

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/063/2019
(Present: A.S. Dasappan)
Dated: 4th November 2019

Appellant : Smt. Beenakumari C
Gowri Bhavan (Vanitha Metals),
Puthuppallikunnam,
Charummoodu P.O.,
Alappuzha

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

ORDER

Background of the case:

The Appellant bearing consumer No.8497 is an industrial consumer under LT-IV A Tariff with a connected load of 126000 watts under Electrical Section, Charummoodu. The premises of the consumer was inspected on 28-01-2019 by a team of KSEB Limited led by the Anti Power Theft Squad (APTS) of Alappuzha unit. An irregularity of metering was detected as the B phase CT is not accurate and resulted in inaccurate metering. So as to compensate revenue loss to the Board for the unrecorded portion of energy, the Assistant Engineer, Electrical Section, Charummoodu, issued short assessment bill by directing the appellant to pay Rs 1,46,259/-. Aggrieved by the short assessment bill, the appellant filed petition before CGRF, Ernakulam requesting to quash the bill. The Consumer Grievance Redressal Forum disposed the OP No.120/2018-19 filed by the appellant and ordered on 24-07-2019 that the bill issued, limiting the period of short assessment to two years is genuine and legally sustainable. Still aggrieved by the said order, the appellant has filed the Appeal Petition before this Authority.

Arguments of the appellant:

The appellant was served with the Notice no BB/Electrical Section Charummoodu/ Con No 8497/2018-19/311 dated 7/2/2019 issued by the Assistant Engineer, Charummoodu alleging that during the course of inspection conducted by the anti-power theft squad, Alappuzha on 28/1/2019 it was found that the CT connected in the B Phase of the meter was not working properly and as such energy consumption through B phase was not recorded. It is further stated in the notice that site Mahazar was prepared and on examination of the events downloaded using software it was found that B Phase was not functioning from 11/11/2016. It is further stated in the notice that the meter was examined at the section office using standard reference meter on 1/2/2019 and it was found that the error percentage is 26.06 percentage. A Bill for Rs. 1,46,259/- was issued for the period from 2/2017 to 1/2019 since it is stipulated in Regulation No 152 that recovery will have to be limited to 24 months period. The appellant was also granted liberty to file objections.

The appellant submitted detailed objections dated 25/2/2019. The Assistant Engineer, Electrical Section, Charummoodu without considering the contentions in the proper perspective issued Order No/BB/EIc Sec Charummoodu/Short Assessment/consumer no 8497/2018-19/358 dated 11/3/2019 in negating the contentions of the appellant. Considering the objections the Assistant Engineer, Electrical Section, Charummoodu ought to have held that current transformer (CT) is a part of the meter and that it is the responsibility of the licensee to maintain the meter and keep it in good working condition at all times, the consequences, if any resulting from any breach of duty in this regard will have to be borne by the KSEB Ltd itself and the demand contained in the notice referred to in the subject is per se illegal and contrary to Regulation 115 of the Supply Code, 2014.

Aggrieved thereby the appellant filed complaint before the CGRF, Central Region. The CGRF, Central Region even without adverting to the contentions of the appellant dismissed the complaint by order dated 24/7/2019.

It is submitted that the term ' Meter' is defined in Regulation No 2 (57) of the Kerala Electricity Supply Code, 2014. The said definition is extracted hereunder for ready reference "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."

In view thereof, current transformer (CT) is a part of the meter. Section 55 (1) of the Electricity Act, 2003 mandates that no licensee shall supply electricity after the expiry of 2 years from the appointed date, except through installation of a correct meter in accordance with the Regulations to be made in this behalf by the authority. Regulation No 104 (1) of the Kerala Electricity Supply Code,

2014 also in categorical terms stipulates that the licensee shall not supply electricity except through a correct meter installed in accordance with the provisions of the Central Electricity Authority (installation and operation of meters) Regulations, 2006. Regulation 109 (20) of the Supply Code, 2014 declares that it shall be the responsibility of the licensee to maintain the meter and keep it in good working condition at all times. Consequently, it is the duty of the licensee namely the KSEB Ltd to maintain the meter and keep it in good working condition at all times. In view thereof, the demand contained in the notice referred to in the subject is illegal and unsustainable. A consumer cannot be saddled with the liability for breach of statutory duty.

Without prejudice to what is stated hereinabove, it is submitted that the meter or for that matter B phase of the CT is not faulty as alleged. The meter as well as the B phase of the CT forming part of it was recording correctly and not defective.

