

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/009/2019  
(Present: A.S. Dasappan)  
Dated: 16<sup>th</sup> April 2019

Appellant : Sri. P.S. Sudheer Babu  
Managing Partner, Hotel Aramana,  
Ottapalam P.O., Palakkad

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

### **ORDER**

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

The Appellant is a consumer under Electrical Section, Ottapalam with Consumer No. 1165339007474. The 3 phase connection was given under LT 7A Tariff for running Hotel and Restaurant named as Hotel Aramana. The APTS, Palakkad inspected the premises of the appellant on 28.05.2018 and found that the energy used in one phase (out of 3 phases) was not recording in the meter. Accordingly a short assessment bill was issued to the appellant for an amount of Rs. 3,59,749/- for the period January 2017 to May 2018. Being aggrieved with the short assessment, the consumer approached the CGRF, Northern Region, with Petition No. 54/2018-19 and the Forum disposed of the petition on 13-11-2018 by quashing the bill amount of Rs.359749/- and also directed the respondent to revise the short assessment by limiting the period of assessment to 12 months. Aggrieved by the decision, the appellant has submitted the Appeal petition before this Authority.

#### **Arguments of the appellant:**

The appellant had submitted an objection to the short assessment bill issued by the respondent and contended that he had not indulged in any sort of misuse of electricity or tampering with the meter box. Since the appellant was threatened with disconnection of electrical connection for nonpayment of penalty for meter fault hence he approached CGRF, Kozhikode by preferring

O.P. 54/2018-19 and the impugned demand was quashed directing the licensee to revise the short assessment bill by limiting the period of assessment to 12 months.

The CGRF, after considering the documents produced by the appellant and the licensee found that the downloaded data submitted by the licensee does not prove that the one phase current missing from the date of installation of CT itself, as revealed from data analysis report of manufacturer as on 6/5/2018, i.e. before the APTS inspection and the licensee was aware of the same and failed to take follow up action in the matter but invoking regulation 152 of KSEC, 2014 and directed to revise the bill by limiting the period of assessment for 1 year.

The lower forum failed to consider the latches and negligence on the part of the licensee in following any of the provisions contained in Section 116 to 120 of the Kerala Electricity Supply Code, 2014 in the instant case. As per Clause 120(2) of Kerala Electricity Supply Code, 2014, if during periodic or other inspection by the licensee, any meter is found to be not recording, the licensee shall follow the procedure detailed in regulations 116 and 117 of the Code. As per Clause 118 of the Kerala Electricity Supply Code, 2014, if a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall immediately be replaced by the licensee with a correct meter and check the correctness of the meter within five working days of receiving the complaint. Here the appellant came to know the defect of the meter only on the receipt of the demand notice issued by the respondent.

Clause 116 to 120 of the Supply Code does not say anything about the imposition of penalty for meter fault. No notice was served to the appellant indicating the nature of defect of the meter, till the date of inspection. As can be seen from the Short Assessment bill, the period in which the variation consumption started not considered while preparing the short Assessment Bill. But assessment was made for 1 year without any basis and without considering the previous bills. Though the CGRF has categorically found that the period of undercharging could not to be established and latches and negligence on the part of the licensee yet issued a direction to licensee to revise the short assessment bill for 12 months.

The impugned Assessment bill does not disclose as to how the Assessment was made and unrecorded energy was calculated. The appellant does not know as to how the Board arrived at a huge sum nearly 2.5 lakh as short assessment bill for the meter fault. With consultation with experts, it is known that the methodology adopted by the Board for calculating the percentage of unrecorded electricity for calculating the short assessment bill was irrational, unscientific and the same was done without any statutory backing.

In the instant case, the respondent has no case that the consumer had indulged in theft of electricity or tampered the meter with dishonest intention. Hence consumer cannot be found fault or made liable for the latches on the part of Board officials. Further, the meter installed in the premises was safe in condition and the same is regularly inspected by the Board officials. The issuance of impugned short assessment bill is arbitrary, illegal, unjust and unfair.

As per clause 125 of Kerala Electricity Supply Code, if the metering equipment is defective, the bill has to be prepared on the basis of average consumption of past 3 billing circles, immediately preceding the date of the meter being found or reported defective. No such procedure was adopted in the instant case. The short assessment was made in violation of above clause which provides that in case of defective or damaged meter. Going by the mahazar prepared by the respondent, there is absolutely no indication as to from which date onwards the error in recording was started. But the CGRF directed to issue short assessment bill for 1 year. The CGRF ought to have taken a lenient view while fixing the period for short assessment.

