

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO. P/170/2015

(Present: V.V. Sathyarajan)

Dated: 08th April 2016

Appellant : Sri. Vinod Viswanathan
President,
Bharath Charitable Hospital,
Kottayam.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Kottayam Central,
Kottayam District.

ORDER

Background of the case:

M/s Bharath Charitable Hospital, High Tension consumer code (No. HTB-13/4221) of the Kerala State Electricity Board Limited having a Contract Demand of 320 kVA, under Electrical Section, Kottayam Central in the jurisdiction of Electrical Circle, Kottayam. The meter installed in the premises was found faulty, while taking meter reading for the month of March 2014. Therefore, a short assessment bill dated 22-01-2015 for Rs. 26,94,441.00 served on the appellant reassessing for a period of previous 9 months. The said short assessment bill was challenged before the Hon'ble High Court of Kerala by filing W.P. (C) No. 4477/2015, and the Hon'ble High Court by its judgment dated 12-02-2015 directed the appellant to approach the Special Officer (Revenue).

Accordingly, the appellant filed an objection against the penal bill before the Special Officer (Revenue), but the said bill was confirmed by Proceedings dated 30-05-2015 of the Special Officer (Revenue). The said order and short assessment bill was again challenged before the Consumer Grievance Redressal Forum (Southern Region) by filing O.P. No. 1517/2015 and the said Forum in its order dated 30-09-2015 concluded that "on verifying the energy consumption pattern of the appellant, the energy consumption prior to meter faulty was 9792 units and after replacement was 10730 units. From this it is found that the energy consumption

increased after the meter replacement." Forum viewed that the energy consumption after the meter replacement is more than before the meter fault. Forum directed to revise the bills for six months as per the clause 115(9) of Kerala Electricity Supply Code, 2014. Against the above order, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant stated the following arguments.

1) Appellant is a High Tension Consumer, having availed electrical connection to their hospital, under Code Number L34634O000915 from the Model Electrical Section at Kottayam.

2) Ever since availing the subject electrical connection, the appellant was duly paying without default the electrical charges, as per bills issued to them from time to time from the Office of the Special Officer (Revenue), Kerala State Electricity Board Ltd, Vydhyuthi Bhavan, Pattom, Thiruvananthapuram, as per the meter reading recorded every month, personally, from the office of the Assistant Engineer, Model Electrical Section, Kottayam Central, Kottayam, from the electrical meter installed at the appellant's premises. Accordingly, appellant had paid the electrical charges to the KSEB for the period from August 2013 to April 2014, in terms of the bills so issued by the 2nd respondent for the said period.

3) While so, on 04-04-2014, the Assistant Engineer, Model Electrical Section, Kottayam Central, Kottayam had since recording of the reading from the electrical meter installed at the premises of the appellant through the Sub Engineer under him, issued letter no. DB/27/L4-L5/AE-KTM C dated 04-04-2014, intimating the appellant that the electrical meter fitted in the appellant's premises is found faulty as per the recorded consumption for March 2014 and accordingly requiring replacement of the same. It is to be noted that this was the first time that the appellant is being intimated that the subject meter is faulty, by the KSEB.

4) Pursuant to the said letter No. DB/27/14-15/AE-KTM C dated 04-04-2014, appellant had in the month of April 2014 itself purchased a new electric meter, got it duly tested from the Meter Laboratory at Kottayam through the KSEB officials and on 23-04-2014, the new meter thereof was installed replacing the earlier meter at the appellant's premises.

5) Since eight months thereafter, the office of the Special Officer (Revenue), Kerala State Electricity Board Ltd, Vydhyuthi Bhavan, Pattom, Thiruvananthapuram had issued letter No. HTB- 13/4221 dated 22-01-2015 to the appellant, revising each of the 9 bills earlier issued to appellant by him covering the period from August 2013 to April 2014, to Rs. 8,85,300.00 each, by reckoning average consumption of the previous 6

months, i.e. from February 2013 to July 2013, and accordingly requiring appellant to remit a sum to the tune of Rs. 26,94,441.00 (Rupees Twenty six lakhs ninety four thousand four hundred forty one only) on or before 06-02-2015. The said letter dated 22-01-2015 is so issued, revising the said prior 9 bills to higher amount as aforesaid, on the premise that the Deputy Chief Engineer, Kerala State Electricity Board Ltd, Electrical Circle, Kottayam has by his letter dated January 2015 reported the energy meter installed in the appellant's premises was "sluggish" from August 2013 onwards and declared as faulty during March 2014 after noticing drastically low Maximum Demand in three zones in the said period, requesting revision of the bills during the period, on average basis. Revised bills so revised for the period from August 2013 to April 2014 were also enclosed with the said letter.

