

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/041/2018
(Present: A.S. Dasappan)
Dated: 12th September 2018

Appellant : Sri. K.P. Ameer
Green Park Residency,
Thavakara, Kannur

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

ORDER

Background of the case:

The appellant runs a Tourist Home in the name "Green Park Residency" at Thavakara bearing Con. No. 1166558009208 under the jurisdiction of Electrical Section, Burnassery. Electricity supply to this premises is given in three phases with a registered load of 32105watts and in LT VII A tariff. While so, on 08-02-2018, 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 appellant was served with a short assessment bill, for the non functioning of CT in B phase for two years, so as to recover the unrecorded portion of energy, for Rs. 5,11,807/-. Being aggrieved with the short assessment, the consumer approached the CGRF, Northern Region, with Petition No. 208/2017-18 and the Forum disposed of the petition on 31-05-2018 upholding the decision of the respondent. Aggrieved by the decision, the appellant has submitted the Appeal petition before this Forum.

Arguments of the appellant:

The appellant has raised the following arguments in his appeal petition.

The anti-power theft squad has conducted an inspection in the premises of the appellant on 08.02.2018 and prepared a mahassar on the allegation that the meter installed in the premises was not recording the consumption properly, as there was some defect in one phase of the meter.

Based on aforesaid mahassar, the respondent issued a demand notice for an amount of Rs. 5,11,807/-being the short assessed amount on account of the faulty meter, for the period of 24 months preceding to the date of the inspection.

Being aggrieved by the said order the appellant approached the CGRF, Kozhikode and his complaint was admitted into file as OP 208/17-18 on 27.02.2018. However without properly considering the contentions raised by the petitioner, the CGRF has dismissed the said complaint as per order dated 31.05.2018. The copy of the said order was served upon the appellant on 9/06/2018.

The demand made by the respondent is not legally sustainable. The findings that meter is faulty and the determination of percentage of error as -33.33% are stoutly denied being incorrect. Even if it is assumed for argument sake that, the finding in the mahassar is correct, it only evidences that the meter was faulty at the time of the inspection.

Even if it is assumed or argument sake, without admitting, that the meter was faulty, that will not enable respondent to reassess the charges for the period of 24 months prior to the date of inspection. It is pertinent to note in this regard that, regulation 115(9) of Kerala Electricity Supply Code, 2014 specifically provides that in case the meter is found to be faulty, revision of the bills on the basis of the test report shall be done, only for a period of 6 months or from the date of last testing, whichever is shorter. In this case, instead of adopting the said procedure, the monthly bills have been revised for a period of 24 months preceding to the date of inspection. This is against the statutory stipulation contained in the above provision and hence the assessment has to be withdrawn.

It is true that regulation 134 and 152 of the Supply Code provides for assessment of charges retrospectively. However aforesaid provisions are general provisions dealing with several contingencies, whereas regulation 115 (9) is a specific and special provision dealing with the assessment /re-assessment of electricity charges on account of default in the meter alone. Therefore being a special provision, it will prevail over the general provision and hence the assessment on the ground of defective meter can only be done by adopting the procedure contemplated under regulation 115 (9) alone.

Nature of the relief sought:

To set aside the order passed by the CGRF, Northern Region, Kozhikode, in OP No 208/2017-18 dated 31.05.2018 and grant the reliefs sought for in the said complaint.

Arguments of the respondent:

The premises of the consumer was inspected on 08.02.2018 by a team of KSEB Limited led by the Anti Power Theft Squad (APTS) of Kannur unit. The inspection site mahazar was prepared by the Sub Engineer Sri. Hari Miniyadan of Electrical Section, Burnassery and witnessed by Sri. K P Ameer for consumer.

The meter installed in the premises was an L & T make CT operated 3 phase meter with serial No. 13405077 and current rating of -/5 A. The current rating of external CTs provided on each phase were 100/5 A. During inspection the voltages in R, Y & B phases displayed in the meter were 231V, 231V and 236V respectively. The currents in R, Y & B phases displayed in the meter were 0.182A, 0.359A and 0A respectively. Since the overall multiplication factor applicable for this metering system was 20, the actual currents shall be 3.62A, 7.08A and 0A respectively if the CT operated metering system is healthy.