As per Regulation 15 of The Kerala Electricity Supply Code, 2014, the wiring of the premises of the consumer shall conform to the standard specified in the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulation 2010, as amended from time to time and other regulations relating to safety and standards of electric supply. The materials used for wiring shall be standard laid down by BIS or any superior standard.

Regulation 26 further mandates that the safety of electrical installation shall be complied with in every respect by the licensee in tune with the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulation, 2010. In the instant case, the licensee has miserably failed to comply with the above regulations, while installing the CT.

As per Regulation 113 of Kerala Electricity Supply Code, 2014, it is the responsibility of the licensee to satisfy itself regarding the accuracy of meter and is bound to conduct periodical inspection or testing or both calibration of meters as specified in rules in an accredited laboratory or in an approved laboratory.

In the instant case, the licensee has not complied with the statutory regulations mentioned above and has acted in violation of the various regulations contemplated in the Central Electricity Authority Measures Relating to Safety and Electric Supply) Regulation, 2010 and Kerala Electricity Supply Code, 2014. Therefore considering the totality of facts and circumstances of the case and the illegal procedures adopted by the licensee with regard to the installation of a defective CT and consequential meter test conducted by the licensee without intimating the appellant, will clearly

establish the negligence and latches on the part of respondents, which resulted in the present proceedings.

The appellant has requested to allow the appeal and set aside the impugned bill and to direct the licensee to recover the same from the officials who are responsible for installing defective C.T.

**Arguments of the respondent:**

The averments of the respondent are the following.

Though the meter box and terminal cover were found to be properly sealed, the Y phase of CT Secondary wire was not found to be connected to the Y phase incoming current terminal of the meter.

Indications of the Voltage and CT secondary current of the concerned phase in the meter and CT Primary current measured by means of Clip on meter at the time of inspection were

Phase	Voltage	CT secondary current (A)	CT Primary current
R	232.69	1.640	65.5
Y	242.23	0.000	43.2
B	242.32	1.008	40.35

The Y phase was showing zero consumption, this was because of the non connectivity of one wire in the CT Secondary coil of the Meter. Hence the APTS used Zera Electronics reference Meter for calculating the percentage of unrecorded electricity at the time of inspection. Accordingly the recorded consumption in the Energy meter was showing (-35.75%) less than the actual consumption. A site Mahazar was prepared and which was acknowledged by Sri Shyju VV, electrician of the appellant. The data from the meter was down loaded and it shows that the Y phase current is zero.

The CT of this consumer was changed on 24.12.2016. During the inspection the meter box, security seal of the meter and terminal cover etc were found properly sealed, this revealed the fact that the anomalies (Non connectivity of one wire in the CT) were persisted from 24.12.2016 onwards; hence a short assessment bill was issued invoking the Reg. 134(1) of the Supply Code, 2014 from 24.12.2016 to 5/2018 for an amount of Rs 3,59,749/- (Three lakhs fifty nine thousand seven hundred and forty nine only) as follows.

The short assessment bill for the period from 24.12.2016 to 2.5.2018

Sl. No	Bill month	Consumption (units)
1	1/2017	1720
2	2/2017	6800
3	3/2017	7560
4	4/2017	5800
5	5/2017	5120
6	6/2017	5600
7	7/2017	2840
8	8/2017	3280
9	9/2017	3680
10	10/2017	2600
11	11/2017	2440
12	12/2017	2440
13	1/2018	1560
14	2/2018	1600
15	3/2018	1360
16	4/2018	3200
17	5/2018	5600
18	Total units	63200

Recorded consumption in the meter	=	63200 units
Actual consumption	=	63200/0.6425 = 98366
Balance units to be billed	=	98366-63200 = 35166 units
Short assessment Amount		
Energy charge	=	35166x9.30 = Rs.327044
Duty	=	Rs. 32705 .
Total Rs.	=	Rs.359749/-

3. The recorded consumption after the rectification of the anomalies is as follows

1	06/2018	11880 Units
2	07/2018	9600 Units
3	08/2018	8320 Units

The above short assessment bill is exclusively for the undercharged units due to the non recording of energy consumption in one phase and no penalization charges levied on the bill. The short assessment is issued to recover the revenue loss occurred to KSE Board.

According to Regulation 134(1) of the 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 30 days shall be given to the consumer for making payment of the bill".

According to regulation 152 (1) & (2) of the Kerala Electricity Supply Code 2014, the Licensee is empowered to realize the under charged amount for inaccuracies in metering and it can be short assessed under normal tariff.