6) During a personal hearing conducted by the Special Officer (Revenue), the appellant had through its Advocate orally raised these contentions. On the occasion, the Accounts Officer attached to the office of the Special Officer (Revenue), representing the KSEB in the said proceedings, had orally taken a contention that this case would also fall under Section 126 of the Electricity Act 2003. Such an argument is not only a sheer absurdity but also seems to have been stated in total ignorance of law. Section 126 relates to contingencies of 'unauthorized use', and does not relate to cases like the instant one, Therefore, the argument raised by the Accounts Officer only deserves to be summarily rejected for want of any legal value.

Thereafter, an elaborate Argument Note dated 17-03-2015 was also filed before the Special Officer (Revenue) on 19-03-2015 from the side of the appellant. Thereafter, without considering any of the contentions and grounds raised by the appellant herein in the correct perspective, based on perverse interpretations the Special Officer (Revenue) issued an Order No. HTB-13/4221 dated 21-05-2015 received by the appellant on 27-05-2015, dismissing the contentions of the appellant, and thereby reiterating the earlier demand to pay a sum of Rs. 26,94,441.00 (Rupees Twenty six lakhs ninety four thousand four hundred forty one only) on or before the expiry of fifteen days from the date of receipt of the Order.

7) The matter was finally heard by the Consumer Grievance Redressal Forum, Kottarakara on 11-09-2015, after which the appellant had filed an elaborate Argument Notes dated 22-09-2015. Thereafter, on 06-10-2015, the appellant received the impugned Order No. CGRF/KTR/OP No. 1517/2015/4537 dated 30-09-2015 passed by the Consumer Grievance Redressal Forum, Kottarakara. The said Order is perverse and illegal in as much as the same has not taken into consideration the following contentions raised by the appellant. It has not devoted any attention to the aspects tabled by the appellant. The Order suffers from gross non application of mind. Moreover, the reasons relied upon by the Consumer Grievance Redressal Forum is illogical and bereft of any legal basis. In this genre/ the observation in paragraph 6 of the Order that the appellant herein had admitted the fault of the meter is false. At no point has the appellant

admitted to such a condition, the mere fact that the appellant had obliged to the demand of the respondents to change the meter does not in any way be termed as an admission on the faulty nature of the meter. In fact, the conviction of the consumer regarding the faultiness of a meter is of no consequence. Rather, law states that the respondents are bound to get a formal declaration from the Electrical Inspector or such other designated or concerned authority before deeming the meter as faulty. The Order seems to have completely ignored this point as also the other points raised by the appellant.

8) Appellant respectfully submits that demand no.HTB-13/4221 dated 22-01-2015 issued from the office of the Special Officer (Revenue), Kerala State Electricity Board Ltd., Vydhyuthi Bhavan, Pattom, Thiruvananthapuram, revising energy charges earlier billed on the appellant, for an anterior period, that too, on the premise that electrical meter installed by the respondents on their responsibility and under their maintenance was "sluggish" and faulty is illegal, arbitrary, and unreasonable. This is so, especially when the alleged "sluggishness" or fault of the meter is admittedly not on account of any unauthorized use or misuse of energy from the side of the appellant and when there is admittedly no tampering with of any electrical equipments, installation or meter from the side of the appellant. This is all the more so, when going by the provisions in the Electricity Act 2003 read with the Regulations framed there under as also the Electricity Supply Code and Terms and Conditions of Supply framed, by the KSEB itself, it is the obligation of the KSEB to ensure that a meter recording accurate reading is installed and to further ensure accurate reading is recorded by meter, with its due repair, maintenance and inspection from time to time being the obligation of the KSEB.