The meter was calibrated at site with a reference standard meter with serial No. 050043257, name: ZERA GmbH, Konigseinter of Germany which is an internationally valid reference standard meter. The voltages measured in R, Y & B phases in the reference standard meter were 232.0V, 230,13V and 236.89V respectively and currents measured were 3.64A, 7.18A and 1.22A respectively. Also the digit test was carried out for kWh reading, with the reading on consumer meter as 8376.420 units and that on reference standard meter as 0 unit. When the reading on consumer meter became 8376.422 units with the consumer load in on condition, the reading on reference standard meter became 0.06 units. The consumption recorded on the consumer meter is $(8376.422 - 8376.420) \times 20 = 0.04$ units only. The consumer meter is recording only 66.67% of actual consumption and hence 33.33% of actual consumption or 50% of recorded consumption was short recorded.

The inspection further revealed that the CT secondary current input to the meter in B phase was missing. The data history downloaded also revealed that the B phase current input to the meter from CT secondary in B phase was missing for a period of more than 2 years, The total connected load detected in the premises was 39kW where as the registered load was only 33kW. The irregularities observed in the consumer premises were 6kW Unauthorized

Additional Load (UAL) and 33.33% under recording of energy consumption in the CT operated metering system,

The provisional assessment for 6kW UAL was made by the Assessing Officer by following Section 126 of Electricity Act, 2003 and a short assessment of Rs. 5,11,807/- dated 14.02.2018 was issued by the Assistant Engineer for realizing the 33.33% unrecorded portion of energy for a period of 2 years, The short assessment was issued as per the provisions of regulations 134 & 152 of Kerala Electricity Supply Code, 2014.

The period of short assessment was limited to 24 months even though the actual under recording of energy was for more than 2 years. The consumer had followed all procedures as per Section 126 for the provisional assessment order issued by the Assessing Officer for 6kW UAL and remitted the final assessment amount. However, aggrieved by the short assessment bill issued by the Assistant Engineer for Rs. 5,11,807/- the consumer had approached the CGRF for redressal.

The fault was kept as it is after inspection and issue of short assessment bill. And the consumer raised objection to pay the monthly bill issued afterwards on account of this short recording. During the course of hearing, the CGRF directed to rectify the fault. Initially it was observed that the short recording was due to a loose contact at the meter terminal of B phase where the CT secondary current input wire to the meter was connected. The meter terminal contact has been tightened on 04.04.2018 by recording the process as a site mahazar. However the fault was still persisting and hence the meter along with CT on B phase were replaced on 24.04.2018 by recording the process as a site mahazar. The existing meter with Sl. No. 13405077 has been replaced with a new meter with Sl. No. 13405194 and the existing CT on B-phase with Serial No. 1/9043 (100/5A, VA-5 and Class-0.5 of PGR Powertech) has been replaced with a new CT with Serial No. 10/1688 (100/5A, VA-5 and Class-0.5 of PGR Powertech). The reading (FR) on new meter after installation was 2657.29.

The following are the readings taken after installation of the new meter and CT:

Sl. No.	Date	Kwh Reading	Units Consumed	Remarks
1	24-04-2018	2657		
2	02-05-2018	2734	1540	Shut down for 4 days from 29.04.2018 to 02.05.2018
3	18-05-2018	2987	5060	
4	20-05-2018	3017	600	
5	01-06-2018	3165	2960	
6	02-07-2018	3385	4400	

The consumer premises was under shut down for 4 days from 29.04.2018 to 02.05.2018 for Transformer maintenance.

Total consumption from 24.04.2018 to 20.05.2018	= (3017-2657) x 20
(23 days)	= 7200 units
Average consumption per day	= 7200/23 = 313.04 units

On analyzing the above facts, it is observed that the meter was not recording consumption on B-phase since installation of the same on 09.04.2014. The under recording is worked out as 33.33% which is 50% of the recorded consumption during the faulty period. The CT with Sl. No. 1/9043 and the meter with Sl. No. 13405077 are kept at Electrical Section Burnassery,

Regulation 115(9) of Kerala Electricity Supply Code, 2014 is not applicable in this case since it is meant for faulty whole current/voltage meters where instrument transformers are not included. Here the fault is due to failure of instrument transformer which has not supplied current input to the meter terminal in B phase. The Current Transformer (CT) secondary at the time of inspection was supposed to supply 24.4 amps to the meter terminal on B phase. Instead the current supplied to the meter terminal in B phase was zero amps. The under recording was clearly established during inspection by calibrating the current transformer operated metering system as a whole. The post consumption pattern for 23 days after rectification of the faults supports the same. Hence the consumer is liable to pay for the actual electricity consumed. The short assessment bill was raised as per the provisions of regulations 134 and 152 of Kerala Electricity Supply code, 2014.