The procedure in the event meter is found faulty is detailed in Regulation 115 of the Kerala Electricity Supply Code, 2014. In the instant case the meter was not tested in the laboratory of the licensee approved by the Commission or at any other laboratory accredited by the National accreditation board for testing and calibration laboratories as mandated by Regulation No 115 (1) and/or (2). Apart from that no notice much less advanced notice of 3 days before testing a meter was given to the consumer intimating the date, time and place of testing so as to enable appellant or his representative at his option be present at the testing as mandated by Regulation No 115 (5). Consequently, the alleged testing conducted using the alleged standard reference meter is not permissible in law. Apart from that the notice of the alleged testing conducted using the alleged standard reference meter was also not given to the appellant. The test report was also not given. Under such circumstances, the demand contained in the notice referred to in the subject is per se illegal and contrary to Regulation 115 of the Supply Code, 2014. Assuming without admitting that the meter is faulty the revision of bills can be done only for the maximum period of 6 months from the date of last testing whichever is shorter and that too on the basis of the test report legally secured after complying with the procedure prescribed in Regulation 115 of the Kerala Electricity Supply Code, 2014.

Regulation 152 will not apply in case the meter is faulty. Regulation 152 will apply only in the event of anomalies specified therein which do not include fault in meters. In short, the entire exercise leading to the issuance of the notice dated 7/2/2019 as well as the order dated 11/3/2019 itself is illegal and contrary to the provisions of the Electricity Act, 2003 and the Kerala Electricity Supply Code, 2014.

Reliefs sought for:

a. Call for records leading to the issuance of the Order No CGRF-CR/OP No. 120/2018-19/181 dated 24/7/2019 passed by the CGRF, Central Region and

Order No/BB/Ele Sec Charummoodu/Short Assessment/consumer no 8497/2018-19/358 dated 11/3/2019 of the Assistant Engineer, Electrical Section, Charummoodu and set aside the same.

- b. Direct the Assistant Engineer, Electrical Section, Charummoodu to pay costs to the appellant.
- c. Pass an interim order staying all further proceedings pursuant to the Order No/BB/Ele/Sec Charummoodu/Short Assessment/consumer no 8497/2018-19/358 dated 11/3/2019 issued by the Assistant Engineer, Electrical Section, Charummoodu pending disposal of the above petition.
- d. Issue any other order, direction as this authority deems fit in the facts and circumstances of the case.

Arguments of the respondent:

On 28.01.19, APTS, Alappuzha and Sub Engineer, Charummoodu, conducted a special drive surprise inspection at the premises of M/s. Vanitha Metals (Registered consumer is Smt. Beena Kumari, Vanitha Metals, Gowri Bhavan, Puthuppallikunnam) under Electrical Section. Charummoodu and detected that the B phase current in the energy meter recorded as 0.21A while R and Y phases recorded as 1.85A and 1.58A respectively. Whereas the line current when measured with a tong tester recorded as 74A, 63.2A and 74.4A in R, Y and B phases respectively. The ratio of CT is 200/5. Therefore, it is proved that the B phase CT is not accurate and hence resulted in inaccurate metering. Later, on 01.02.19, as per Regulation 18(2) of CEA (Installation and Operation of Meters) Regulations 2006, site testing of the meter under test was done with a standard reference meter and determined the inaccuracy (error) as -26.04. The event logs from the meter showed that this error started on 11.11.2016. That means, it is proved that the inaccuracy of CT corresponding to. B phase of meter started recording from 11.11.2016. Thus, it is undoubtedly proved that the energy meter was recording 26.04% less energy since 11.11.2016. That means Kerala State Electricity Board Limited has lost a revenue against the unrecorded energy for the past 26 months and 18 days. As per regulation 152(1) and (2) of Kerala Electricity Supply Code, 2014, the bill was prepared and issued to the consumer for 24 months. As per Regulation 134(1) of Kerala Electricity Supply Code 2014, a notice was served to the Appellant, accompanied with the said bill and a detailed calculation sheet, giving her 30 days' time for remitting the amount.

The details of the consumer during inspection are as follows. Consumer No. 8497, Connected load - 126000 Watts, Contract demand - 95kVA. Tariff LT-4A, 3 phase, CT Ratio - 200/5, Multiplication factor - 40, TOD meter, Meter Sl. No. KSB 44154, Impulse -8000 imp/unit, Capacity - - /5A, Type E3T055, make-Secure.

Here the assessment is made only for short assessment bill at normal rate for consumption, under Regulation 134 of the Kerala Electricity Supply Code, 2014 which permits the licensee to recover the amount short collected from the consumers by issuing a bill. The Hon'ble High Court of Kerala had occasion to look into similar issue in W.P (C) No.90/2009 (P. Sundardas & V.KSEB), the Hon'ble High Court of Jharkhand in LPA No.665/2015 (M/s. Sheo Dhekti Cement Industries V. Jharkhand Urja Vikas Nigam Ltd.) and Hon'ble Bombay High Court In W.P (C) No.7015/08 (M/s. Rototex Polyester & Another Vs. Department) categorically asserted that licensee is empowered to realize the short assessment amount even at a later stage. Besides Regulation 131 of the Code empowers the licensee with blanket provision to recover the undercharged amount. The appellant is liable to remit the current charges actually consumed by him.

