

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/013/2019
(Present: A.S. Dasappan)
Dated: 9th April 2019

Appellant : Sri. Raju T K.
Proprietor, TKR Metro Residency,
38/4148 C, Edappally 24,
Ernakulam

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

ORDER

Background of the Case:

The appellant is a consumer under Electrical Section, Palarivattom. There are three connections with Con No 35451, 34167 and 35450 in the premises owned by the appellant for TKR Metro Residency, Devankulangara, Edappally, Kochi 24. The APTS Ernakulam wing inspected the premises of the appellant on 28-05-2018 and detected unauthorized load of 4558 watts connected to consumer number 35451. A site Makassar was prepared and accordingly a provisional bill dated 01/06/2018 for Rs. 62500/- issued under Section 126 of Electricity Act 2003. Considering the objection raised by the appellant, the respondent finalized the penal bill to Rs. 4800/- and the appellant remitted the amount on 08-08-2018.

The appellant was received electricity bills for the connections bearing consumer numbers 35451, 35450 and 34167 for the amounts Rs. 258498/-, Rs.39842/- and Rs.16932/- respectively. Against the issuance of the bills the appellant approached the Hon'ble High Court of Kerala by filing W.P. (C) No.19827/2018 which was dismissed directing the petitioner to pursue the complaint before the CGRF by making deposit of 50% of the amount of energy bills. According to the direction by the Hon High Court against W. P. C No 19827/2018, the 50% of the disputed bill of Rs 2,58,498 has been remitted by the consumer on 30th June 2018. The meter provided for Con No 35451 was checked and found that a magnetic tamper was recorded.

The appellant filed a petition before the CGRF and the CGRF passed an order dated 31.12.2018 stating that the Forum lacks jurisdiction to entertain the complaint against the proceedings under Section 126 of the Electricity Act 2003 in consumer number 35451. Further the Forum made clear that the petitioner/ appellant would be at liberty to file appeal before the Appellate Authority. Thereafter, appellant preferred appeal before the Appellate Authority U/Sec. 127 of the Electricity Act, 2003 relating to consumer No. 35451 for Rs. 2,58,498/-.

Aggrieved against the other bill amounts, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant:

1. The appellant had at the beginning approached to the Hon'ble High Court of Kerala against the excess Bills dated 19-5-2018 issued by the Electrical section, Palarivattom relating to consumer nos. 34167 and 35450 and the Hon'ble High Court by judgment dated 14.06.2018 in W.P. (C) No. 19827/2018, without considering the matter on merits, directed the appellant to remit 50% of the bill amount as a pre-condition to file complaint before the Consumer Grievance Redressal Forum.

Accordingly, the appellant had paid the said amount on 30.06.2018 and preferred complaint before the said Forum as directed by the Hon'ble High Court. The Forum after hearing the both parties passed an order dated 31.12.2018 stating that the Forum lacks jurisdiction to entertain the complaint against the proceedings under Section 126 of the Electricity Act 2003. Further the Forum made clear that the petitioner/ appellant would be at liberty to file appeal before the Appellate Authority, Sri. K.K. Unni, Kerala State Electricity Appellate Authority, CC 51/52 Near 110KV Sub Station Vyttila. The order of the CGR Forum was received by the appellant on 14.01.2019. Thereafter, appellant preferred appeal before the Appellate Authority U/Sec. 127 of the Electricity Act, 2003 by including a bill of Rs. 2,58,498/- relating to consumer No. 35451. The office of the appellate authority orally directed to file the said appeal before this Ombudsman.

Accordingly, the appellant approached to the office of the Ombudsman. Again appellant was directed to approach to the Appellate Authority at Vyttila with respect to bill No. 35451 for Rs. 2,58,498/- and file a complaint with respect to the other bills before this Office. By this time "the period of filing complaint against the order of Consumer Disputes Redressal Forum was over. So the delay caused in preferring this complaint is not willful and deliberate. Therefore the complaint may be received to file by condoning the delay.

