

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/068/2018
(Present: A. S. Dasappan)
Dated: 29th October 2018

Appellant : Sri. Athikkal Muhammed
M/s Athikkal Bricks & Clay Works,
Edavanna,
Malappuram

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Wandoor,
Malappuram

ORDER

Background of the case:

The appellant is an industrial consumer with consumer No. 4235 under Electrical Section, Edavanna having a connected load of 75 kW. The Audit team of Regional Audit Officer, Manjeri conducted an inspection during the month of November 2015 and found that the consumer was issued with undercharged bills from 10/2013 to 08/2015. Accordingly the appellant was issued with a short assessment bill amounting to Rs. 60,091/- (Rupees sixty thousand and ninety one only). Aggrieved by this, the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 06/2016-17. The Forum quashed the short assessment bill for Rs. 60,091/- and directed the respondent to issue short assessment bill in compliance with Regulation 134 of KESC 2014 for ToD energy charges, demand charges, electricity duty and meter rent as per the readings recorded in the office register. The respondent had filed a review petition before the CGRF requesting to review the order dated 30-06-2016 issued in OP No. 06/2016-17. It is submitted by the respondent that the Forum erred and failed to see the power factor incentive/disincentive has been introduced by the licensee from 01-09-2013 based on the order of the Regulatory Commission published in Kerala Gazette

dated 9th September 2013 and it is constructive notice and hence a separate notice is not mandatory. The Forum allowed the review petition vide order dated 31-03-2017 in review petition no. 07/2016-17. Aggrieved against this, the appellant has submitted an appeal petition No. P/084/2017 before this Authority which was disposed of by setting aside the order dated 31-03-2017 of CGRF and by quashing the short assessment bill amounting to Rs. 60,091/- and also directed the respondent to revise the short assessment bill by deducting the incentive/disincentive from the calculation statement and to issue the revised bill to the appellant. Accordingly the respondent had issued another revised short assessment bill for Rs. 53843/-. The appellant challenged this revised bill by filing W.P. (c) No. 41936 of 2017 before the Hon'ble High Court of Kerala and the Hon. Court directed the appellant to submit application before the competent statutory authority. So the appellant again approached the CGRF (NR) by filing a petition in OP No. 181/2017-18. The Forum found that the revised bill for Rs. 18,533/- issued to the appellant on 27-11-2017 is in order and hence rejected the petition. Aggrieved against this, the appellant has submitted this appeal petition No. P/068/2018 before this Authority.

Arguments of the appellant:

The contentions of the appellant in this appeal petition are as follows.

1. As per tariff order of Hon. Commission it is mandatory to have ToD metering from 01.01.2013, as per Clause 11 of General conditions. ToD tariff shall be applicable to LT IV Industrial consumers having connected load 20kW and above and LT 1 (a) domestic (3Phase) consumers having monthly consumption of above 500 units. The charges and other terms & conditions for ToD tariff is given as Annexure 'D & E' to the schedule. The scheme shall be effective from 01.01.2013. Here the claim starts from 10/2013.
2. If KSEBL have been providing the appellant with proper bill indicating all required parameters like zone wise kWh, zone wise kVA, cumulative kVAh and cumulative kWh the consumer would have understood the magnitude of penalization towards low PF and they would have taken corrective measures by adding capacitors. Now the appellant has lost the opportunity for the correction and hence this claim is not reasonable.
3. Also as per Supply Code, 2014 Reg.123, KSEBL is liable to provide the appellant with detailed bill indicating all the 56 details including power factor, kVA, cumulative kWh, cumulative kVAh etc. They have not provided with the detailed bill which surmounts to non compliance of the directives.
4. All the ToD meters are having MRI facility and it is the bound duty of KSEBL to provide the appellant with details of short assessment. The consumers are not aware the reason for the short assessment and also about

the meter readings cumulative kWh and kVAh and also average PF. The bills given violating all rules and norms by KSEBL do not indicate the required parameters and it is not known from where and how this penal amount came.

5. It is to be taken into consideration that the impugned bill issued to the appellant is based on an audit report. The audit report is in general nature pointing out the dereliction of the duty from the part of KSEBL employees pointing out grave lapses. The auditors have found a lot of discrepancies in meter reading register. The auditors also found out that the power factor is also not entered on a regular basis. So the attempt of KSEBL to pass on the burden of loss to the consumer for the wrong doing on part of their employees should not be entertained.

