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APPEAL PETITION NO. P/167/2015

(Present: V.V. Sathyarajan)

Dated: 29th February 2016

Appellant : M/s Ahammed Roller Floor
Mills Pvt. Ltd.,
Puthiyangadi,
Kozhikode

Respondent : 1. The Deputy Chief Engineer,
Electrical Circle, KSEBL
Vydhyuthi Bhavanam,
Kozhikode

2. The Special Officer (Revenue)
KSEBL, Vydhyuthi Bhavanam,
Thiruvananthapuram

3. The Assistant Executive Engineer,
Electrical Sub Division, KSE Board Ltd.
West Hill, Kozhikode.

ORDER

Background of the case:

M/s Ahammed Roller Flour Mills Private Limited, a High Tension with consumer Code No HTB-13/1331 of the Kerala State Electricity Board Limited having a contract Demand of 350 kVA, under Electrical Section, West Hill in the jurisdiction of Electrical Circle, Kozhikode. The Meter Testing Unit attached to TMR Division, Kannur inspected the premises of the appellant on 30-06-2014 based on the complaint dated 12-06-2014, declared the CT/PT unit as faulty and directed the appellant to replace the CT/PT with ratio 20/5A class 0.5 accuracy.

The appellant was issued with revised electricity bills for the months of May, June and July 2014 amounting to Rs. 11,17,769.00 on the basis of average consumption of 109520 units per month subsequent to replacement of CT/PT. Aggrieved by this, the appellant approached the CGRF, Kozhikode by filing a Complaint No. 61/2014-15. The CGRF dismissed the petition vide order dated 02-09-2015 by holding that the bill issued is in order. Still aggrieved with the above decisions of CGRF, the appellant has approached this Authority with this appeal petition on 21-10-2015.

Arguments of the appellant:

1. The appellant stated that the consumer no. bearing 13/1331, is one of the ideal industrial consumers of the KSEB since 1982 and has always been a prompt remitter of electricity charges until the recent defects in the electricity bills for the months of May, June and July 2014.
2. In June 2014, the appellant had sent a letter to the Assistant Engineer, KSEB, regarding abnormality in the power factor and requesting the Assistant Engineer to test the composite Kerala State Electricity Board metering system installed at the appellant's premises. Thereafter, the appellant received a letter from the 2nd respondent herein intimating that the faulty CT/PT unit was to be replaced urgently as the same was reported to be faulty upon the site inspection dated 30-06-2014. The 2nd respondent, vide the said letter, directed the appellant to procure a new CT/PT unit having CT ratio – 20/5A; class - 0.5 and that the same was to be calibrated from TMR Kannur for replacing the same on or before 22-07-2014 with an intimation of Assistant Engineer, Electrical Section, West Hill and HTMT Unit, Kannur.
3. The appellant sent a reply dated 19-07-2014 requesting that 15 days time may be allowed to complete the process. On 07-08-2014, the appellant sent a letter to the Assistant Engineer, Electrical Section, West Hill, informing him that a new CT/PT was purchased and further requesting that the needful be done to certify the new CT/PT at HTMT Unit, Kannur, enclosing therewith the invoice and test reports. Further, the appellant received the Test Report from the KSEB Ltd., TMR Division, Kannur, dated 08-08-2014.
4. The new CT/PT unit was therefore, calibrated by the TMR Division, Kannur and installed by the HTMT, Kannur on 11-08-2014. A report regarding the same specifies in its remarks that the new CT/PT unit has been tested and commissioned successfully, that the metered supply has been provided from 11-08-2014 and that the average is to be charged on the billing up to 11-08-2014.
5. Subsequently, the appellant received revised bills for the months of May, June and July 2014 showing the total amount to be paid as Rs. 11,17,769.00. The said amount was to be paid on or before 30-08-2014. The appellant, thus, made a request dated 28-08-2014, before the 2nd respondent stating in detail why the revised bills were wrong. The said revised bill was based on the assumption of average consumption of 109520 units per month during each of the 3 months. The appellant, vide the said letter, informed the 2nd respondent that the plant was not running to its full capacity during June and July 2014. The total market requirement of wheat products under the "PK Brand" was met from the production of the appellant's plant and the sister concern of the appellant, namely, Peekay Roller Flour Mills, which is adjacent to the appellant's mill.

