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APPEAL PETITION No. P/001/2019  
(Present: A.S. Dasappan)  
Dated: 25<sup>th</sup> February 2019

Appellant : The Manager  
M/S Francis Alukkas Jewellery,  
City Centre, Fort Road,  
Kannur

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

### **ORDER**

#### **Background of the Case:**

The Appellant is conducting Jewellery business under the name and style of M/s Alukkas Jewellery, Fort Road, City Centre, Kannur and having a CT Connected three phase service connection under LT-VII A Tariff with a connected load of 67005(68kw) watts with Consumer No 1166551007476. The premises of the consumer was inspected on 18.06.2018 by a team of KSEB Limited led by the Anti Power Theft Squad (APTS) of Kannur unit. A site mahazar was prepared by the Sub Engineer Sri. Hari Miniyadan of Electrical Section, Burnassery. An irregularity of metering was detected as the current input in to the meter through CT secondary wire is missing in B Phase. So as to compensate the Board for unrecorded portion of energy, the Assistant Engineer, Electrical Section, Burnassery, issued short assessment bill by directing the appellant to pay Rs 6,99,527/-. Later a final revised short assessment invoice dated 31.07.2018 for Rs. 5,77,790/- was served for a period of 21 months for the period from 01.09.2016 to 01.06.2018. Aggrieved by the short assessment bill, the appellant filed petition before CGRF, Kozhikode requesting to set aside the demand notice and to take action to replace the Energy meter. The Consumer Grievance Redressal Forum disposed the OP No.83/2018-19 filed by the Appellant and ordered on 23-11-2018 that the short assessment is in order. Thereafter on 01/12/2018 the respondent issued a short assessment demand against under charged bills demanding to pay the amount as per short assessment dated 31.07.2018 for Rs 5,77,790/-

(Five lakh Seventy Seven Thousand Seven Hundred and Ninety only). Still aggrieved by the said order, the Appellant has filed the Appeal Petition before this Authority.

**Arguments of the appellant:**

1. Appellant submits that Anti power theft squad has no case that the consumer had extracted energy unauthorisedly or had committed any malpractices or had tampered with the meter or unauthorized connected load in excess of the contracted connected load. The meter and associated equipment installed within the premises of the appellant and seals on the meter have been kept in safe custody. It was found that the seal, which is fixed on the meter, metering equipment, load limiter and other apparatus of the Opposite party have not tampered with, damaged, broken or destroyed. The only defect informed was an irregularity in metering i.e. the current input to the meter through CT secondary wire is missing in B phase and no trace of power theft or unauthorized use of electricity or unauthorized connected load in excess of the contracted connected load has been detected.

2. Since the whole of service line, meter and other associated equipment shall be deemed to be the property of the licensee and the appellant has no access and affairs with the same, the appellant is not liable for the faulty equipment provided and maintained by the Opposite parties. Consumer has no statutory obligation to check as to whether the meter is recording the correct energy or he is not an expert to find out the correctness or otherwise of the meter.

3. It is the responsibility of the Opposite parties to satisfy itself regarding the accuracy of the meter before it is installed and conduct periodical inspection or testing or both and calibration of the meters, and associated apparatus as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.

4. The observation of the Opposite Party that the fall in consumption occurred from 03.06.2016 is due to defective metering is not true and reasonable. The fall in consumption occurred from 03.06.2016 is due to shortage of total working days of the show room of the Appellant. From July 2016 onwards all the Sundays have been declared as holidays for the showroom and closing time of the show room has been reduced due to decline in Gold business. There are a number of examples before the said period of 03.06.2016 in which similar fall in consumption of energy due to similar reasons. Moreover the appellant have changed a major portion of interior light fittings to LED type lights and cut short the decorative illumination in the show room to reduce the consumption of energy. It can be realized on an inspection of the appellant's showroom.

5. It is the duty of the opposite Parties to verify the correctness of the meter at least once in every five year. If at all any alleged defect in the meter, it is purely due to the negligence and gross dereliction of duty of the opposite parties for which the consumer cannot be made accountable. There is no allegation of tampering of the meter, unauthorized use of energy or misuse of energy in the site mahazar during inspection. It is also noted that though monthly readings were regularly recorded by the officials of KSEB, no one has pointed out yet about the 'alleged defect' in the meter till the Anti Power Theft Squad of the Kerala State Electricity Board had inspected the premises on 18.06.2018.

6. No scientific analysis was done by the respondents to find out the period for which the voltage in B phase was missing. They have not submitted the tamper report of the meter under dispute. The respondents relied only on the consumption pattern to find out the date from which such anomaly was persisted. This is only a presumption.