9) Moreover, in any view, demand no. HTB-13/ 4221 dated 22-01-2015 in as much as it so revises energy charges for a period of about 8 months prior to the date on which the alleged non recording is said to have been detected is also illegal, arbitrary, and unreasonable, especially when such levy is not enabled or permitted by there under, much less, for the period anterior to the date on which the alleged fault in the meter is said to have been detected, as per the letter DB/27/14-L5/AE-KTM C dated 04-04-2014, issued by the Assistant Engineer, Model Electrical Section, Kottayam Central, Kottayam. The letter of demand no HTB-13/4221 dated 22-01-2015, in as much as it undertakes revision of electrical charges on assumed consumption for a period of 8 months prior to the alleged detection of fault in meter, is also arbitrary and illegal, for such fault has not occurred prior to its detection in April 2014, at all. In any view, the demand no.HTB-13/ 4221 dated.22-01-2015 issued on the aforesaid premise without subjecting the meter to an inspection by the Electrical Inspector, despite the appellant disputing the stand in the letter of demand no.HTB-13/4221 dated 22-01-2015 and alleged "sluggishness" and fault is also arbitrary and illegal, especially in the light of the law in this regard laid down by various Courts.

10) Going by the scheme and provisions in Section 55 of the Electricity Act 2003; Regulations 6 (2), 7, 9, 10, 14 (2), 15 (2) and 18 (2) of the Central Electricity Authority (Installation and Operation of Meters) Regulation 2006; Regulation 6 of the Kerala State: Electricity Regulatory Commission (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations 2006; Regulations 31, 33, 34, 35, 36, 37, 42 and 43 of the Kerala State Electricity Board Terms and Conditions of Supply 2005; and Clauses 18 to 24 of the Kerala Electricity Supply Code 2005; it is the duty and obligation of the KSEB to repair and maintain a meter recording the accurate reading as also ensure the accuracy of the reading recorded by such meter. When that be so, for any fault or defect in the accuracy of the reading recorded by a meter obliged to be maintained by the respondents, for that matter the appellant in this case, cannot be held responsible or liable for such fault. This is all the more so, when the alleged defect or fault in the readings recorded by the meter is admittedly not on account of any unauthorized use or misuse of energy by the appellant, the appellant in this case; and when the appellant has admittedly not tampered with or damaged the electrical equipments, installation or the meter. In fact, there are no provisions in the Electricity Act or rules or any regulations framed there under which enable the KSEB to penalize or hold the appellant liable in such cases or to revise or levy higher energy charges for the period anterior to detection of the alleged fault or defect in the accuracy of the reading being made by the meter obliged to be maintained by the KSEB. On the other hand, the responsibility for maintenance of the meter also ensuring its accuracy in reading, being KSEB, the KSEB itself will have to suffer for any fault or defect in the recorded by the meter thereof.

11) Moreover, it may be noted that in the case of HT consumers like the appellant herein, there is an Accounts officer/Personnel at the office of the special officer (Revenue) who draw up the bills in accordance with the meter readings provided by the local Assistant Engineer. That being so it begs the following questions;

- I. as to why such a personnel at the office of the special officer (Revenue) did not notify the appellant earlier since even according to the KSEB, the variations in the readings and slump in the bill amounts could lead to the inference of a faulty meter or "sluggishness"?
- II. If the data relied upon by the KSEB would show a decline or slump in the meter efficiency for over a period of time from August 2013 till April 2014 why did not the KSEB personnel who personally recorded the readings at site did not detect any such sluggishness from August 2013 to April 2014?

These questions assume importance, since, as already stated that it was on 04-04-2014, for the first time that the Assistant Engineer, Model Electrical section, Kottayam central, Kottayam had since recording of the reading from the electrical meter installed at the premises of the appellant through the Sub Engineer under him, issued letter no. DB/27/14-5/AE-

KTM C dated 04-04-2014. Anyhow, In view of the above scheme of the Electricity Act, Rules and Regulations framed there under, the letter of Demand no HTB-13/4221 dated 22-01-15, is illegal.

12) The letter of Demand no.HTB-13/4221 dated 22-01-2015 in as much as it seeks to revise and levy higher energy charges from the appellant on the impugned premises, for a period of about 8 months prior to April 2014, the month in which the alleged fault in the meter is said to have been detected, as would be evident from the letter dated 04-04-2014 is illegal, arbitrary, and unreasonable, more so in the absence of any provisions in the Electricity Act, 2003 and Rules as also Regulations there under enabling the KSEB to impose such revision or levy and levy thereof for any period anterior to the date on which the alleged defect or fault in the accuracy of the reading recorded by the meter is said to have been detected.