6. Another important factor to be taken into consideration is that the appellant had given the premises on rent and the tenant had paid the electricity bill as per the bill provided by the KSEBL during the relevant periods. Now the tenant has been changed and if any short assessment bill is to be paid then the appellant will have to pay it from his pocket. The appellant will have to pay the charges irrespective of the fact that he has never consumed any electricity and hence the appellant will have to face irreparable injury and hardship, which should not be allowed.

7. It is to be noted that the State Electricity Ombudsman had quashed the short assessment bill by finding that on verification of meter reading register of the consumer it was found that it lacks the relevant details required in many months. Without such details, it is difficult to prepare a short assessment bill. On basis of this finding the bill was quashed.

8. When enquired through the Right to Information Act, 2005 it was revealed by KSEBL that the short assessment was not based on the additional electricity consumed by the consumer.

9. It is to be noted that the forum had not even granted a chance to cross examine the respondents.

Relief Sought for:

1. Direct KSEBL not to disconnect the supply till hearing and disposal of the petition.
2. Cancel the impugned bill.

Arguments of the respondent:

The respondent submits the following versions.

As per the regulation 134(1) of Kerala Electricity Supply Code 2014, "If the Licensee establishes either by review or otherwise, that it has under charged 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 above regulation the Licensee is eligible to recover the under charged amount from the consumer and the bill was issued accordingly. The details of the short assessment bill issued to the consumer is as follows. The short assessment bill comprises of the following items, since it was not included in the regular bills.

- a) Power factor disincentive
- b) Difference due to zone wise billing of energy charges
- c) Short assessment in energy charges
- d) Short assessment in electricity duty
- e) Short assessment in meter rent

The details of the short assessment against the consumer is as follows

Incentive/Disincentive due to power factor

The disincentive due to power factor from 11/13 to 7/14 is collected from the consumer taking reference power factor as 0.9 and from Aug 2014 to July 2015, the disincentive / incentive due low/high power factor was not done due to omission in billing by the KSEB. Also consumer was billed with 0.8 as power factor as reference instead of 0.9 during the month of Oct 2013. Hence an amount of Rs 6249/- towards disincentive is due from the consumer for the above period in this head.

As the consumer has already paid the disincentive/incentives from November 2013 to July 2014 and the disincentive/incentive is not done from Aug 2014 to July 2015 this is a case of undercharging as section 134(1) of Electricity Supply Code 2014.

Short assessment due to energy charges

The ToD billing of the energy charges has been done from Oct 2013 to July 2014 and the consumer has paid the amount. The billing has been done based on normal tariff from Aug 2014 to June 2015. Again the ToD billing was done from July 2015 till now. Hence there was a short assessment during the period from Aug 2014 to June 2015 amounting to Rs 12329/-. This is due to wrong application of tariff. Instead of billing the consumer with Zone wise tariff, the consumer was billed with normal tariff which was paid by the consumer

and the balance to be paid is as per short assessment. This is a case of undercharging as per section 134(1) Electricity Supply Code 2014.

Short assessment in Demand charges

The short assessment in demand charges is also due to wrong application of contract demand. The demand charge was calculated based on 0.5625 (0.75x0.75) times the contract demand instead of 0.75 times the contract demand from Oct 2013 to Aug 2015. The consumer has paid the demand charges as per the normal bills and the balance to be paid due to calculation error amounts to Rs 39936/-. This clearly shows that it is a short assessment as per section 134(1) of Electricity Supply Code 2014 as the consumer has already paid the demand charges corresponding to 0.5625 times the contract demand.

Short assessment in Duty

The short assessment in duty to revised energy charges which amounts to Rs. 1,406/- for the entire period.

Short assessment in Meter Rent

The short assessment in meter rent is due to tariff revision from Aug 2014 which amounts to Rs 2172/- for the entire period.