2. The appellant on receipt of the Bills referred to above, noticed that the amount shown in the Bills are highly excessive against the consumption of his establishment. Therefore, he made a request to review the Bill and to issue

fresh Bill relating to the respective meters. Nothing was done in this matter. However, to his surprise, the Assistant Engineer, Electrical Section, Palarivattom came to his establishment premises without notice and reported to the department that with respect to meter No.35451 is in excess reading due to 'Magnetic Tamper' and thereafter, a Provisional Assessment Order dated 01.06.2018 was issued to him by the Assessing Officer, Asst. Executive Engineer, Electrical Sub Division, Palarivattom to pay a sum of Rs.62,500/- due to unauthorized connected load to the extent of 4558 Watts detected by the Anti Power Theft Squad of KSEB Ltd., Ernakulam. Against which he had filed an objection to the Assessing Officer which is still pending. In the meantime, the respondents were about to disconnect the connections to his premises, he approached to the Hon'ble High Court of Kerala against the disconnection. Accordingly, the Hon'ble High Court without considering the matter on merits, passed the aforesaid direction.

3. The appellant is the proprietor of M/s TKR Metro Residency, Devankulangara, Edappally, Kochi-24. The connection No.35451, 34167 and 35450 were given to TKR Metro Residency only on 07.03.2018. On that day the official of the KSEB inspected the premises and he was convinced that there is a connected load of 14483 Watts. After verification, the connections were given. The Residency is inaugurated and started functioning with effect from 12th April, 2018. The appellant received bill for the said 3 connections bearing Consumer No 34167, 35450 and 35451 respectively amounting to Rs.16,932/-, Rs.39,842/- and Rs 2,58,498/-, which appears to have been the higher amount-particularly Con. No 35451. So appellant had made a request dated 21.05.2018 to the Asst. Engineer, KSEB Palarivattom to review the bill issued to him against the said three connections. Instead of hearing him and reconsidering the bill, the Asst. Engineer, Electrical Section, Palarivattom without giving notice to him conducted a visit to his premises and prepared a Mahazar without noting the actual facts including not recording the meter reading of three meters and observed in the Mahazar that there is a magnetic tamper to the meter for the consumer No. 35451 and he further stated that the consumption of the Electricity is higher than the average use in the said meter. But the engineer does not mention whether he had inspected and verified the other 2 meters. It is pertinent to note that in the report the engineer has stated that the security seal of the meter is intact and the meter was functioning. But the engineer does not mention any tampering to the equipments, gadgets, machines, devices connected or used or alter if any to the meter.

4. So in fact there is no tampering or unauthorized use of electricity, but malfunctioning of the meter. The engineer further states that by using software he verified the meter data during the period from 21.03.18 to 11.04.2018 and the engineer came to know that there is a magnetic tamper which is recorded and the consumption of the electricity is higher than the average. The appellant submits that no tampering of any sort was made to the aforesaid 3 meters from his side. It is absolutely a wrong observation and finding by the Asst. Engineer

with a view to cause much inconvenience and financial loss to appellant. There is no substance to the said finding.

5. Assuming that if any magnet is used, naturally the meter would not have functioned and would record a lower reading than a higher reading as stated by the Asst. Engineer. Moreover, the connections were given to the premises on 07 03 2018, inaugurated the establishment on 12.04.2018 and started functioning the lodge only on 16.04.2018. It is stated in the Assessment Order that the Anti Power Theft Squad of KSEB Ltd, Ernakulam Unit conducted a surprise inspection in the premises on 28.05.2018 and detected an unauthorized connected load to the extent of 4558 watts. To the knowledge of appellant, no such squad conducted a surprise inspection in his premises.

6. The appellant submitted that he had not used the electricity as per the Bills given to him. He had not done anything to change the meter reading or "Magnetic Tamper" as stated by Asst. Engineer in his letter. Since the alleged consumption period is before commencing the functioning of the Residency, there is no iota of chance to come to a conclusion that the appellant had used electricity to the value of Rs.2,58,498/- or the amounts shown in the other Bills.