13) The letter of demand no.HTB-13/4221 dated 22-01-2015, in as much as it is one imposing levy of higher energy charges on the appellant, on the reasons recorded therein, is illegal and arbitrary; for such revision and levy is based on assumed consumption which is not actually not enable such assumed assessment at all,

14) In any view of the matter, appellant having dispute over the stand of the KSEB in the letter of demand no.HTB-13/4221 dated 22-01-2015, as to the alleged "sluggishness" of the meter; The said demand no. HTB-13/4221 dated 22-01-2015 could not have been issued at all to the appellant without subjecting the meter to inspection by the Electrical Inspector. This is so, especially in the light of the law laid down by the Hon'ble Supreme Court and the various High Courts by binding precedents governing the issue one. Therefore, the letter of demand no.HTB-13/ 4221 dated 22-01-2015 is illegal on this count too.

15) The letter of demand no.HTB-13/4221 dated 22-01-2015, is arbitrary and illegal, also in as much as the revision and levy there under is made without any basis and without revealing to the appellant, the letter of the Deputy Chief Engineer, Kerala State Electricity Board Ltd, Electrical Circle. Kottayam referred to therein and its basis or details or particulars as to its calculations. Till date the appellant has not been served with copy of such a letter.

16) The letter of demand no.HTB-13/4221 dated 22-01-2015 in any view is arbitrary and ultra vires, for none of the provisions of the Electricity Act 2003 or Rules or Regulations framed there under enables the KSEB to resort to revision or levy of higher energy charges on the counts and premise recorded in the letter of demand no. HTB- L3/4221 dated 20-01-2015, especially when it does not tantamount to unauthorized use of electricity or misuse or theft of energy and does not involve tampering or damaging any electrical installations, equipment or meter from the side of the appellant, the appellant in the instant case.

17) In any view of the matter, the letter of demand no.HTB-13/4221 dated 22.01.2015 issued on the premise that meter installed at appellant's premises was sluggish from August 2013, when no such sluggishness was reported or revealed prior to the letter No. DB/27/14-15/AE-KTM C dated 04-04-2014 or even in the said letter No. DB/27/14-15/AE-KTM C dated 04-04-2014 and when such letter No. DB/27/14-15/AE-KTM C dated 04-04-2014 without reporting any sluggishness in the meter, reading of the month of March 2014 is arbitrary and illegal and tainted by non-application of mind.

18) As already stated, neither the Accounts Officer at the office of the Special Officer (Revenue) nor the local Assistant Engineer has ever reported prior to April 2014, about such a fault or sluggishness. If the KSEB now claims to have been in their possession scientific data which reveals such an anomaly or a sluggish pattern, it leads to a further crucial question as to why no prior intimation was ever tendered from the side of the Accounts Officer at the office of the Special Officer (Revenue) or the local Assistant Engineer, as soon as such a defect erupted in August 2013. Since bills are supposed to be drawn up on actual data, any abnormality in such data ought to have triggered alarms, Therefore, absence of any such action is an indication that the contentions raised by the KSEB in this case are false, and fruits of afterthought.

19) None of the contentions and citations raised by the KSEB in its Version is sustainable. It seems to have deliberately misinterpreted the provisions of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 and the Kerala Electricity Supply Code, 2005, so as to mislead this Hon'ble Forum.

20) In page 2 of its Version, at paragraphs "2, 3", and "6, 7" the KSEB has relied upon Regulation 37 (5) of the Kerala Electricity Supply Code, 2005 so as to justify its assessment and demand in this case. At the outset, it is hereby pointed out that the Kerala Electricity Supply Code, 2005 does not have any such Regulation, If the KSEB was in fact intending Regulation 37 (5) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005, the said provision does not concern or relate to the factual 'matrix and scenario of this instant case. The instant case relates to the dispute raised as to the finding of the KSEB that the meter was faulty for the period from August 2013 to April 2014, and the action of the KSEB in issuing additional bills for these 9 months based on an average consumption relying on the periods beyond August 2013. That being the gist of the dispute, Regulation 37 (5) of the Kerala State Electricity Board Terms and Conditions of Supply 2005, does not have any bearing on this case, especially since Regulation 37 relates only to "Disputes in Bill" which presupposes a meter which is perfect, and does not extend to scenarios like this.