The Peekay Roller Flour Mills was taken up for modernization during February 2014 and after modernization, the mill is able to manufacture the total market requirement of PK Brand wheat products, resulting in reduction of production work at the appellant's mill after mid-June 2014. Consequently, the appellant produced only a little over 50% of its capacity during June 2014 and a very negligible quantity of 116 MT during July 2014. As the appellant remained in non-operation, there has been negligible consumption of electricity during July 2014 and substantially less consumption of electricity during June 2014. Following the modernization at Peekay Roller Flour Mills, the appellant's mill works only on those days when there is a shutdown Peekay Roller Flour Mills. The appellant, through the letter, informed the 2nd respondent that the appellant had been producing on an average of around 1200 MT per month. The higher production was recorded during the period when Peekay Roller Flour Mills was shut down for modernization, in order to meet the market requirement of 'PK' brand wheat products. The average consumption of electricity per MT of production is 72 units, which is evident from the statement enclosed with the letter. Considering the quantity produced in MT for the months of June and July 2014 and the unit consumed as per revised bill, the average units per MT should be 129 and 938 respectively, which is unreasonably high.

6. Further, on 19-09-2014, the appellant received a notice from the 3rd respondent under section 56(1) of the Electricity Act, 2003, warning the appellant of disconnection if the appellant failed to pay the amount of Rs. 17,16,965.00. Following this, the appellant made a complaint before the Chairperson, Consumer Grievance Redressal Forum, KSEB, Kozhikode on 26-09-2014 with reference to the appellant's letter dated 28-08-2014 to the 2nd respondent. The appellant clarified that there had been no instance of having kept the electricity charges in arrears till then and that the delay in payment against the revised bills was due to error in the bill. The appellant also said that the disconnection of electricity supply to their unit would affect not only their production, but also lead to lay off of their employees. The appellant therefore prayed that the KSEB be restricted from disconnecting the power supply to the unit until a decision is made on the issue and that the prayer be considered as genuine and allow the appellant to remit the correct electricity charges for the period.
7. Later, the appellant sent a letter to the Chairperson, Consumer Grievance Redressal Forum, informing him that as per the oral instruction from the Forum, the appellant remitted Rs. 3,73,000.00 to KSEB as being one third of the disputed amount. However, the Kerala State Electricity Board disconnected the power supply to the appellant's unit on 27-09-2014 in the evening. Meanwhile, the appellant received a letter from the 3rd respondent, after disconnection, extending the time for last date of remittance up to 04-10-2014. Accordingly the power supply was restored by the morning of 28-09-2014. In the above circumstances, the appellant sought for issuance of an interim order at the earliest as the threat of disconnection of power supply prevailed. The Forum issued an interim order the very next day.

8. The 1st respondent submitted the statement of facts and objection before the Consumer Grievance Redressal Forum stating that average energy/ consumption was arrived as stipulated in Regulation 125(1) and for the Maximum Demand charge as contemplated in 125(3) of the Kerala Electricity Supply Code, 2014. Further, it stated that the bills were issued in conformity with the regulation and rules in force and as such, the revised invoice issued based on the average consumption be upheld.
9. The 3rd respondent issued Disconnection Notice dated 29-10-2014 with regard to the notice for September 2014, directing the appellant to remit the amount of Rs. 1,96,774.00 on or before 12-11-2014, failing which the service was to be disconnected. It further stated that the rest of the amount of Rs. 7,44,769.00 was also due, but subject to the finalization of the Consumer Grievance Redressal Forum.
10. Subsequently, the appellant sent a letter dated 10-11-2014 to the Consumer Grievance Redressal Forum praying that restricted from disconnecting the power supply to the appellant's unit. The appellant further informed the Forum that despite having paid close to 67% of the disputed amount, the appellant received no reply from the 3rd respondent to the appellant's letter dated 01-10-2014. Instead, the 3rd respondent issued a notice.
11. The Consumer Grievance Redressal Forum passed its order in OP No. 61/2014-15 on 02-09-2015, and by the said order, rejected the appellant's claim stating that the appellant should have informed the licensee of the proposed under-consumption well in advance to make a claim for the same. The order further states that the appellant has claimed under consumption not even during the receipt of regular invoice when the metering unit was recording defectively as found in the site inspection on 30-06-2014, but only after the licensee has declared the metering unit faulty and revised the electricity bills for the 5th, 6th and 7th month of 2014 by average billing in compliance to the appropriate regulations of Kerala Electricity Supply Code, 2014. Hence the claim of the appellant to revise the average billing on their submission that the plant was not running to full capacity cannot be admitted. The Forum further noted that the disputed bills are for the energy already consumed and hence remittance of the same has to be made by the appellant forthwith, failing which the burden of this revenue loss to the licensee will be ultimately passed on and will have to be borne by the innocent general public.

