

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/042/2023
(Present A. Chandrakumaran Nair)
Dated: November-03-2023**

- Appellant : Sri. Muhammed Sheriff,
S/o Abdul Khadar (Late), Partner,
E- star establishment, Industrial Estate,
Ollur, Thrissur- 680306
- Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kerala State Electricity Board Ltd.,
Ollur, Thrissur.

ORDER

Background of the case

The appellant availed an electric connection from the licensee (KSEBL) with consumer no. 11567220229617 from the Ollur, Electrical Section under the tariff LT VI A. The connection availed was for an Industrial Establishment with connected load of 83Kw. The meter provided is the CT connected meter with current ratio 150/5 and hence the multiplication factor 30. APTS inspection was conducted on 24/05/2018 and it was found that voltage in one phase of energy meter was missing. A standard reference meter was connected and found that the meter record only 67.56% of the actual reading. When the data was downloaded from the meter it shows that the voltage was missing for 34 times since 7/2017. A site mahazar was prepared in presence of the manager of the appellant and a copy was handed over to them. Accordingly, a short assessment was issued for Rs. 52,500/- on 11/06/2018 for the missing 1/3rd of the consumption for the period of three months from 02/2018 to 04/2018. During the audit of RAO, opined that the short assessment is to be charged for the entire period and an additional bill for Rs. 1,61,556/- was issued on 20/02/2020. Then the appellant submitted the complaint to the Vydhyuthi Adalath, then the amount was revised to Rs. 1,32,127/-. The appellant filed petition to the CGRF (CR), Ernakulam and CGRF issued order dated 18/08/2023. Aggrieved with the order of CGRF, this appeal petition was filed to this authority.

Arguments of the Appellant

1. Complainant is one of the partners of M/s E-Star Establishment, which was started more than 20 years back and is engaged in production of plastic items. The KSE Board was pleased to give electric connection to the industrial premises with Consumer No. 1156722022961 and the connected load in the premises is 82 KW. The complainant is regular in remitting the energy bills issued by the 2nd respondent.
2. An inspection was conducted by the APTS at the premises of the industrial unit on 24.05.2018 and thereafter a Mahazar was prepared by the Sub Engineer of Electrical Sub- Division, Ollur. After inspection it is alleged that as per the reading there is difference in the consumption and actually recorded in the meter. In the Mahazar it is stated that in the display of the meter B phase voltage is not recording. It is further stated that by using volt meter voltage is seen 235 V. At the time of inspection, it is stated that power is used in all the three phases. Thereafter it is stated that they have verified the meter with a standard meter and alleged that in the standard meter the reading is seen as 1331.986 wh. whereas in the consumer's meter the reading is only 900 wh. Thereafter it is stated that on verifying the data which is available from 07/2017 B phase voltage is missing 34 times. From the above it can be assumed that the meter is faulty. However, complainant is not accepting that the meter is faulty unless it is found in accordance with law.
3. Thereafter a provisional bill for three months was assessed by the 1st respondent directing the complainant to remit an amount of Rs.52,500/-. Complainant remitted the amount is under protest.
4. Thereafter on 20.02.2020, the 1st respondent again issued another bill by stating that the bill issued as per Document No.2 was reviewed. It is further alleged that the bill was undercharged and stated that as per the meter data downloaded, the B phase was missing from 07/2017 and hence alleged that regular bills issued from 01.07.2017 to 01.06.2018 are found to be undercharged and hence a short assessment bill for Rs.1,61,556/- was issued.
5. Since the demand in Document No.3 is illegal, complainant challenged the demand by filing a petition before the Adalath conducted by the KSEBL. Thereafter there was no response in the matter and complainant bonafide thought that the demand is withdrawn by the KSEBL. Thereafter to the utter dismay of the complainant after a period of more than 3 years 3 months and 10 days the 2nd respondent issued a demand dated 30.05.2023 directing to pay an amount of Rs.1,32,127/-. In the bill it is stated that the bill dated 20.02.2020 for Rs.1,61,556/- is stand cancelled.

It is respectfully submitted that Document No.4 is legally unsustainable and barred by limitation. Apart from that the 2nd assessment is without any legal basis and there is no power to review Document No.2 bill issued by the 1st respondent.

6. Complainant filed complaint in Form-A before the CGRF, Central Region, Ernakulam. The respondents filed statement denying the contentions. Thereafter the Hon'ble CGRF passed an order on 18.08.2023 dismissing the petition and holding that petitioner is liable to pay the short assessment bill. Being very much aggrieved by the order of CGRF, Central Region, Ernakulam, the above complaint is filed on the following among other: -
7. The order passed by Hon'ble CGRF, Central Region, Kalamassery, Ernakulam in O.P No0.23/2023-24/193 dated 18.08.2023 is without considering the grievances highlighted in the complaint and hence liable to be set aside.

