

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P23/08

Appellant : Sri M.A.Mohammed Ashraf
Proprietor, Pulikkal Textorium, Erattupetta

Respondent: Kerala State Electricity Board *Represented by*
The Assistant Executive Engineer
Electrical Sub Division Erattupetta

ORDER

Sri M.A.Mohammed Ashraf, Proprietor, Pulikkal Textorium, Erattupetta submitted a representation on 25.8.2008 seeking the following relief :

Set aside the Order No: CGRF-CR/Comp 66/06-07 dated 23.6.2008 of CGRF Ernakulam and the Bill dated 22.07.2008 issued by the Assistant Engineer Erattupetta

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 31.10.2008 .The Appellant and the Respondent submitted argument notes. Comments of both the parties were called for on the argument notes on 29.11.2008 but none had any comments to offer.

The Appellant has Textile Showroom under Erattupetta KSEB Section with Consumer Number 9063 under LT VII Tariff. The APTS of KSEB inspected the premises on 25.03.1998 and found that the Consumer has Unauthorized Additional Load in his showroom and also that only one phase of the 3 phase meter is in working condition. Based on the inspection report a penal bill was issued for an amount of Rs 1,11,795/-by the Respondent for the unrecorded portion of the energy consumed since two phases of the meter were not working. The assessment was done taking two times the recorded consumption as the unrecorded consumption for six months prior to the date of inspection. Fixed charges for the unauthorized additional load was taken at three times the normal rates and the proportionate current charges at 2 times the normal rates. The consumer agreed to settle the dispute by paying the bill with interest at the rate of 12% per annum in an Adalath on 11.12.2002. Mean while consequent to an Audit comment, the Respondent revised the demand to Rs 5,07,115/- and this action resulted in continuous disputes and litigations.

The matter was heard latest by the CGRF and the CGRF ordered on 23.06.2008 to revise the bill taking penalty provision of Section 42(d) of the Conditions of Supply of Electrical Energy as Two times the rate applicable instead of three times. The CGRF also upheld the methodology of computing the total consumption consequent to the two phases not working as three times the consumption recorded in the working phase. The CGRF decided that the case under review being a case of defective wiring the clause 26(6) can not be attracted.

Based upon the order of CGRF the Respondent issued a revised Invoice on 22.7.2008 for Rs 2,83,900/-

The representation with the pleas noted above is submitted to the under signed in the above back ground.

I. The contentions/arguments/points raised by the Appellant in the representation , during the hearing and in the argument note are summarized below:

The estimation of the unrecorded energy due to the non functioning of two phases as Two times the recorded energy is not correct .This is unscientific and without consideration of basic documents like site mahazar etc. The Technical aspects of computing the total consumption using this methodology in a 3 phase 4 wire system where the electricity is predominantly used for Lights and Fans is technically unscientific and baseless. In the absence of a scientific test report and site mahazar containing the details of such inspection the computation is not justified.

The consumption recorded in the new meter installed on 12.11.2001 from 12/01 to 4/04 is identical to the consumption recorded in the old meter under dispute and hence it is clear that the methodology of computing the unrecorded consumption is erroneous.

There are errors in the calculations related to the months of 6/98 ad 7/98

The assessment done is beyond the provisions of Section 42(d) of the Conditions of Supply of Electrical Energy and judgments of Hon : High Court .Entire consumption was recorded in the meter and hence the imposition of penalty is not justifiable.

The actual damage to the Respondent due the alleged additional load is only in respect of Fixed Charges. Hence there is no justification in imposing penalty on consumption charges. This contention has been accepted by the KSEB vide BO(FB)1292/2002/(Plg.Com.4206/2001)dated 19.09.2002 and several judgments of Hon : High Court.

The KSEB is not empowered to decide the question of the correctness or incorrectness of the meter. When there is a dispute the matter has to be referred to the Electrical Inspector as per section 26(6) of the Indian Electricity Act 1910.

II. The contentions/arguments/points raised by the Respondent in the counterstatement, during the hearing and in the argument note are summarized below:

The Consumers with 3 phase connection are to keep their loads balanced as per section 42(b) of the Conditions of Supply of Electrical Energy. If this is done the

consumption in each phase of the 3 phase meter shall be equal approximately. The consumption up to the month of 11/2001 when the meter was changed is the consumption recorded in one phase of the meter only.

The matter had been going through the review of several Forums/Courts and the question of site mahazar was not raised by the Appellant anywhere before, since it was already handed over to him at the time of inspection in 1998 itself.