Further, the appellant raised the arguments based on the following grounds.

- A. The conclusion arrived at by the Consumer Grievance Redressal Forum in its order dated 02-09-2015, rejecting the claim of the appellant herein, is against law and hence liable to be set aside.

- B. The Forum wrongly relied on the clause 127 of the Kerala Electricity Supply Code, 2014, which deals with cases where there is to be a change of occupancy of the premises or its falling vacant. The appellant has no case that there was a change of occupancy or that the premise was to fall vacant. The Forum has observed in its order that "Accordingly, the consumer has to inform the licensee in advance if there is any chance of less consumption or falling vacant of the premises and a no due certificate has to be obtained from the licensee". It is submitted that the Forum has erroneously included "any chance of less consumption" which is not reflected anywhere in clause 127.
- C. The Forum went wrong in not appreciating the proviso to sub-clause (1) of clause 125 which states that "Provided further that any evidence given by the consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average." Though the appellant has submitted reliable evidence to this effect, either the Forum, or the Kerala State Electricity Board did not appreciate the appellant's requests.
- D. The Forum went wrong in not considering the statement produced along with the letter dated 28-08-2014. It is submitted that the average consumption of electricity per MT of production of the appellant is 72 units, as is evident from the statement enclosed with the aforesaid letter. Considering the quantity produced in MT for the months of June and July 2014 and the unit consumed as per revised bill, the average units per MT should be 129 and 938 respectively, which is unreasonably high. This is also highly improbable.
- E. It is submitted that disconnection of the power supply to the appellant's mill would affect not only their production, but would also lead to the lay off of a lot of employees of the appellant's mill.

Arguments of the respondent:

The respondent argued that the relation between the consumer and the Kerala State Electricity Board Limited is governed by the Electricity Act, 2003, Rules and Regulations made thereto orders issued by the Appellate Tribunal for Electricity, Central/State Electricity Regulatory Commission as the case may be from time to time and Agreement executed by the consumer and distribution licensee and changes made in the Act, Regulation, orders issued by the Apex Court or other statutory bodies. Tariff orders issued from time to time forms part of the agreement. The appellant is billed under Differential pricing system of Electrical Energy measured with the aid of time differentiated Time of Day (ToD) meter. The Tariff of all consumers of the Kerala State Electricity Board Limited is determined by the Kerala State Electricity Regulatory Commission (KSERC) and tariff determined by the KSERC from time to time forms part of the agreement.

As for HT/EHT consumers, the billing demand shall be recorded maximum demand for the month in kVA or 75 % of the Contract Demand. Further when the recorded maximum demand during normal period and peak period in a month exceeds the contract Demand during normal period and peak period and if the Recorded Maximum demand exceeds 130 % of the Contract Demand in off-peak period, the excess over demand shall be charged at the rate of 150 % of the demand charges applicable.

It is submitted Meter Testing Unit attached to TMR Division, Kannur inspected the premises of the appellant on 30-06-2014 based on the complaint dated 12-06-2014 regarding deterioration in power factor. In the inspection it was revealed that ToD meter displaying U1 and U3 as 9250 V and 10800 V. Upon detailed analysis it was revealed that the secondary voltages of the PT measured as RY- 92.5 V, BY-108 V and RB- 41.9 V. The data from 01-07-2013 to 30-04-2014 downloaded and analyzed. Test report confirmed that RY and RB voltage were comparatively lower than the rated voltage of 110 V. Accordingly CT/PT unit declared faulty. By communication dated 17-07-2014, the agreement authority, based on the analysis report of downloaded data, intimated the appellant regarding declaration of the CT/PT as faulty and directed the appellant to replace the CT/PT with ratio 20/5A class 0.5 accuracy. The agreement authority further directed the HT Billing Authority to revise the bills from May 2014. The CT/ PT unit was replaced on 11-08-2014.

Invoice for the month of May 2014 for Rs. 3,82,464.00 issued with a consumption of 65787 kWh and that of June 2014 for Rs. 2,23,913.00 with a consumption of 33459 kWh. On receipt of the test report and based on the remarks of the agreement authority Invoice of July 2014 was issued with average consumption of 109520 kWh and Recorded Maximum Demand (RMD) of the preceding year in the computation of Demand charges. Besides bills of May 2014 and June 2014 also revised with the average consumption of 109520 kWh.