7. If there is any alleged defect in the meter, are not within the knowledge of the consumer for which the consumer cannot be made accountable and cannot be fixed firmly with the liability of paying the alleged arrears commencing from 03.06.2016.

8. The consumer cannot be reassessed retrospectively from the date of reduced consumption.

9. As per Clause 152(3) of Supply Code 2014 it is stated that if the period of such short collection 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. More over if meter is found faulty such meters shall be replaced immediately at the expense of the Board. Here in this case even though the meter is found defective at the time of inspection on 18.06.2018, the authority replaced the faulty meter only on 30.07.2018. As such the action of the Authority not replacing the faulty meter is clear violation of the section 55 of the Electricity Act.

10. According to the existing rules, in the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective and any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average. Charges based on the average consumption as computed above shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter. Hence the appellant prayed to quash the short assessment demand bill for 21 months and issue orders accordingly.

**Arguments of the respondent:**

The meter installed in the premises was an L & T make CT operated LT 3 phase meter with serial No. DT652233/2000 with a current rating of -/5 A. The current rating of external CTs provided on each phase is 200/5 A. The overall multiplication factor applicable for this metering system is 40. The meter has no facility to download data. During inspection the voltages in R, Y & B phases with neutral measured were 235V, 242V and 236V respectively. The current in R, Y & B phases measured in the primary side cables of the CT are 44A, 48A and 53A respectively and those in the secondary side cables of the CT are 1.1A, 1.25A and 0A respectively. Since the overall multiplication factor applicable for this metering system is 40, the actual current in the secondary cables shall be 1.1A, 1.2A and 1.325A respectively. The meter, CT and their connections were preserved as it is for further test required if any.

The current input to the meter in B phase is 0A instead of 1.325A which means the consumption in one phase is not recording. In the site mahazar itself it has been established that 1/3<sup>rd</sup> portion (33.33) of total consumption is not recording in the meter due to the above said defect. It may be noted that this quantum of short assessment is arrived on an ideal condition of balanced load, when all the three voltages, current and power factor of the loads in each phases are equal. In this case the power consumption at the time of inspection in R phase at a load power factor of 0.9 is  $235V \times 44A \times 0.9 = 9306W$ .

The power consumption in Y phase is  $242V \times 48 \times 0.9 = 10454.4W$ . And that in B phase is  $236V \times 53 \times 0.9 = 11257.2W$ , which is the unrecorded portion.

The total consumption is  $9306 + 10454.4 + 11257.2 = 31017.6W$ . However, the total consumption assessed based on the above theory is for  $(9306 + 10454.4) \times 1.5 = 29640.6w$  which means the short assessment demanded based on 1/3<sup>rd</sup> concept is  $(9306 + 10454.4) \times 0.5 = 9880.2w$  only instead of the actual 11257.2W. In short assessment cases the above theory of 1/3<sup>rd</sup> concept is followed on an average basis where the actual data is not available. Also the power factor of the load is presumed as 0.9.

On analyzing the previous consumption pattern, it has been observed that there is a considerable fall in consumption since 03.06.2016. The consumption has been reduced from 11720 units to 8400units. Hence a short assessment of Rs. 6,99,527.00 vide invoice dated 28.06.2018 was issued, as per the provisions of Regulations 134 of Kerala Electricity Supply Code, 2014 for a period of 24 months from 03.06.2016 to 01.06.2018. The period of short assessment was limited to 24 months even though the actual under recording of energy was for more than 2 years.

3. The aggrieved consumer filed an objection before the Assistant Engineer vide their letter dated 17.07.2018. A hearing was conducted on 27.07.2018

before the Assistant Engineer in which the consumer pointed out that the reduction in business hours and switching over to LED bulbs contributed the fall in consumption. The consumer has produced the purchase invoices of LED bulbs. By considering the facts pointed out in the hearing, short assessment invoice was revised. The revised short assessment invoice dated 31.07.2018 for Rs.5,77,790/- was served for a period of 21 months for the period from 01.09.2016 to 01.06.2018. A further fall in consumption was noticed since 01.09.2016 as the consumption reduced from 7760 units to 5840 units.

A test meter and CT was installed on 30.07.2018. The installed ToD meter was of L&T make with serial No. 14678841 and the ratio of CTs installed was 200/5.