21) In paragraph 8 of its Version, the KSEB has adopted a vain contention that the appellant is also liable to report any sluggish or defective meter. So as to table such a contention, it has relied upon a Clause 58 (a) of the

Kerala Electricity Supply Code, 2005. However, it is hereby pointed out that there is no such Clause 58 in the Supply Code, 2005. Even otherwise, such a situation is not attracted in this case, because even according to the Kerala State Electricity Board they were raising bills on the subject meter for the period from August 2013 to April 2014. Therefore, the KSEB itself having raised bills on the said meter during each of these nine months, how could the consumer recognize or deem such a meter to be faulty? This assumes importance because a meter, even as per the various provisions in the Kerala State Electricity Board Terms and Conditions of Supply, 2005 and the Kerala Electricity Supply Code 2005 can be characterized as faulty or "malfunctioning" only when the KSEB is unable to raise any bill on it. As already stated, in this case the KSEB was able to generate bills on this subject meter (which were duly paid) on each of the months running from August 2013 to April 2014. The upkeep and the accuracy of the meter, as laid down in various provisions of the Electricity Act as including Section 55, as well as in Regulation 42 of the Kerala State Electricity Board Terms and Conditions of Supply 2005, is the bounden responsibility of the KSEB. Therefore, any suggestions to the contrary as seen urged in vain in the Version, is unacceptable. Moreover, as already stated above in paragraph 12 herein, without subjecting the said meter to the scrutiny of the Electrical Inspector, the KSEB was not justified in condemning the meter as faulty.

22) Moreover, in support of the above paragraph, going by the scheme and provisions in Section 55 of the Electricity Act 2003; Regulations 6 (2), 7,9, 10, 14 (2), 15 (2) and 18 (2) of the Central Electricity Authority (Installation and Operation of Meters) Regulation 2006; Regulation 6 of the Kerala State Electricity Regulatory Commission (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations 2006; Regulations 31, 33, 34, 35, 36, 37, 42 and 43 of the Kerala State Electricity Board Terms and Conditions of Supply 2005; and Clauses 18 to 24 of the Kerala Electricity Supply Code 2005; it is the duty and obligation of the KSEB to repair and maintain a meter recording the accurate reading as also ensure the accuracy of the reading recorded by such meter. When that be so, for any fault or defect in the accuracy of the reading recorded by a meter obliged to be maintained by the respondents, for that matter the appellant in this case, cannot be held responsible or liable for such fault.

23) Moreover, as already stated, there are no provisions in the Electricity Act or Rules or any Regulations framed there under which enable the KSEB to penalize or hold the appellant liable in such cases or to revise or levy higher energy charges for the period anterior to detection of the alleged fault or defect in the accuracy of the reading being made by the meter obliged to be maintained by the KSEB. Therefore, Reg 37 (5) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 or the provisions of the Supply Code, 2005 cannot have any mechanisms to the contrary.

24) Moreover, contrary to the assertions in paragraph 8 of its Version, Reg 42 (3) of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 has absolutely no bearing on the instant case. That provision only

extends to where the consumer detects any complaint in the meter. But, in this case there was never any reason for the consumer to detect any complaint in the meter during the relevant period of 9 months (August 2013 to April 2014) because the readings were being taken each month by an Assistant Engineer of the Model Electrical Section, Kottayam, which was then relied upon by the Accounts Officer at the Office of the Special Officer (Revenue) to generate bills. As stated above, as per the various provisions in the Kerala State Electricity Board Terms and Conditions of Supply, 2005 and the Kerala Electricity Supply Code, 2005 can be characterized as "faulty" or "malfunctioning" only when the KSEB is unable to raise any bill on it. As already stated, in this case the KSEB was able to generate bills on this subject meter (which were duly paid) on each of the months running from August 2013 to April 2014. Moreover, as already stated above in paragraph 12 herein, without subjecting the said meter to the scrutiny of the Electrical Inspector, the KSEB was not justified in condemning the meter as faulty. Therefore, the meter is yet to be legally and formally presumed as faulty.