Analysis and Findings: -

The hearing of the case was conducted on 14-08-2018, in the Office of the State Electricity Ombudsman, Edappally, Kochi. Sri Ziyad Rehman, Advocate, represented the appellant's side and Sri. Rajeev N, Assistant Executive Engineer, Electrical Sub Division, Kannur, represented the respondent's side. 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 08-02-2018 and found that one phase of the Current Transformer (CT is a device for measuring high values of electric Current on a proportionate reduced scale), was not feeding the "current inputs" to the 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 CT's fault in one phase. 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.

Normally, the respondent is bound to rectify the defect of the CTs to the meter or renew the CTs or the CT meter itself, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 5,11,807/-, for non-recording of energy due to defects of the B phase CT, for 24 months, by taking the lost energy as half of the recorded energy (1/3rd of the actual consumption). On perusing the Mahazar, this Forum feels that the contention regarding the one No. of CT's defects noticed during inspection by KSEBL was correct.

The appellant contended that Regulation 134 and 152 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 the KSEBL has under charged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately. It is stated that this provision not deals with a situation where the meter is inaccurately recording the energy consumed on account of a wrong connection given to the meter.

The respondent has averred that the total period of phase failure was obtained by downloading the meter. The respondent relied upon the downloaded data and consumption pattern for establishing the period of phase failure and missing of current in one phase. It is submitted by the respondent that the meter installed in the premise is not reported as defective or damaged. Under charging of prior bill is established due to an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 134 is applicable. It was also contended that the downloaded data was convinced by the CGRF.

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. 5,11,807/- as per Regulation 134(1) and 152 of Supply Code, 2014.

Here in this case, the respondent declared that the current in one of the CTs connected to the meter is detected as missing/abnormal on the basis of the inspection conducted in the premises on 08-02-2018. The data is downloaded on 08-02-2018 by the APTS. It is also found that the consumption of the appellant before and after the disputed period and during the disputed period is not in a consisting pattern.

The site mahazar also justifies missing of current 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 08-02-2018, but not confirmed the missing of energy at the rate of 1/3rd of the consumption for the entire period.

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 08-02-2018 and detecting of non-recording of energy in one phase. The respondent has an argument that, the meter is not defective, to attract Clause 115 of Supply Code, 2014.

On going through the records, the following facts are revealed. The faulty metering system was replaced in April 2018. The consumption recorded in the new meter for 5/2018, 6/2018 and 7/2018 are 8620 units, 4400 units and 5060 units respectively with an average monthly consumption for 6027 units. But the average monthly consumption for the above particular period of the previous years 2015, 2016 and 2017 are 3873 units 4560 units and 3353 units respectively. From the above, it is clear that the consumption recorded in the new meter is higher than the consumption recorded in the metering system which was replaced.

Further on verifying 135 events of occurrence/recoveries of various factors in the downloaded data of the energy meter from 14-01-2015 to 08-02-2018, the CT current is seen as -0.260Amps at 09.37 hrs on 21-01-2018, -0.130 Amps at 08.05 hrs. on 19-02-2017 and -0.490 Amps at 21.06 hrs on 14-01-2015. Also on examining the downloaded data an event of 'B phase CT open' is not seen and hence the data is not dependable.

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 load survey/tamper report down loaded. But the quantum of loss calculated based on 1/3rd missing of energy is not established conclusively. There is no 3 phase load in the premises. Majority of the load is that of lights, fans, air conditioners, computers etc and the firm is a commercial establishment. The consumption recorded in the new meter itself was taken for assessing the unrecorded portion of energy. The percentage of loss of energy 33.33% arrived at by the respondent for the 24 months on the strength of the consumption recorded 0.06 units in the test meter and 0.04 units in the premises meter for a short duration is not fair. So, a probable conclusion can be arrived at in this case is that the CT current in 'B' phase was missing, but cannot be reliably assessed

and the quantum of loss calculated based on 1/3rd missing of energy is not established correctly.

Decision

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 5,11,807/- issued to the appellant. The respondent is directed to revise the bills for the consumption for the period of one year prior to the inspection dated 08-02-2018 by taking an average consumption of 6027 units i.e. the average consumption of 05/2018 for 8620 units, 06/2018 for 4400 units, and 07/2018 for 5060 units. Accordingly the respondent shall raise a bill for the meter faulty period and issue the revised bill to the consumer within fifteen 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 208/2017-18 dated 31-05-2018 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/041/2018/ _____ /Dated: _____

Delivered to:

1. Sri. K.P. Ameer, Green Park Residency, Thavakara, Kannur
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., 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