Here in this case short collected period was reliably assessed and the bill was issued accordingly. More over the right of the licensee to demand and realize the short assessment amount actually due from consumer and it was established by the Regulation of Supply Code 2014.

In the order issued by the CGRF, it has observed that "the downloaded data submitted by the respondent does not prove that one phase current missing is from the date of installation of CT itself. Data analysis report from the manufacturer is on 06/5/18, i.e. before the inspection date of APTS. If licensee was aware of data analysis from 06/5/18 as to why the licensee fails to take follow up. Therefore the forum is not in a position to support the version filed by the respondent.

But here the fact is that the data from the meter was downloaded during the inspection on 28/5/18 by APTS, Palakkad and Electrical Section Ottapalam. As per the instantaneous values of downloaded data, the current L2 (Y phase current) is zero and as per the load survey the current L2 (Y phase current) is zero from 19/4/18 to 28/5/18. Due to the limitation of memory the load survey is available for 40 days only. In the event log Y phase current (L2) missing is not at all recorded but lot of current missing in R phase (L1) and B phase (L3) is recorded at different times. The Assistant Executive Engineer, APTS, Palakkad sought clarification on 23.07.2018 from meter manufacturer M/s SECURE Meters Ltd for the non recording of current missing in Y phase (L2) in the event log and, M/S SECURE Meters Ltd sent their finding through letter dtd 6/8/18. According to the finding of the meter manufacturer this is due to the fact that Y phase current wire was not connected to the meter from the date of installation. From this it is evident that the Y phase current is missing from the date of installation of CT. Also the letter from M/s SECURE Meters Ltd is wrongly dated as 06/05/18 at the top of the letter but the actual date of letter is 06/08/18 which is clearly mentioned in the said letter in the document history column.

The objection raised by the appellant, about the non compliance of the provisions contained in clause 116 to 120 of the Kerala Electricity Supply Code, 2014 have not been considered is not applicable here, because the above clauses are related with procedure to be followed for in the case of defective or damaged meters. Here the existing meter of the premise was not faulty and the energy meter was in good condition. But the defect was for the non recording of

consumption in 'Y' phase (less -35.75%) due to the non connectivity of one wire in the CT secondary coil of the meter. This defect was rectified and the regular bill is issued with the reading of the same meter.

Another objection raised by the appellant is issuing of Short assessment bill in violation of clause 125 of the Supply Code 2014. The above clause is related to procedure for billing in the case of defective or damaged meter, in this particular case the meter is neither defective nor damaged.

As per Regulation 30 of the Central Electricity Authority (measures relating to Safety and Electric Supply, 2010 ), where an installation is already connected to the supply system every such installation shall be periodically inspected and tested at intervals not exceeding 5 years. However this particular inspection of the meter and related equipments conducted on 28/5/18 at consumer premises is not as per the above regulation. This inspection was conducted as per clause 150 of the Supply Code 2014 by the authorized office and the anomalies attributable to the licensee was detected and short assessed as per clause 152 of Supply Code 2014 for the amount of electricity charges short collected and the bill served for this short collection from the month of 1/2017 to 5/2018.

The argument of the appellant that the respondent has not complied with the regulation 15 of Supply Code, 2014 is not correct. The above clause deals with the wiring on the premises of the consumer and it has no relevance on metering.

The respondent has used metering equipments conforming to the specification as per the CEA (installation and operation of meters ) Regulation, 2006 and as amended from time to time. The meter and CT installed are in working condition.

Moreover in several cases the Hon'ble High Court has established the right of the licensee to demand and realize the short assessment amount actually due from the consumer. In the judgment of OP No. 5930/1985 which was filed by Mr. V.A. Balakrishnan, the Hon'ble court held that "If there is a mistake or there is an under billing, it is always open to the respondents to rectify their mistakes and to demand the proper charges due from the consumer". Also in judgment dated 09/02/2012 of WA No. 211/2012 in WP(C) No. 34768/2011, the Hon'ble High court of Kerala held that "the question of normal period of limitation is not applicable both, towards electricity and water charges". Hence the bill issued to the consumer in accordance with the law of the land to realize the undercharged amount for the unaccounted portion without any penal charges is legal.

The appellant is not entitled for any relief as sought for in the above petition and requests to declare that the action of the respondent are well within the purview of the prevailing rules and regulations and is in order and permit the respondent to short assess the appellant for the period of undercharging from 01/2017 to 05/2018.