7. The Consumer Grievance Redressal Forum, though received the complaint of the appellant as directed by the Hon'ble High Court, it did not consider the matter on merits. Even though version of the respondent was called for and the Forum looked into the matter, the Forum did not consider the matter or viewed the matter on merits. But stated that the Forum lacks jurisdiction and gave the appellant liberty to file appeal before the Appellant Authority. Hence there is no limitation and the pre-condition to deposit part of the amount of bills for preferring the complaint is also complied.

8. In the circumstances, the complaint may be considered on merits.

i) Therefore it is requested that this Ombudsman may be pleased to set aside the Bills dated 19.05.2018 issued by the Electrical Section, Palarivattom relating to Con.Nos.34167 and 35450 and to direct the respondents to issue fresh bill each to these connections (meters) in consonance with appellant's actual consumption and refund the excess amount paid by him now as a pre-condition to file appeal/complaint in respect of his three Bills

Or

ii) In the alternative, direct the respondents to review the Bills under challenge in accordance with appellant's future consumption for a period of six months from the date of issue of his present Bills.

And

Till that time the disputed Bills may be kept in abeyance.

iii) Direct the respondents to refund the excess amount paid by appellant in respect of the disputed three bills.

Arguments of the respondent:

There are three connections with Con No 35451, 34167 and 35450 owned by the appellant for TKR Metro Residency, Devankulangara, Edappally, Kochi 24. The appellant has made a request dated 21/5/2018 to review the bill issued to the above 3 consumer numbers. The APTS Ernakulam wing in the presence of Assistant Engineer has verified all 3 meters and as there was anomaly seen only in 35451, a site Makassar was prepared and meter reading was recorded and a copy of the same was furnished to the appellant.

The assessing officer, the Assistant Executive Engineer, Electrical Sub division, Palarivattom has issued a provisional assessment for an amount of Rs 62,500 on 01/06/2018 as there was an unauthorized additional load of 4558 watts in the premises of Con No 35451. The argument of the appellant that no order communicated against the objection is incorrect. A hearing was conducted and communicated the final assessment vide order No DB10/73FA/AEE/ESD/PTM/18-19/35451 PTM/T K Raju/62/07/07/2018. The appellant has remitted Rs 4800 vide Rt 55430180808101071 on 8th August 2018.

According to the direction by the Hon High Court against W. P. C No 19827/2018, the 50% of the disputed bill of Rs 2,58,498 has been remitted by the consumer on 30th June 2018. The meter provided for Con No 35451 was checked and found that a magnetic tamper was recorded. Other two meters were also inspected and no anomaly was recorded which was already mentioned.

The meters with Con No 34167, 35451 and 35450 have been examined by the APTS, Ernakulam. As there was no anomaly in the meters were detected and hence the Assistant Engineer confirmed the billing done on these consumer nos. are correct. In 35451 there was an anomaly and hence prepared the site mahassar.

The assumption of the consumer that the meter would not have functioned if any magnet were used is incorrect. If any magnetic tamper attempt is detected the meter will function with its full amperage. Argument of the consumer that the squad inspection was not done is incorrect and hence denied.

On the request of the consumer, the meter was got tested at NABL accredited lab TMR Angamaly. The meter test report confirms the accuracy of

these meters. The bill claimed for Rs. 2,58,498 is correct as the meter is tested and found good.

The CGRF has not accepted the case where the assessment in 35451 due to unauthorized additional load was done under section 126 of Electricity Act 2003 where the Appellate Authority is authorized to hear the appeal.

Actual consumption is decided by the reading recorded in an accurate meter. The meter correctness has been checked in the laboratory and found correct. Hence refund claim cannot be accepted.

As per Regulation 130, disputed bill has been processed. The consumer is liable to remit the payment as meters under con No 35450 and 35451 are correct as the test report from the Lab. The test report of 34167 is yet to be obtained from Electrical Section, Palarivattom and the bill can be revised basis the test report of 34167.