It is true that the appellant filed OP No. 06/2016-17 before the Consumer Grievance Redressal Forum, Northern Region, Kozhikode against the short assessment bill issued. The Forum on wrong appreciation of the facts and circumstances allowed the petition by the order dated 30-06-2016. The contention of the appellant that the Forum by order dated 30-06-2016 allowed the petition filed by the appellant and the short assessment bill was quashed is not true. It is true that the Forum vide order dated 30-06-2016 has disallowed the claim of disincentive on the ground that no prior notice was given to the consumer. In a review petition No. 7/2016-17 filed by the respondent before the CGRF, it was submitted that the Forum failed to see that the power factor incentive/disincentive has been introduced by KSEB Ltd from 10/2013 based on the Order of the Regulatory Commission published on the Kerala Gazette dated 9th Sep 2013. Since the above publication is a constructive notice, separate notice is not mandatory and the invoice issued by the respondent as per regulation 134(1) of the Kerala Electricity Supply Code 2014 is to recover the undercharged portion only. Thus, demanding of undercharged portion of the bill cannot said to be illegal and the respondent has acted strictly in accordance with rules and regulations. The Forum disposed the review petition filed by the Respondent vide its order dated 31-03-2017 by admitting the review petition and directing the Respondent to allow installment facility on request of the consumer. The appellant challenged the above order before this

Authority and ordered to revise the short assessment bill deducting the incentive/disincentive from the calculation statement. The respondent has obtained approval from the Kerala State Electricity Board Ltd for the compliance of the order. The sanction for compliance of the order of the Electricity Ombudsman received on 24-11-2017 and the revised bill as per the order of Electricity Ombudsman issued to the consumer on 27/11/2017. The bill issued to the consumer was only short assessment for the undercharged period and not any penal bill.

The contention of the appellant that he was unaware of the magnitude of penalization towards the low power factor and if known they would have taken corrective measures by adding sufficient capacitors is not true to the facts. The true fact is that even now after providing the full details of metering, the appellant has not taken any initiative to rectify the low power factor by installing necessary capacitor.

The respondent provided all details of the bill, when demanded by the appellant. The short assessment bill issued was not only for low power factor but also it contained short assessment of demand charge, energy charge, duty and meter rent for the period covering 10/2013 to 08/2015. It is true that as per the tariff revision order approved by the Hon'ble Kerala Electricity Regulatory Commission, it is mandatory to have ToD metering from 01/01/2013 as per the clause II of general conditions for industrial consumes having connected load above 20 KW and LT Ia (3 Ph) domestic consumers having monthly consumption more than 1000 units per month. But due to various reasons Board extended time for the implementation of ToD billing w.e.f. 01/10/2013. For implementing ToD billing with the LT IV industrial consumers having connected load above 20 kW, CT operated ToD meters were required in large quantities. Due to the lack of availability of such meters in the market those days, the KSEB Ltd was able to mobilize the meters by 7/2013 only. The bill issued to the consumer was only a short assessment bill for the undercharged period and not any penal bill.

The details of information to be provided in the bill is clearly mentioned in the Regulation 123 of Kerala Electricity Supply Code 2014. It is clearly stated in Regulation that the bill shall not become invalid only because of any one or more item of information are absent in the bill.

The ToD billing was effective in the appellant's premises from 10/2013 onwards and ToD billing of energy charges has been done from 10/2013 to 07/2014. Thereafter during the period from 08/2014 to 06/2015 the respondent failed to collect the energy charges under ToD billing. The details of ToD billing calculation done by the Respondent was verified by the Electricity Ombudsman and found that bill is actually re-assessment of short collected amount towards the actual consumption of the appellant for the period from 10/2013 to 08/2015 except the fresh assessment of penalty for low power

factor, which is newly generated demand. The bill issued to the consumer was purely as per the Regulation 134(1) of Kerala State Electricity Supply Code 2014 and the appellant is liable to pay the bill.

Analysis and findings:

Hearing of the case was conducted on 04/10/2018 and 26-10-2018 in the Office of the Kerala State Electricity Ombudsman, Edappally, Koch 24. Sri. Shanavas P.Y., Advocate appeared for the appellant and Sri. Pradeep P.S., Assistant Executive Engineer, Electrical Sub Division, Wandoor appeared for the respondent. Both sides have presented their arguments on the lines as stated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

Originally, this case pertains the short assessment of Rs. 60,091/- issued to the appellant and disposed by this Authority in its order dated 23-10-2017 in Appeal No. P/084/2017. As per the said order issued, the respondent had revised the short assessment and a revised bill for Rs. 53,843/- was issued. Not satisfied with the revised assessment done, the appellant filed a writ petition no.41936 of 2017 (N) before the Hon'ble High Court of Kerala and the Court directed the appellant to submit application before the competent statutory authority. Accordingly the appellant approached the CGRF by filing a petition dated 20-01-2018 and the same was dismissed by the CGRF on 09-07-2018. This appeal is submitted against the decision of the CGRF.