Invoice Details	Consumption (kWh)	Amount	Revised Consumption	Revised demand	Remittance	Balance Amount
May 2014	65787	382464	109520	573183	382464	190719
June 2014	33458	223913	109520	575680	223913	351767
July 2014	109520 (avg)	575583	109520	575283	373000	202283

The consumption pattern and also the test report confirmed that CT/PT became faulty in May 2014 itself. As such needs revision. Bills raised were in order and proper notice and intimation were served in advance for the replacement of the fault CT/PT system and about average billing during faulty period. Average energy consumption was arrived as stipulated in Regulation 125(1) and for the Demand charge as contemplated in regulation 125(3) of the Kerala Electricity Supply Code 2014.

The appellant could not produce any evidence to show that there was variation in production pattern in their plant. As per Regulation I27 of the Kerala Electricity Supply Code, 2014, it shall be the responsibility of the consumer to get a special reading by the licensee at the time of change of occupancy of the

premises or its falling vacant and to obtain after paying the dues, a no dues certificate from licensee.

In the case in hand, the maintenance of the plant was prearranged and preplanned one. The decline production, substitution from sister concern etc was raised by the appellant, only after the licensee declared that metering unit was faulty and revised bills were served as per the provisions of the Supply Code, 2014. The liability to pay current charge is statutory liability as held by the Supreme Court in Kusumam Hotels vs. K.S.E. Board. The appellant could not produce any evidence to show that the reduced consumption was on account of the decline in production. Central Excise and also Sales Tax Department raised demands based on the production and also based on the transfer price or arms-length-price from the sister concerns. The appellant could not produce any evidence on this ground also.

Forecast of demand, execution, and implementation of production pattern follows principles of production management, and the company is well aware of requirement of raw materials and power for the production. It is true that during plant shutdown and maintenance the energy consumption would be lesser compared to normal month. In the agreement for service connection, it is specifically stated that the maintenance and shutdown should be intimated to the licensee. This procedure is insisted in order to consider hours of usage in computing the average consumption. The consumer has not intimated to the licensee. Energy consumption required for producing one MT of products like steel, etc. varies from plant to plant. The quantity of power required for producing one MT of the product may not be the same for one MT of the product from their sister concern. Factors such, technology, skills of the employee, production and process methods varies from plant to plant even if same product is delivered.

The details of arrears to be payable by the appellant is given below:

Arrears as per the disputed bills	Rs.7,44,769.00
Short remittance of the demand	Rs.1,96,744.00
Total arrears issued on 09/2014	Rs.9,41,543.00

Since the bills issued were in conformity with the regulation and rules in force, it is requested that this Hon'ble Forum may direct the consumer to remit the dues to the Board with applicable interest. The petition of the consumer be dismissed with cost.

Analysis and findings

A hearing of the case was conducted in Court Hall of CGRF, Kozhikode, on 13-01-2016. Sri T.K. Abdul Khader and T.C. Nasarudheen represented for the appellant's side and Sri. C.K. Jayakumar, Assistant Executive Engineer, Electrical Sub Division, West Hill, Kozhikode, Manoj T.S., Assistant Engineer, West Hill, Kozhikode, and Sri. Sukumaran, Accounts officer, O/O the Special Officer (revenue), Vydhyuthi Bhavan, Thiruvananthapuram represented for the respondent's side. The brief facts and circumstances of the case that led to filing

of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The question here in this case is whether the issue of revised electricity bills for the months of May, June and July 2014 amounting to Rs. 11,17,769.00 on the basis of average consumption of 109520 units per month considering the CT/PT as faulty is in order or not.

The appellant's main contention is that the revised bills issued based on the previous average consumption were wrong. The total market requirement of wheat product under "PK Brand" is met from the appellant's premises, Ahammed Roller Flour Mills (P) Ltd. and their sister concern Peekay Roller Flour Mills. The appellant contended that the Peekay Roller Flour Mills was shutdown during February 2014 for modernisation and a higher production was necessitated during this period in the appellant's premises so as to meet the market requirement of PK Brand wheat products.

Further, the appellant contended that after modernisation of the Peekay Roller Flour Mills, the total market requirement of PK Brand wheat products was met from this sister concern, resulting in cessation of production work at the appellant's premises after mid June 2014. So the appellant's premises curtailed 50% of its production capacity during June 2014 and very negligible quantity of 116 MT during July 2014. According to the appellant, the premises had remained non-operation and there has been negligible consumption of electricity during June and July 2014. Further, the appellant argued that he had been producing on an average of around 1200 MT per month prior to the period under dispute. The average consumption of electricity per MT of production is 72 units but as per the revised bill, the average unit per MT comes 129 and 938 units respectively, which is unreasonably high.