The APTS had actually tested the meter after applying specific loads on each phase before reaching to the conclusions.

III. Discussion and Findings:

The issues to be decided in this case are the following:

- A. Whether methodology adopted for assessment of electricity consumed is correct or not?
- B. Whether methodology approved by the CGRF on raising the demands towards penal charges for the assessed consumption is correct or not?
- C. Whether the Respondent should have approached the Electrical Inspector before the assessment to decide upon the extent of error in the meter?

The technical question of correctness of the assessment raised by the Appellant shall be discussed first. The Consumer had 3 phase connection reportedly with single phase loads of Lights and Fans only. If the loads are evenly distributed in 3 phases as demanded by Regulations, the current coils of the meter shall provide uniform torque to the rotating disk. If 2 phases are not functioning obviously the speed of the disk will be one-third. This is the logic of multiplying the recorded consumption with 3 for arriving at the total consumption. The situation would not materially change if it is a 3 wire system or 4 wire system as claimed by the Appellant. The situation could be different if the loads are not evenly distributed. If the consumer had consumed more energy through the non-working phases, which is possible with change-over facilities, the Supplier shall incur losses and vice-versa. Hence this calculation methodology inherently contains very high possibility of errors- Errors in both ways. But that is the only available time-tested scientific way of assessment. The objections raised by the Appellant against the methodology adopted for assessment of electricity consumed has no merit and can not be accepted.

The assessment of penalty has to be in accordance with the statutes applicable for the period. The Conditions of Supply of Electrical Energy Regulations issued by the KSEB vide order number BO TC I/9314/88 dated 4.12.1989 effective from 1.1.1990 was the applicable regulations for the period. The clause 42(d) provides for penalizing at 3 times for the applicable rates. But the CGRF has ordered to penalize at Two times only taking a lenient view in consideration of the Board Orders dated 4.11.2006 and 18.12.2006 on the matter. But the Appellant has requested to make the amendments brought forward by the KSEB on the CSEE Regulations on 18.9.2002 applicable to the instant case. The amendments have effect from the date of order only. As such I do not think it would be proper to apply the amendments made to the regulations in 2002 with prospective effect to this case which occurred in 1998. The relief already announced by CGRF is endorsed.

The Appellant has argued that the penal charges assessment on Energy Charges is illegal in view of the Judgment of the Hon: High Court of Kerala in OP 26123/1999 dated 14.10.2008. I had carefully gone through the Judgment and the circumstances of the case. The Hon : High Court had held that the penalty on current charges for the proportionate consumption is without jurisdiction in view of the fact the assessment is made under Section 42 and Section 43 of the CSEE Regulations simultaneously. But in the instant case assessment is made under section 42(d) only as stated in the CGRF order clearly. Hence the circumstances and back ground of this case being different I do not feel that the contention of the Appellant is relevant here.

The question of applicability of Section 26(6) to the instant case has been raised by the Appellant. He has also sought to contend that since the matter was not referred to Electrical Inspector under the above section the short assessment is without jurisdiction and hence liable to be set aside. The section 26(6) of the Indian electricity Act 1910 said that '*where any difference or dispute arises as to whether any meter --- is or is not correct the matter shall be decided, upon application by either party, by an Electrical Inspector*'. Here the relevant question is whether any dispute has arisen. The defects in the meter was found out after inspection and testing by a team of professionally qualified and experienced team of officials of the Respondent. Had the consumer disputed these findings ? Whether the consumer had contended that the meter was working correctly? Is there any dispute whether the meter *is or is not* working correctly? Neither the Appellant nor the Respondent had produced any evidence or documents to prove the *existence of any dispute in 1998 on the matter*. A plain reading of the above section of the Act shows that the existence of dispute is a precondition for activating the above Section. Under the above circum stances I do not find any merit in the contention of the Appellant *now* that the Respondent should have initiated action under section 26(6) of the then prevailing Act and hence the short assessment is liable to be set aside.

IV. Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The pleas of the Appellant are devoid of any merit and hence the representation is dismissed*
2. *The respondent shall be free to take steps to recover the balance dues on the short assessment Invoice dated 22.7.2008 after making the corrections if any as pointed out in Grounds-Para-E of the representation.*
3. *No order on costs.*

Dated this the 6th March 2009,

P.PARAMESWARAN
Electricity Ombudsman

No P 23/08/ 184 / dated 11.3.2009

Forwarded to: Sri M.A.Mohammed Ashraf
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