It is respectfully submitted that the moot question in the case on hand is whether the meter installed at the premises is faulty or not.

According to the respondents the meter is faulty which is admitted by the Hon'ble CGRF as well. In that case the relevant provision that is applicable is Regulation 115 of the Kerala Electricity Supply Code, 2014. Though the Hon'ble CGRF have taken note of the above contention no answer is given to the above question while passing the impugned order. Therefore, on that point also the impugned order is liable to be set aside.

8. It is pertinent to note that the demand is also bared by the Section 56 (2) of the Electricity Act, 2003. A perusal of Document No.4 produced would clearly show that bill dated 20.02.2020 for Rs.1,61,556/- stands cancelled against the fresh invoice dated 30.05.2023. No reason is stated as to why there is inordinate delay of more than 3 years 3 months and 10 days. Section 56 (2) of the Electricity Act, 2003, clearly states that "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity". The respondents in their objection have no case that they have continuously demanded the amount after the issuance of Document No.3 bill. A perusal of Document No.4 would clearly show that bill dated 20.02.2020 was cancelled only on 30.05.2023 i.e., after a period of more than 3 years and therefore the amount cannot be recovered. The decision relied on by the CGRF is not on the point. The above decision deals with the term first due. According to the decision reported in Assistant Engineer (D1), Ajmeer Vidyut Vitaran Nigam Ltd. and another V. Rahamatullah Khan reported in (2020) 4 SCC 650 wherein the Hon'ble

Supreme Court clearly held that the limitation period began to run from the date when the mistake is discovered for the first time.

In the case on hand the alleged mistake was found on 20.02.2020 and the impugned demand is dated 30.05.2023. Therefore, in the light of the above decision is also the amount demanded is unenforceable.

9. It is pertinent to note that the 1st respondent has no power to review its own order. As per Document No.2 a short assessment was raised alleging meter faulty. It is clear that the meter is not working. Therefore, at the most the revision of the bill can be made only in accordance with Regulation 115 of the Supply Code. The respondents have no case that they have followed any procedure as contemplated in Regulation 115 of the Supply Code. Therefore, even for argument's sake, not admitted the revision can be only for the period of 6 months.
10. It is pertinent to note that the respondents have not followed the provisions of meter testing as mandated in 115 of the Supply Code. In the absence of doing the same, the amount already deposited by the complainant ought to have been refunded to the complainant.

It is respectfully submitted that the calculation raised by the respondents are also incorrect and without any basis. Admittedly the voltage missing was for 34 times. Therefore the Board can demand short assessment bill for 34 days alone and not for 365 days. Therefore, the calculation for 365 days is illegal and liable to be set aside.

11. For these and other grounds to be urged at the time of hearing, it is most humbly prayed that this Hon'ble Ombudsman may be pleased to:
 - i. To set aside Document Nos.3, 4 and 7 by issuing appropriate orders.
 - ii. Declare that the demand raised is without following the mandate prescribed in Regulation 115 of the Supply Code, 2014 and therefore legally unenforceable.
 - iii. Declare that the demand raised as evident issued on 30.05.2023 by cancelling bill dated 20.02.2020 is after a period of more than 3 years 3 months and 10 days and hence hit by Section 56 (2) of the Electricity Act, 2003 r/w Regulation 136 (3) of the Supply Code 2014 since there is no continued demand after 20.02.2020
 - iv. To award cost for these proceedings
 - v. To grant such other reliefs that may be deemed just and proper by this esteemed authority.

Arguments of the Respondent

1. All the averments in the complaint, except those are specifically admitted hereunder, are denied. The above complaint is not maintainable either in law or on facts.
2. The electric connection with Con. No. 1156722022961 under Electrical Section, Ollur provided for the Industrial purpose with a sanctioned connected load of 83 kilo watts in LT Three phase category is registered in the name of Sri. Muhammed Sheriff, E- Star Establishment, Industrial Estate, Ollur and is being billed under LT 4A TOD tariff.
3. The metering of the consumer was done through Current Transformer (CT) Operated Meter of Genus Make with SL No. 4183748 and -/5A capacity using CTs with Ratio 150/5. The meter is having the facility for the storage of the data which can be retrieved by downloading the meter.
4. A surprise inspection was conducted by the APTS, Ernakulam unit along with the officials of the respective office on 24/05/2018 and it was found that voltage in one phase (B Phase) of energy meter was missing. On checking with the standard reference meter, it was found that while 1331.986 Wh was recorded in the reference meter 900Wh was recorded in the consumer meter which indicate that corresponding to the potential missing in the B phase the consumption in that phase is not recording in the meter. The recorded data of the meter was downloaded using the software at the site itself. All these findings were recorded in a site mahassar prepared by Sri. Suthesh T S, Sub Engineer of the Electrical section, Ollur and duly served a copy to Smt. Rekha Ganesh, Manager, E Star Establishment, Ollur who was present at the site during the time of inspection and she has affixed her signature on the site mahassar as a token of acceptance.
5. On analysis of the downloaded tamper report, it is found that B phase potential missing is seen occurred 34 times during the period from 04/07/2017 to the date of inspection ie, 24/05/2018 ranging from negligible duration to 107 days during the said period.

