. The site mahazar and test report of the CTs also reveal that the averment of the respondent in this regard is true. Regarding the contentions of the appellant that the meter and CT were faulty, it poses no serious weightage, since there is no defective or malfunctioning in the CTs or in the meter, as alleged by the appellant. It is possible that due to some omission, an error can occur in the calculation of electricity bill. This may be due to wrong application of MF as happened in this case or may be due to clerical mistake or oversight. The Regulation 134 of Electricity Supply Code 2014 states that;

“If the Licensee establishes either by review or other wise, that it has undercharged the consumer, the Licensee may recover the amount under charged 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”.

Though it was a fault on the part of KSEB to apply the correct MF, it cannot be ignored that the consumer has actually used the energy and is liable to pay the charges for the energy he has consumed. He is required to pay the charges only for the actual energy and not any penalty. In such situations, the consumer can be allowed to remit the amount in monthly equal installments. In this case, the short assessment bills became due only after realization of a mistake. Amounts of the short assessment bills were never issued earlier and the same cannot be said to be 'due' at any earlier time. In short, the word 'due' in Section 56(2) means the amount due and payable after a valid bill has been served on the consumer. In this case the short assessment bill was issued on 31-10-2017 and hence the amount of the impugned bill cannot be said to be unrecoverable and barred under Section 56(2) of the said Indian Electricity Act, 2003.

In an identical case, reported as, 2009(1) KHC 945 of Hon High Court of Kerala in W P (C) No. 90 of 2009 (1), Sunderdas P Vs KSEB, it was decided as follows; "...The scheme of Section 56(2) is that the amount becomes due when the bill is issued". In that particular case also, the bill was caused due to the wrong application of multiplication factor. In this case, the Energy Meter was good and the CTs used for measurement of 'current' to the Meter were working properly and only the Multiplication Factor (MF) used for the computation of actual energy used, for preparing the electricity Bill of the consumer, went wrong. It is a clerical mistake and not a technical error. Hence the appellant's contention regarding application of Section 55 (1) of Electricity Act, 2003 and regulations of 110 (7) and 115 (9) of Electricity Supply Code, 2014 has no relevance in this case. However serious lapses occurred on the side of the respondent in collecting the current charges by incorrectly fixing the multiplication factor for a period of 29 months. As per Regulation 152 (3), in such case of anomaly of wrong application of multiplication factor, the realization of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months. So the licensee may take action to recover the loss caused to them which is exceeding 24 months from the concerned responsible employees. It is revealed from the site mahazar and the meter history records of consumer number 12205 produced by the respondent that the connected load of electric connection had been enhanced from 40150 watts to 121645 watts with effect from 16-05-2015 onwards resulting the change of CT with 100/5 ratio to 200/5 ratio.

The appellant's arguments regarding meter faultiness and replacement of the meter and CTs several times are not substantiated with any evidences and hence not acceptable and not sustainable. The consumer also does not seriously dispute the omission of MF detected except that it is barred by Limitation under Section 56(2) of IE Act 2003. The appellant has pointed out that the CGRF, Kozhikode, in a similar case, had limited the assessment for 12 months only. But the facts of the order issued by the CGRF in OP No.23/15-16 is different and that order is based on the provision that if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months. This provision cannot be applied in the case of the appellant as it is clearly proved that the appellant's connected load enhanced from 40150 watts to 121645 watts with effect from 16-05-2015 onwards.

But the appellant is also eligible for suitable installments, if requested for, and the respondent shall issue the same. The decision taken by the CGRF is found to be in order.

Decision

From the analysis done above and the findings and conclusions arrived at, I do not find any merit in the Appeal Petition filed. The appellant has consumed energy and due to some omission on the side of the respondent, the multiplication factor was wrongly applied as 20 instead of 40. The site mahazar prepared during APTS inspection has noted down the anomaly detected and copy of the site mahazar was received by the Manager of the Firm.

The appellant is also eligible for 24 installments, if requested for, and the respondent shall issue the same. The consumer shall pay the whole amount or the 1st installment within 30 days of this order. The subsequent installments will bear interest from 30th day of this order to the day of payment. No interest or surcharge is payable by the consumer for the Appeal pending period before this Forum and up to 30th day of this order.

Having concluded and decided as above, it is ordered accordingly. The order dated 08-03-2018 of CGRF in OP No.156/2017-18 is upheld. No order on costs.

ELECTRICITY OMBUDSMAN

P/019/2018/_____ /Dated:_____

Delivered to:

1. Sri Abdul Gafoor B.P., M/s Fab Wood Industries, Thuruthi, Pappinisseri, Kannur
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Pappinisseri, Kannur

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, Gandhi Road, Kozhikode