The reading of the test meter was 752.25 kWh and that on existing meter was 64136.5kWh. A site mahazar was prepared for the same. The test meter was dismantled on 24.08.2018 by preparing another site mahazar. The reading on the test meter on 24.08.2018 was 872.76 kWh. The consumption recorded for the period from 30.07.2018 to 24.08.2018 is  $(872.76 - 752.25) \times 40 = 4820.4$  kWh. The reading on the existing meter on 24.08.2018 was 64218.9 kWh. The consumption recorded for the same period is  $(64218.9 - 64136.5) \times 40 = 3296$  kWh which is 68.38% of the consumption recorded on the test meter. Since the CT and meter installed in premises was a party meter (purchased by the consumer), a notice dated 13.08.2018 was issued to the consumer for replacing the faulty CT and meter with ToD type meter as required by the existing standards.

The short assessment involved in this case is a clear case of short collection of electricity charges actually consumed by the consumer referred under Regulations 134, 138 and 152 of Kerala Electricity Supply Code, 2014. And the period of short assessment is reliably proved duly considering the arguments of the consumer. The under recording is calculated on an average with a balanced load concept among three phases and at a presumed power factor of 0.9. In view of the above facts, it is prayed that the Forum may dismiss the complaint.

### **Analysis and Findings: -**

The Hearing of the case was conducted on 12-02-2019, in my chamber at Edappally. Sri. P.O. Radhakrishnan and Sri T. Nandakumar represented the appellant's side and Smt. K.V. Shyni, 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 18-06-2018 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 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. 577790/-, for non-recording of energy due to defects of the B phase CT, for 21 months, by taking the lost energy as 1/3 of the recorded energy. On perusing the Mahazar, this Authority feels that the contention regarding the one No. of CT's defects noticed during inspection by APTS 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.

The appellant has contended that if the failure of the CT connection was more than two years 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. According to him, the fall in consumption occurred from 03.06.2016 is due to shortage of total working days of the show room of the Appellant and from July 2016 onwards all the Sundays have been declared as holidays for the showroom and closing time of the show room has been reduced due to decline in Gold business. Moreover the appellant have changed a major portion of interior light fittings to LED type lights and cut short the decorative illumination in the show room to reduce the consumption of energy.

Further the appellant contended that no scientific analysis was done by the respondents to find out the period for which the current in B phase was missing. The respondents relied only on the consumption pattern to find out the date from which such anomaly was persisted and this is only a presumption.

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 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.

Refuting the above contentions, the respondent has averred that the defect of phase failure was detected by using a test meter. The respondent relied upon the result of the testing by using the test meter in the premises and the previous consumption pattern for establishing the period of phase failure and missing of current in one phase. According to him, the dip in consumption for more than two years 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 CT current in one phase was found missing (somehow) and Regulation 125 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) is applicable. It was also contended that the energy meter is not a downloaded type meter.

The issue arising for consideration in this appeal is whether the period assessed and the quantum of current loss computed are in order and the appellant is liable for the payment of short assessment for Rs. 5,77,790/- as per Regulation 134, 138 and 152 of Supply Code, 2014, as claimed by the respondent.

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 18-06-2018. No data was downloaded during the inspection as the meter was not a downloaded type. 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.

From the site mahazar, it is revealed that the CT connected to one terminal of the meter was failed and thereby consumption by the load connected to that phase in the premises was not recorded by the meter.

The site mahazar dated 30-07-2018 and 24-08-2018 after installing a test meter and CT 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 13-06-2018 and 24-08-2018.

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 fault in the meter and to avoid the loss if any occurred to the licensee.

The respondent has issued the short assessment bill for a period of 24 months by taking 50% of the recorded consumption following the inspection conducted on 13-06-2018 and detecting of non-recording of energy in one phase. The result of the testing conducted using the test meter revealed that the appellants meter had recorded consumption of 68.38% during the period of testing. Later the respondent has revised the short assessment bill for a period of 21 months amounting to Rs. 5,77,790/- and the CGRF also confirmed this in its order dated 23-11-2018.

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 respondent has an argument that, the meter is not defective, to attract Clause 125 of Supply Code, 2014. Meter defined as under Supply Code, 2014 is extracted here under 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 external 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 unit 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 current in one phase 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 issued the short

assessment bill for 21 months based on the dip in consumption during the disputed period. Due to the absence of a downloaded data, the period of missing of the B phase cannot be assessed correctly. 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 functioning only in day time.

**Decision:-**

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 5,77,790/- issued to the appellant. The respondent is directed to revise the bill for the consumption for the period of 12 months prior to the date of installation of the new meter by taking an average consumption of three months after the meter was replaced. Accordingly the respondent shall raise a bill and issue the revised bill to the consumer within fifteen days.

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 83/2018-19 dated 23-11-2018 is set aside. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/001/2019/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. The Manager, M/S Francis Alukkas Jewellery, City Centre, Fort Road, Kannur
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kannur, 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