Analysis and findings:

The hearing of the case was conducted on 22-03-2019 in the office of the State Electricity Ombudsman, Edappally, Kochi and Sri. Raju T K. represented for the appellant's side and Smt. Husna Mumtaz, Assistant Executive Engineer of Electrical Sub Division, Palarivattom appeared for the respondent's side. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority came to the following conclusions leading to the decision.

The main grievance of the appellant is that the CGRF had not looked in to the causes leading to the issuance of the exorbitant bill which is not tallying with the connected load and usage.

Further it is admitted that the appellant had filed appeal before the appellate authority under Section 127 of the Electricity Act relating to the bill amount Rs.258498/- bearing consumer number 35451, since the test report reveals magnetic tamper. The CGRF / Electricity Ombudsman has no jurisdiction to entertain complaints relating to offences and penalties as provided under Section 126 and Sections 135 to 139 of the Act, in view of the bar under Sub Clause (vii) (I) of Clause 2 (f) of the Regulations. It is therefore held that the case relating to consumer number 35451 is not maintainable before this Authority.

The complaint is that the appellant was served with an exorbitant bills for Rs.39842/- and Rs.16936/-, towards electricity charges of consumer nos. 35450 and 34167 respectively, alleging high consumption in the period from 01-03-2018 to 17-05-2018. According to the appellant, the amounts demanded

in terms of the current charge bills issued for the above period are exorbitant and not proportionate to the usage.

The first point to be decided is whether the Energy meters provided to the appellant was faulty during the period and whether the consumption recorded in it during that period is genuine or actually consumed by the appellant. The meter of consumer number 35450 was tested at an accredited lab and the test result from TMR Angamaly showed that the Energy Meter was good. No test was done to meter for consumer number 34167. The meters were purchased by the appellant and installed by the respondent after fulfilling all formalities. The connections were provided on 01-03-2018 except connection no. 34167. As per appellant's version, the test reports were not handed over to the appellant and as such directed the respondent to hand over it for further remarks, if any, from the appellant.

The energy consumption details of consumer number 35450 furnished by the respondent showed that the bimonthly average energy consumption is not in a consistent pattern. The consumption details are as follows.

1-3-2018 to 17-05-2018	=	3443 units (2½ months)
17-5-2018 to 18-7-2018	=	3375 units
18-7-2018 to 31-8-2018	=	2571 units
After replacement of meter the consumption is furnished below.		
31-8-2018 to 17-9-2018	=	547 units
17-09-2018 to 14-11-2018	=	1686 units
14-11-2018 to 14-1-2019	=	1860 units
14-1-2019- to 14-3-2019	=	2415 units

This Authority has inspected the premises on 3-4-2019. All these three numbers of connection are provided to run a hotel having three floors with accommodation facilities. Electricity for the banquet hall and dining room of the hotel is provided from consumer number 35450. The common facilities like lift etc is connected from consumer number 34167. There are 30 numbers of AC rooms in the 2nd and 3rd floors and connected from consumer number 35451. The variation in the consumption is natural for a hotel with residency due to the occupancy of the inmates in the rooms. The test report of the meter revealed no faultiness in the meter and the appellant has not raised any specific reasons for the exorbitant bills for the consumer numbers 35450 and 34167. Also it is seen that the respondent has taken steps, to check the working of the disputed energy meter, on getting the complaint, which established the perfect functioning of the meter. But KSEB should have prepared a mahazar on the test undertaken by it, in the consumer's or his representative's presence.

Decision:

Considering facts of the case, this Authority decide that the order of the CGRF stands upheld.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is not allowed and stands disposed of as such. No order as to costs.

ELECTRICITY OMBUDSMAN

P/013/2019/ _____ /Dated: _____

Delivered to:

1. Sri. Raju T K., Proprietor, TKR Metro Residency, 38/4148 C, Edappally 24, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Palarivattom, Ernakulam

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.