Analysis and Findings: -

The Hearing of the case was conducted on 03-10-2019 and 15-10-2019, in my chamber at Edappally. Sri. A. Ravindran Nair and Sri T.R. Rajan, Advocate represented the appellant's side and Sri. Manoj B, Assistant Executive Engineer, Electrical Sub Division, Charummoodu, 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 28-01-2019 and found disproportionate CT current in 'B' phase of the energy meter against the load current, thus resulting in the recording of a lower consumption than what is actually consumed. The connected load of the appellant in the premises is 126 kW and a three-phase connection having a ToD meter. A site mahazar was prepared on 28-01-2019 and meter data was downloaded. As per the data downloaded, the missing of CT current in one phase was from 11-11-2016 onwards. The appellant was issued a short assessment bill for two years 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.

The appellant's contention is that he may not be burdened for the negligent act of the respondent who failed to perform its duty in ensuring that the meter was in proper working condition. Further it is submitted that the respondent has no case that the appellant manipulated the meter in any manner. The appellant has contended that if there was failure of the energy missing 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. Further the

appellant contended that no scientific analysis was done by the respondents to find out the period for which the CT current in B phase was missing.

Refuting the above contentions, the respondent has averred that the meter installed in the premise is not reported as defective or damaged. The respondent relied upon the previous consumption pattern for establishing the period of phase failure. According to him, the dip in consumption for more than two years is the result of the failure to record one phase in the meter. According to the respondent, the Hon'ble High Court of Kerala had occasion to look into similar issue in W.P (C) No.90/2009 (P. Sundardas & V.KSEB), the Hon'ble High Court of Jharkhand in LPA No.665/2015 (M/s. Sheo Dhekti Cement Industries V. Jharkhand Urja Vikas Nigam Ltd.) and Hon'ble Bombay High Court In W.P (C) No.7015/08 (M/s. Rototex Polyester & Another Vs. Department) categorically asserted that licensee is empowered to realize the short assessment amount even at a later stage. Besides Regulation 131 of the Code empowers the licensee with blanket provision to recover the undercharged amount.

The issue arising for consideration in this appeal is whether the period assessed, and the quantum of energy loss computed are in order and the appellant is liable for the payment of short assessment for Rs. 1,46,259/- as per Regulations 134 and 152 of Supply Code, 2014, as claimed by the respondent. Normally, the respondent is bound to rectify the defect of the metering system, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 1,46,259/- for non-recording of energy due to defects of the B phase for 24 months, by taking the lost energy as 26.04% of the actual energy. Three phase load is the major load connected. On perusing the mahazar, this Authority feels that the contention regarding the current missing in one phase 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.

Here in this case, the respondent declared that the current in B phase of the meter is detected as missing by the meter reader on the basis of the inspection conducted in the premises on 28-01-2019. As per the data downloaded the meter started to record consumption without use of current in one phase from 11-11-2016 onwards. As per the sit mahazar, the energy meter was recording 26.04% less energy since 11.11.2016.

The site mahazar dated 28-01-2019 justifies missing of actual energy 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 from 11-11-2016 onwards and partially in third phase. 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. It is the responsibility of the respondent that 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 consumer's complaint pertaining to a meter. The respondent has issued the short assessment bill for a period of two year by taking 26.04% is the error of the meter following the inspection conducted on 28-01-2019 and detecting of non-recording of actual energy in one phase.

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 the 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 metering system was defective since CT current in one phase was not getting 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.

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 24 months based on the downloaded data. There is 3 phase load in the premises. The respondent has argued that the short assessment bill raised is only for the electricity consumed by the appellant and it is the responsibility of the consumer to pay electricity charges for the energy he has used and the same is issued without any interest.

There is no variation of connected load. The average consumption for three months prior to the defect is 6400 units and after the rectification, the average consumption for three months is 4310 units. But the average consumption in the faulty period of assessment is only 2887 units. This clearly proves that the actual consumption was not recorded in the meter during the faulty period. The respondent has taken only 35% of the recorded consumption from 02/2017 to 01/2019 for computing the unrecorded portion of 26% of the total consumption.

Decision

For the reasons detailed above, the appeal petition No. P/063/2019, filed by the appellant stands dismissed as it is found having no merits. The order dated 24-07-2019 in OP No. 120/2018-19 of CGRF, Ernakulam is upheld. But the respondent is directed to issue a revised bill for 24 months under ToD billing

to the appellant within fifteen days. The appellant is allowed 24 instalments without interest, to remit the revised short assessment bill, if he desires so.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant stands disposed of as such. No order on costs.

ELECTRICITY OMBUDSMAN

P/063/2019/ _____ /Dated: _____

Delivered to:

1. Smt. Beenakumari C, Gowri Bhavan (Vanitha Metals), Puthuppallikunnam, Charummoodu P.O., Alappuzha
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Charummoodu, Alappuzha

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.