25) In paragraph 9, 10 of its Version, the KSEB has also relied upon Regulation 18 (8) of the Kerala Electricity Supply Code 2005. That provision only deals with period of limitation in raising a bill. But the point of dispute in this case is the legality of the circumstances which led to the issuance of the revised bills. In support of its contention, the KSEB has relied upon a judgment in Writ Appeal No. 211 of 2012. The said judgment does not have any binding effect on the instant case, Moreover, a perusal of the said judgment would reveal the fact that the said judgment does not lay down any declaratory dictum; rather it operates only on the facts of that case, Similarly, the judgment of the Hon'ble High Court of Kerala in OP 5930/1985, relied upon by the KSEB in its Version also does not have any bearing on the instant case. Even according to the KSEB, the said judgment relates only to mistakes in billing. But it does not encapsulate scenarios where the bill is supposedly issued on a meter which is subsequently claimed by the KSEB to be faulty, when no such fault or malfunction was ever reported during the impugned period; when in fact bills were in fact raised on its readings during the said period. The very reason why the texts of these judgments have not been produced before this Hon'ble Forum along with its Version is because the KSEB is well aware that those are not relevant for the adjudication of this case.

26) In paragraph t4 of its Version, the KSEB has again relied upon a Clause 58 (a) of the Kerala Electricity Supply Code, 2005. However, it is hereby pointed out that there is no such Clause 58 in the Code, 2005. However, Kerala State Electricity Board Terms and Conditions of Supply, 2005 contain a Regulation 58 (a), which runs on similar lines. But the same is not attracted in this case/ because even according to the KSEB they were raising bills on the subject meter for the period from August 2013 to April 2014. Therefore, the KSEB itself having raised bills on the said meter during each of these nine months, how could the consumer recognize or deem such a meter to be faulty? This assumes importance because a meter, even as per

the various provisions in the Kerala State Electricity Board Terms and Conditions of Supply, 2005 and the Kerala Electricity Supply Code, 2005 can be characterized as "faulty" or "malfunctioning" only when the KSEB is unable to raise any bill on it. As already stated, in this case the Kerala State Electricity Board was able to generate bills on this subject meter (which were duly paid) on each of the months running from August 2013 to April 2014. Anyhow, as soon as the appellant was intimated as per letter no DB/27/14-15/ AE-KTM C dated 04-04-2014, the appellant herein replaced the meter immediately.

Arguments of the respondent:

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 the 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.

It is submitted that meter reading of High Tension consumers are taken by the Assistant Engineer of the Electrical Section concerned. While taking meter reading of March 2014, it was noticed that the meter installed in the premises was faulty. Accordingly notice was issued to the appellant to replace the meter. In order to ascertain the meter faulty period, the meter was sent to the Meter Testing Unit attached to TMR Division, Pallom. The downloaded data revealed that the meter was faulty from August 2013. A new ToD meter was commissioned in May 2014. On verifying the consumption pattern recorded after replacement of the meter and prior to the replacement of meter, and also based on the downloaded data it was necessitated to reassess the bills during the meter faulty period.

The consumption of energy (both kWh & kVA) from August 2013 to February 2014 and from May 2014 to December 2014 is reproduced below:

Before replacement of meter			After replacement of meter		
Month	Con (kWh)	RMD-kVA	Month	Con (kWh)	RMD-kVA
Aug-13	62481	278	May-14	118549	315
Sep-13	35751	252	Jun-14	93756	308
Oct-13	56898	259	Jul-14	112824	283
Nov-13	72720	285	Aug-14	96600	296
Dec-13	83025	250	Sep-14	109932	308
Jan-14	43584	259	Oct-14	112148	303
Feb-14	79461	286	Nov-14	122104	300
			Dec-14	121728	315

The downloaded data revealed that the meter faulty occurred in Aug 2013. On verifying the consumption pattern, it was noted that there were considerable increase in consumption after replacement of the meter. As such needs revision of invoices. Proper notice and intimation were served in advance for the replacement of metering system. Bills issued were reassessed based on the average consumption from 02/2013 to 07/2013. Accordingly short assessment bill dated 22-01-2015 for Rs. 26,94,441.00 served on the consumer reassessing for a period of 9 months, i.e. from the fault of meter (in August 2013). It is true that bills were issued after an elapse of 8 months so as to watch the consumption pattern of six months after commissioning of the new meter.