The defect noticed in the connection was rectified and the same meter with same CTs continued in the connection until the meter was replaced on 06/06/2022 for standardization of the CT connections with 4 CTs.

A short assessment bill amounting to RS.52500/- was issued due to B Phase voltage missing for the period of three months from 02/2018 to 04/2018. The consumer paid the amount in three installments vide Rt. No.102122,102194, 102121.

6. In the audit of the RAO Thrissur, the bill issued was reviewed and found that the bill was undercharged as it was carried out only for 3 months which is not done as per the downloaded data from which it is very clear that the B

phase missing was existing from July 2017. Also, there is considerable decrease in the recorded consumption from the month of June 2017 up to the rectification of the defect in the meter. From this analysis it was observed that the under charged bill period has to be revised for a period of 1 year from 06/2017.

7. Accordingly, a short assessment bill of Rs. 161556/- was issued on 20/02/2020 for the 1/3rd of the recorded consumption during the period.

The consumer filed a complaint at Vydyuthi Adalath 2020 challenging the bill calculation. But on verifying the records, billing based on the conclusion of the RAO was observed to be correct by the Adalath Committe and since the consumer was not satisfied with the decision, the matter was referred to Board. Later along with the pending matters in the Adalath, this complaint was also returned by Board authorizing the Deputy Chief Engineer to resolve the complaints as per the guidelines.

8. The Deputy chief Engineer, Electrical Circle, Thrissur after analyzing the complaint in detail, ordered to revise the bill issued on 20/02/2020 limiting the assessment for the actual duration of B phase potential missing as per the downloaded data during the period from, 04/07/2017 to 24/05/2018.
9. As per the direction of the Deputy Chief Engineer the bill was revised to Rs.1,32,127/- dated 30.05.2023.

As per the petition filed before the Honourable CGRF, Ernakulam with a complaint No. OP-23/2023-24 the order was placed the forum on 18.08.2023 directed to the petitioner to pay the short assessment bill. A notice was issued to the petitioner on 24.08.2023 for remitting the amount as per the order.

10. These Respondents are having every legal right as per Regulation 134 r/w 152 of the Kerala Electricity Supply Code 2014, to recover the short assessment in the under charged bill raised towards the inaccuracies in the metering of the consumer detected as per the inspection at the premises. The bill is issued in accordance with law and is liable to be remitted by the consumer.

The allegations in the complaint regarding the testing of the meter is not having any relevance in the bill issued consequent to the detection of inaccuracies in the metering in the inspection.

The bill was duly issued to the consumer as per the audit report and since the complaint raised by the consumer was pending the demand was kept under dispute. The complaint was considered positively and a permissible deduction in the amount to the extent possible was allowed by the Deputy Chief engineer which has resulted in the issuance of the revised bill with due date as per rules. The objection raised in the complaint in this regard referring to Section 56(2) of the Act is not sustainable.

11. There is no merit in any of the grounds raised in the petition and liable to be dismissed as such.

For the reasons stated above, it is most respectfully prayed that this Hon'ble State Electricity Ombudsman may be pleased to dismiss the complaint outright, with cost to the opposite party.

Analysis and findings

The hearing of the appeal petition was conducted on 17/10/2023 at 10:30 am in the office of Vydhyuthibhavanam, KSEB, Kottappuram Road, Thrissur, 2nd floor. The hearing was attended by the appellant's Advocate Sri. Firoz. K. Robin and the respondent Smt. Nisha A., AEE, Electrical Sub Division, Kerala State Electricity Board Ltd., Ollur along with Sri. James T., the Nodal Officer, Electrical Circle, Thrissur.

The appellant Sri. Muhammed Sheriff is the owner of an Industrial Establishment named as E- Star Establishment in the Ollur Industrial Estate. The electric connection availed from the Ollur, Electrical Section of the Licensee with the consumer no. 1156722022961 under LT VI A TOD tariff. During the APTS inspection it is found that the voltage reading of the B phase in the energy meter was missing and it is found that the missing happened 34 times from 04/07/2017 to 24/05/2018 for different durations. The meter was working well till 06/06/2022. During the APTS inspection, the reading in the meter was around 33% lower than the actual consumption. The meter was replaced on 06/06/2022 for standardization of connections with 4 CT's. A short assessment bill was raised by the licensee for a period of three months from 02/2018 to 04/2018 for Rs. 52,000/- and the consumer has made the payment. The audit team of RAO, made a remark to raise the demand for the entire period. The recommendation of the audit team was to charge the consumption for 1/3rd of the actual reading from 04/07/2017 to 24/05/2018 and accordingly the short assessment demand for Rs. 1,61,556/- was again raised to the consumer.