It is found that the respondent revised the bill excluding the power factor and issued the appellant a revised bill for Rs. 53,843/- against the original invoice for Rs. 60,091/-. The argument of the appellant is that the revised invoice is not a convincing one as the month wise split up is not furnished. Also the facts and figures in the audit report differ in the invoices issued.

This Authority has considered all the arguments of the appellant earlier while disposing the Appeal Petition filed earlier regarding the same subject matter. The appellant has raised the same arguments in this appeal Petition, which was nothing but the same apprehension about deduction of power factor incentive/disincentive. The arguments raised cannot be considered now afresh, as it was considered, decided and order issued accordingly earlier. It is clearly analyzed in the order of the appeal petition No.84/2017 dated 23-10-2017 and decided as follows; "As such the amount of penalty is the only new one, is seen included in the short assessment based on the power factor. It revealed from the records that no error occurred on the part of the respondent in calculating the shortage of revenue in energy charge (zone wise billing), demand charge, electricity duty and meter rent. But error in raising demand of power factor penalty occurred on the part of the respondent. In the meter reading register,

power factor is not furnished from 10/2013 to 03/2014 and 06/2014 to 10/2014, but penalty is assessed in the calculation statement. Power factor entered in meter reading register from 10/2013 to 08/2015 is not at all convinced. As per Regulation 2 (15) of Supply Code, 2014, "(15) "average power factor" for a billing period means the ratio of the total kilowatt hours (kWh) to the total kilovolt ampere hours (kVAh) supplied during that period; ratio being rounded off to two decimal places". KVAh is seen only furnished from 02/2016 onwards in the meter reading register. There is no document on the part of the respondent to prove the power factor entered in the meter reading register is "average power factor" which can only be taken for the calculation of incentive/disincentive. Here the respondent has failed to explain how the power factor was computed either as above or directly from the energy meter. There is enough chance to make the calculation based on "instantaneous power factor" as the meter reading register lacks proper entries on kvah etc." "The respondent is directed to revise the short assessment bill by deducting the incentive/disincentive from the calculation statement and to issue the revised bill to the consumer within fifteen days."

Decision

The only dispute pertains in this appeal petition is the methodology of calculation of the revised bill issued to the appellant. As directed by the Hon. High Court of Kerala, the CGRF, Northern Region have discussed the subject in detail and found that the revised bill for Rs. 18533/- issued on 27-11-2017 is in order and they decided to dispose of the case.

This Authority examined the revised bill and found that

(1) Billing demand shall be the recorded maximum demand for the month in kVA or 75% of the contract demand whichever is higher. In this case the demand charge was not billed earlier for 75% of the contract demand. Hence the billing demand of the appellant shall be 75% of the contract demand, which is the minimum to be paid by the appellant, even if the actual demand is below of the contract demand. Since the appellant objects the calculation, the respondent shall once again verify the demand raised for Demand Charge (DC), Electricity Charge (EC), Electricity Duty (ED) and Meter Rent (MR) and confirm the correctness.

(2) The respondent shall ascertain the correctness of the amount paid by the appellant in each month from 10/2013 to 08/32015.

(3) The revised demand for power factor (PF) need not be taken for the final demand, as ordered earlier by this Authority in Appeal No.084/2017 dated 27/10/2017. The respondent shall prepare the demand from 10/2013 to

08/2015 excluding the incentive/disincentive completely (i.e. Rs.6266/-calculated). So the revised demand shall include only the Demand Charge (DC), Electricity Charge (EC), Electricity Duty (ED) and Meter Rent (MR) for the period from 10/2013 to 08/2015. The respondent is directed to revise the bill for the entire period from 10/2013 to 08/2015 and generate bill for arrear or excess charges based on the actual amount remitted and the account of the consumer shall be realized/adjusted within one month of this order with details of calculation for his information. The respondent shall refund/adjust the excess amount, if any, remitted by the appellant or collect the short assessed amount if any, being the amount of difference of the revised amount and amount remitted. Having concluded and decided as above, it is ordered accordingly. The order of CGRF, Kozhikode in OP No.181/2017-18 dated 09-07-2018 is set aside. In view of what is stated above, the aforesaid Appeal Petition filed by Sri. Athikkal Muhammed stands disposed of.

ELECTRICITY OMBUDSMAN

P/068/2018/_____ /Dated: _____

Delivered to:

1. Sri. Athikkal Muhammed, M/s Athikkal Bricks & Clay Works, Edavanna, Malappuram
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Wandoor, Malappuram

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