Kerala Electricity Supply Code, 2005 was promulgated by the Kerala State Electricity Regulatory Commission and the KSEB Terms and Conditions of Supply, 2005 was approved and ratified by KSERC. The revision of bill was issued as per Regulation 37(5) of the KSEB Terms and Conditions of Supply, 2005. As per Regulation 58(a) of the KSEB Terms and Conditions of Supply, 2005, duty cast upon the consumer to intimate any complaint of the meter to the distribution licensee. Appellant also admitted that the meter was faulty. If there is a mistake or there is under-billing, it is always open to the Electricity Board to rectify the mistakes and to demand proper charges due from the consumer (Decision of the Hon'ble High Court of Kerala in O.P.No.5930/1985). In the instant case, the meter data were downloaded and tested at the meter testing unit, TMR Division, Pallom.

It is true that the Central Electricity Authority published under notification No.502/70/CEA/DP&D in the Gazette of India Extra Ordinary Part III, Section 4 No.40 dated 22-03-2006 (pp 26-44), the regulation namely the CEA (Installation and Operation of Meters) Regulations, 2006. As mandated, the metering equipment was tested and analyzed at TMR Division and the details of downloaded data were made available to the appellant also. The short assessment was made based on the downloaded details. In the instant case the meter was tested at TMR Division, Pallom and the said Test Report has not challenged by the appellant. As per Regulation 115(8) of the Kerala Electricity Supply Code, 2014, the testing at National Accredited Board for Testing and Calibration Laboratories (NABL) arises if the consumer disputed testing of the Distribution Licensee.

On going through the consumption pattern of hospitals under High Tension category it is seen that consumption is even. Changes occur only in the cases where there is decrease/increase in load. The Hon'ble Forum may please be noted that the consumption of the appellant increased after the replacement of the meter. Generally the monthly readings of HT consumers are taken in the first week. While taking monthly consumption of March, 2014 it was noted some error and accordingly meter was sent to TMR Division for testing and analysis. Notice was also issued to the appellant to replace a new meter. Test Report and analyzed data showed that the fault

occurred from August 2013 and hence bills were revised and short assessment issued. The challenge against the short assessment bill was considered by the CGRF (Southern Region) and directed the Board to revise bill. Bills were issued after testing the meter and the appellant has not questioned the testing.

In the light of the above submission the respondent requested that the appeal petition may be rejected with cost.

Analysis and findings

A hearing of the case was conducted in the Conference hall of the Electrical Circle, Thodupuzha, on 10-02-2016. The counsel of the appellant Sri Thomas P Makil was present. Sri Babujan, Assistant Executive Engineer, Electrical Sub Division, Kottayam, only 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 appellant's main contention is that when the alleged defect or fault in the readings recorded by the meter is admittedly not on account of any unauthorized use or misuse of energy by the appellant and the appellant has admittedly not tampered with or damaged the electrical equipments, installation or the meter. In fact, there are no provisions in the Electricity Act or Rules or any Regulations framed there under which enable the KSEB to penalize or hold the appellant liable in such cases or to revise or levy higher energy charges for the period anterior to detection of the alleged fault or defect in the accuracy of the reading being made by the meter obliged to be maintained by the licensee. On the other hand, the responsibility for maintenance of the meter also ensuring its accuracy in reading rest with the KSEB itself and they will have to suffer for any fault or defect in the recorded by the meter thereof.

According to the respondent, the consumption pattern and also the test report confirmed that the meter became faulty during August 2013 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 consumption pattern in their hospital. In the instant case the meter was tested at TMR Division, Pallom and the said Test Report has not challenged by the appellant. As per regulation 115(8) of the Kerala Electricity Supply Code 2014, the testing at National Accredited Board for Testing and Calibration Laboratories (NABL) arises if the consumer disputed testing of the Distribution Licensee.

The question here in this case is as to whether the issuance of revised short assessment bill dated 22-01-2015 for Rs. 26,94,441.00 to the appellant after reassessing for a period of previous 9 months on the basis of average consumption of 109520 units per month considering the meter as faulty is in order or not.