According to the respondent, the consumption pattern and also the test report confirmed that CT/PT became faulty in May 2014 itself. So, average energy consumption was arrived as stipulated in Regulation 125(1) and for the Demand charge as contemplated in Regulation 125(3) of the Kerala Electricity Supply Code, 2014. The appellant could not produce any evidence to show that there was variation in production pattern in their plant. The decline production, substitution from sister concern etc was raised by the appellant, only after the licensee declared that metering unit was faulty and revised bills were served as per the provisions of the Supply Code 2014. Central Excise and also Sales Tax Department raised demands based on the production and also based on the transfer price or arms-length-price from the sister concerns.

Further the respondent argued that in the agreement for service connection, it is specifically stated that the maintenance and shutdown should be intimated to the licensee. This procedure is insisted in order to consider hours of usage in computing the average consumption. The quantity of power required for producing one MT of the product may not be the same for one MT of the product

from their sister concern. Factors such, technology, skills of the employee, production and process methods varies from plant to plant even if same product is delivered.

Apart from the assertions, the only material produced by the respondent in this case is the test report of Executive Engineer, TMR Division, Kannur. The respondent stated that the data from 01-07-2013 to 30-04-2014 downloaded and analyzed. The test report confirmed that RY and RB voltages were comparatively lower than the rated voltage of 110 Volts. Accordingly the CT/PT unit declared faulty. Even though the respondent has stated that they have downloaded the data and analysed the same, failed to furnish the actual date of CT/PT unit went faulty. However, the respondent revised the assessment for the month of May 2014 based on the test report of Executive Engineer, TMR Division, Kannur dated 02-07-2014 that there is reduction in the consumption compared to previous month.

On a close perusal of the consumption pattern of the appellant it can be seen that during 03/2014, the recorded consumption is 119172 units. For the month of 04/2014, 05/2014 the consumption is 92622 units 65787 units respectively. There is a considerable reduction for the month of 06/2014 and is only 33459 units. From the above it can be presumed that CT/PT unit became faulty during 06/2014. In the case of defective or damaged meter, the procedure for billing is detailed in **Regulation 125(1) of Supply Code, 2014 which reads as**

“in the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of the meter being found or reported defective:

Provided that average shall be computed from the 3 billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available.

Provided, further that any evidence given by the consumer about conditions of working and occupancy of the concerned premises during the said period, which may have had a bearing on consumption, shall also be considered by the licensee for computing the average.

(2) Charges based on the average consumption as computed above shall be levied only for a maximum period of 2 billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter”.

Here in this case the respondent has taken the average consumption for 04/2014, 03/2014 and 02/2014 and arrived as 109520 units. The respondent has not adduced any evidence to establish his argument that the CT/PT went faulty during 05/2014. On going through the consumption pattern it can be seen that there is substantial reduction in the consumption during 06/2014 when compared to the previous month's consumption. Hence a reasonable conclusion can be arrived that the CT/PT went faulty during 06/2014. In such cases for reassessing the appellant, previous average has to be taken for 03/2014, 04/2014 and 05/2014 instead of 04/2014, 03/2014 and 02/2014.

As per Regulation 125(2) average consumption shall be levied only for a maximum period of 2 billing cycles. But the respondent levied average consumption for a period of 3 billing cycles which is found not in order and hence cannot be justified.

Decision

In view of the above discussions it is concluded that there is no reasonable justification for issuing the short assessment bill for Rs. 11,17,769.00 and hence hereby quashed. However, the respondent is directed to revise the bill based on the average consumption for the previous billing cycles from 03/2014, 04/2014 and 05/2014 as per Regulation 125(1) of Supply Code, 2014. The average consumption shall be levied only for a maximum period of 2 billing cycles as per Regulation 125(2). The order of CGRF in OP No. 61/2014-15 is hereby set aside. The appeal petition is found having some merits and is allowed to the extent as ordered. No order as to costs.

ELECTRICITY OMBUDSMAN

P/167/2015/ _____ Dated: _____

Delivered to:

1. M/s Ahammed Roller Floor Mills Pvt. Ltd., Puthiyangadi, Kozhikode
2. The Deputy Chief Engineer, Electrical Circle, KSEBL, Vydhyuthi Bhavanam, Kozhikode.
3. The Special Officer (Revenue), KSEBL, Vydhyuthi Bhavanam, Thiruvananthapuram.
4. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd. West Hill, Kozhikode.

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, KSEBoard Ltd, Gandhi Road, Kozhikode.