**Analysis and Findings: -**

The hearing of the case was conducted on 14-03-2019, in the Office of the State Electricity Ombudsman, Edappally, Kochi. Sri P.S. Sudheer Babu, appellant and Sri. Mansur, Advocate, represented the appellant's side and Smt. Kala Rani L.R., Assistant Executive Engineer, Electrical Sub Division, Shornur and Sri Unnikrishnan K.K., Nodal Officer (L), KSEBL, Shornur, 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 28-05-2018 and found that Y phase of the Current Transformer (CT is a device for measuring high values of electric Current on a proportionate reduced scale), secondary wire was not connected to the Y phase incoming current terminal of 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 non connectivity in one phase. The CGRF has observed that "the downloaded data submitted by the respondent does not prove that one phase current missing is from the date of installation of CT itself. The Forum analyzed the consumption pattern produced by the licensee and observed that there was dip in consumption for the last one year. Hence Regulation 152 of KESC 2014 is applicable in this context. The Forum is of the opinion that the bill in question has to be quashed as the period of undercharging could not be established. It is noted that the average consumption for three months after meter replacement is 9933 units and the average consumption before 3 months of detection is 6160 units. The percentage of missing of power is found to be 62%. It need not be taken since the petitioner submits records for getting bar license i.e. on 4-8-2018 only. Hence the percentage shown in the site mahazar may be taken for assessment."

The argument of the appellant mainly rests on the point that the illegal procedures adopted by the licensee with regard to the installation of a defective CT and consequential meter test conducted by the licensee without intimating the appellant, establishes the negligence and latches on the part of respondents, which resulted in the present proceedings and the methodology adopted by the Board for calculating the percentage of unrecorded electricity



for calculating the short assessment bill was irrational, unscientific and the same was done without any statutory backing. As per the appellant, no periodical inspections were done in the premises by the Board. Also it is stated during the hearing that the hotel was in closed stage for maintenance up to April 2018, but it was not informed to the Board and no documents produced by the appellant in this regard.

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. 3,59,749/-, for non-recording of energy due to the non connectivity of the Y phase CT, for 18 months, by taking the lost energy as more or less half of the recorded energy (35.75% of the actual consumption). On perusing the Mahazar, this Authority feels that the contention regarding the one No. of CT's non connectivity 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 taking the date of the CT changed i.e. on 24.12.2016. According to the respondent, during the inspection the meter box, security seal of the meter and terminal cover etc were found properly sealed, and hence this revealed the fact that the anomalies (Non connectivity of one wire in the CT) were persisted from 24.12.2016 onwards. The data from the meter was down loaded and it shows that the Y phase current is zero. But due to the limitation of memory the load survey is available for 40 days only. 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.

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 amount 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 on the basis of the

inspection conducted in the premises on 28-05-2018. The down loaded data confirmed this fact. 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 28-05-2018. The respondent has an argument that, the meter is not defective, to attract Clause 115 or Clause 125 of Supply Code, 2014.

The appellant was billed for the unrecorded portion of energy @ 35.75%, based on the result of the inspection done at site. According to the respondent, the CT connection was defective from the date of replacement of old CTs on 24-12-2016, but no proof is produced by the respondent. The data was downloaded and received the data from 19-4-2018 onwards, showing CT secondary current in Y phase 'zero'.

On going through the records, the following facts are revealed. There is no three phase load in the hotel and connected load changed from 63 kW to 73 kW from 01/2017 onwards. The disputed bill period is from 01/2017 to 05/2018, following the inspection done on 28/05/2018. The CT was replaced soon after the inspection. The consumption recorded after replacement of the CT for 6/2018, 7/2018 and 08/2018 are 11880 units, 9600 units and 8320 units respectively with an average monthly consumption for 9933 units. The average of the consumption recorded in the disputed period (1/2017 to 5/2018) is only 3818 units whereas the average consumption after the rectification is 9933 units. From the above, it is clear that the consumption recorded in the meter is higher after the replacement of the meter.

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 and the previous consumption pattern substantiated this fact. The appellant is liable to pay the actual energy consumed by him which was due to the licensee. The mistake or lapses on the part of respondent is not an excuse for the consumer from paying the actual energy consumed by him.

**Decision: -**

From the findings and conclusions arrived at as detailed above, I decide to uphold the decision of the CGRF, Kozhikode. The respondent is directed to revise the short assessment bill by limiting the period of assessment to 12 months prior to the rectification of the metering system. The respondent shall issue a revised bill within a period of 15 days from the date of receipt of this order.

Having concluded and decided as above it is ordered accordingly. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/009/2019/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. P.S. Sudheer Babu, Managing Partner, Hotel Aramana, Ottapalam P.O., Palakkad
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Shornur, Palakkad

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