On going through the consumption pattern of the hospital which is coming under High Tension category, it is seen that consumption is **even**. Changes occur only in the cases where there is decrease/increase in load. The consumption of the appellant is seen increased after the replacement of the meter. Apart from the assertions, the only material produced by the respondent in this case is the downloaded data of Executive Engineer, TMR Division, Pallom. The respondent stated that the data from 30-05-2013 downloaded and analyzed. The report confirmed that there were considerable decreases in actual consumption during the meter faulty period. In the letter dated 06-02-2015 of Executive Engineer, TMR Division, Pallom says that the maximum demand of M/s Bharath and Charitable Trust Hospital, Kottayam was found abnormal during the reading taken on 28-03-2014 by the Assistant Engineer, Electrical Section, Kottayam (C). The same was verified with downloaded data and found that Maximum Demand is wrong. It was recommended for meter replacement and the meter was replaced on 07-05-2014.

Even though the respondent has stated that they have downloaded the data and analysed the same, failed to conduct an inspection in the premises of the appellant and also to prepare a site mahazar showing the details of discrepancies, if any noticed. In the absence of a site mahazar there is no justifiable reason for not intimating the appellant about the defect if any found in the metering equipment and for issuing for a penal bill to the tune of 26,94,441.00. There is no mechanism for the appellant to know whether the metering system is working or properly functioning. Hence the issue of penal bill for a huge sum of Rs. 26,94,441.00 which is arbitrary and unreasonable. However, the CGRF revised the assessment for *six months as per the clause 115(9) of Kerala Electricity Supply Code, 2014.*

As per Section 24 (5) of the Kerala Electricity Supply Code, 2005, the licensee is entitled to recover electricity charges, undercharged from the consumer, if it is established. In the present case it stands proved there were considerable decreases in actual consumption during the period of 9 months from August 2013. It is true that the recovery of arrears of electricity charges is not due to any fault or offence committed by the appellant. There is no allegation of misuse or unauthorized use of electricity against the consumer by the KSEB. The KSEB has only demanded the charges for the energy lost in the recording of the meter, which has been actually used by the party. The consumer is bound to pay electricity charges for the energy he has consumed. After replacing the old meter with a new one, the consumption was seen increased. This confirms that there was a drastic fall in energy consumption during the disputed period, which is established as

due to the meter faultiness. Hence the appellant is bound to pay the electricity charges for the actual energy he has consumed.

On a close perusal of the consumption pattern of the appellant it can be seen that during the period from August 2013 to April 2014 (9months) recorded average consumption was (557756/9) 61973 units. After replacement of the meter the recorded average consumption from May 2014 to December 2014 was (887641/8) was 110955 units. There is a considerable reduction of 48982 units per month during the alleged faulty period. From the above it can be presumed that the meter became faulty during 08/2013. 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”.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. But the Forum has taken a decision based on the Regulation 115 (9) of Supply Code, 2014. **Regulation 115 (9) says that in the case the meter is found to be faulty, revision of bill on the basis of test report shall be done for a maximum period of 6 months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in two subsequent bills.** According to 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 9 months which is found not in order and hence cannot be justified.

Decision

Here in this case, the Forum had revised the short assessment as per Regulation 115(9) without any testing of meter by the NABL accredited

laboratories and a test report. It is pertinent to note that the reason for the issuance of short assessment is based on the letter dated 06-02-2015 of Executive Engineer, TMR Division, Pallom. This letter cannot be treated as a test report since the TMR Division has not conducted any testing of the meter under question. There is no justification in issuing such a short assessment based on the Regulation 115(9) and hence the same is quashed. However, it is open to the respondent to consider the issue afresh based on the Regulation 125 of Supply Code, 2014 mentioned above.

The appeal petition is found having some merits and is admitted. The order of CGRF in O.P. No. 1517/2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/170/2015/ _____ /Dated: _____

Delivered to:

1. Sri. Vinod Viswanathan, President, Bharath Charitable Hospital, Kottayam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kottayam Central, Kottayam District.
3. The Deputy Chief Engineer, Electrical Circle, Kerala State Electricity Board Ltd., Kottayam
4. The Special Officer (Revenue), Vydhyuthi Bhavanam, Kerala State Electricity Board Limited, Pattom, Thiruvananthapuram

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, Kottarakkara - 691 506.