This demand is again revised to Rs. 1,32,127/- by calculating the energy which was not read by the meter at 34 instances from 04/07/2017 to 24/05/2018, by analysing the downloaded data of the meter. The total energy meter reading after the entire period (34 instances) was calculated as 2036.4295. The consumption = Energy meter reading \times MF of CT = $2036.4295 \times 30 = 61293$ units. This is the consumption recorded by the meter for two phases i.e., R & Y phases. The energy missed due to B phase missing is the half of the above reading and hence the total consumption would have been 30,546.44 units. Then the three-zone consumption were arrived by multiplying the Zone 1, Zone 2, Zone 3 consumption with the ratio 30546/70830. Then the total consumption of 30,546 was split into three Zones and accordingly the consumption in Zone 1 was arrived as 14788 units and that of Zone 2 was 5214 units and of Zone 3 was 10544 units. The total energy charges worked out to Rs.1,84,627 and adjusting the amount already paid which is Rs. 52,500, the balance payable is Rs.

1,32,127/-. The revised calculation arrived by the licensee considering only the missing of the energy is seen to be correct and scientific.

The appellant states about the applicability of Section 115 of the Supply Code which describes about the testing of meter in case the meter read incorrectly or defective or damaged due to technical reasons. If the meter is

found to be faulty, revision of bill on the basis of the test report shall be done for a period of six months. Here the meter was not faulty, as the voltage of B phase is not reaching to the meter, the reading was inaccurate. Then the Section 152 of the Supply Code only applicable in the case and not Section 115.

Again, the appellant pointed about the applicability of Section 56 (2) of the Electricity Act by which the limitation period of two years is applicable from the date when the amount is first due. The Hon'ble Supreme Court of India has clearly defined the first due in the case of Prem Cottex Vs Uttar Haryana Bijili Vitran Nigam Ltd. in the civil appeal no. 7235 of 2009 that the amount become first due only when the defect is detected. Here the defect in the calculation was detected on 20/02/2020 and the demand was raised. The demand was revised on 22/05/2023. The appellant's claim is that the defect detected on 20/02/2020 and the demand was revised on 22/05/2023 and hence as per the Section 56 (2), the bill is raised after the limitation period of two years. The question is whether this is applicable in this case? The defect detected and the demand was also raised on 20/02/2023. The appellant approached the adalath disputing the claim of the licensee. As the bill is raised in time and revision was delayed due to the litigation/dispute, and hence this argument of the appellant is not acceptable.

The Section 152 of the Kerala Electricity Supply Code 2014 deals with the anomalies attributable to the licensee which are detected at the premises of the consumer.

152(1) "Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act."

152(2) "In such cases the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted."

152(3) "The amount of electricity charges short collected for the entire period during which such anomalies persisted, maybe realised by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies

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:

Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of 24 months, even if the period during which such anomaly persisted is found to be more than 24 months.”

152(4) “The consumer may be given instalment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of installment”.

As there was a fault in the meter, the readings were inaccurate and it has been found out during the inspection in the premises of the consumer. The energy charges short collected to be limited to maximum 24 months if the period could be reliably assessed. The missing of the reading was from 04/07/2017 to 24/05/2018 i.e., around 11 months.

The Section 134 of the Kerala Electricity Supply Code 2014 also empower the licensee to recover the under charged amount from the consumer.

134(1) “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”.

The Section 45 of the Electricity Act 2003 speaks about the recovery of charges by the distribution licensee for the energy supplied by the licensee.

45(1) “Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity, him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.”

45(2) “The charges for electricity supplied by a distribution licensee shall be –

(a) Fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) Published in such manner so as to give adequate publicity for such charges and prices.”

Here in this case the inaccuracy of the meter reading was established and the missing of the energy was calculated and the amount chargeable

also arrived scientifically. Then the appellant is liable to pay the demand raised by the licensee.

Decision

Verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellant is liable to pay the amount as per the demand raised by the licensee.
2. No interest is to be charged.
3. The licensee shall permit the appellant to pay the amount in 12 monthly installments.
4. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/042/2023/ dated: 03/11/2023.

Delivered to:

1. Sri. Muhammed Sheriff, S/o Abdul Khadar (Late), Partner, E-star establishment, Industrial Estate, Ollur, Thrissur - 680306.
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd., Ollur, Thrissur.

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, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503.