

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/182/2015

(Present: V.V. Sathyarajan)

Dated: 18th April 2016

Appellant : The Assistant Vice President
Administration, HDFC Bank Ltd.,
Sastri Road, Vettoor Building,
Kottayam.

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

ORDER

Background of the case:

The appellant is a LT 3 phase consumer with consumer No. 5581 under Electrical Section, Kottayam East. The sanctioned load of the appellant is 69 kW and the tariff allotted is LT VI C. On 27-05-2015 the APTS, Kottayam unit conducted an inspection in the appellant's premises and detected that the first and second phases i.e. R and Y phases are connected with CT having ratio 200/5 and the third phase i.e. B phase with 100/5 and the assessment was being done with multiplication factor as 20.

Based on the site mahazar prepared by the APTS team, a demand notice dated 10-09-2015 for an amount of Rs. 3,13,880.00 was issued for the wrong application of multiplication factor. Aggrieved against this, the appellant approached CGRF (South), Kottarakkara and filed OP No. 1589/2015. The Forum disposed the petition by upholding the above demand. Still aggrieved the appellant filed this appeal before this Authority.

Arguments of the appellant:

The contention of the appellant is that the assessment for an amount of Rs. 3,13,880.00 is incorrect. Hence it is decided to prefer an appeal against the demand. The appellant also submitted that considering the fact CT meter was available at the premises when he took over the building and the same is being sealed by KSEB. The appellant also making all the

monthly bills issued to him by the respondent on time as per records. As per the order dated 2nd December 2014 of Ombudsman there is no provision for recovery of short assessment in the case of fault in meter/CT not attributable to the appellant.

Considering the above facts, the appellant has requested to consider the appeal and waive the penal charges and allow him to remit the normal monthly charges.

Arguments of the respondent:

The appellant is an LT 3 Phase consumer with consumer No. 5581 under Electrical Section, Kottayam East with a contract demand of 69 kW in LT VI C tariff. On 27-05-2015 the APTS team inspected the appellant's premises and detected wrong application of multiplication factor and CT, hence prepared a site mahazar detailing the anomalies. The supply to the appellant is through a CT meter. The first and the second phases i.e. R & Y Phases are connected with CT having the ratio 200/5, the third phase i.e. B Phase with 100/5 and the assessment being done with multiplication factor as 20. Here the consumption and multiplication factor in B phase is correct, but in R & Y since the CT installed is 200/5 the multiplication factor should have been 40 instead of 20, due to this wrong application of multiplication factor KSEB Limited sustained a heavy loss.

Phase	CT Ratio	Actual Multiplication Factor	Billed Multiplication
R(First Phase)	200/5	40	20
Y(Second Phase)	200/5	40	20
B(Third Phase)	100/5	20	20

Kerala Electricity Supply Code, 2014 Regulation 152 (3) states that "The amount of electricity charge short collected for the entire period during which such anomalies persisted may be realized by the licensee without any interest". Provided that if the period of such of 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.

Here in this case since the connected load of the appellant was enhanced from 31 kW to 69 kW on 07-06-2014, the defective period was taken in accordance with Sub Regulation 8 (iii) of Regulation 155 and issued short assessment bill from the date of last inspection i.e. from 07-06-2014.

Calculation Details	
Meter reading as on 27-05-2015 (Date of Anti Power Theft Squad inspection)	30951 kWh
Meter reading as on 07-06-2014 (Date of connected load enhancement)	27594 kWh
Actual Consumption	3357 kWh x 20/2 x 3 = 100710 kWh
Assessed Consumption	67140 kWh
Unbilled Portion	33570 kWh

Since the loss sustained is due to the application of wrong multiplication factor, the loss sustained can be calculated from the available recorded consumption. The Hon'ble State Electricity Ombudsman may please note that the appellant's consumption after rectifying the defects increased considerably.

Consumption Statement.

SI No.	Month	kWh	Multiplication Factor	Total Consumption
1	Jun-14	299	20	5980
2	Jul-14	320	20	6400
3	Aug-14	320	20	6400
4	Sep-14	108	20	2160
5	Oct-14	335	20	6700
6	Nov-14	295	20	5900
7	Dec-14	214	20	4250
8	Jan-15	307	20	6140
9	Feb-15	319	20	6380
10	Mar-15	320	20	6400
11	Apr-15	326	20	6520
12	May-15	212	20	4240
13	Jun-15	238	40	9520
14	Jul-15	199.5	40	7980
15	Aug-15	199.5	40	7980

The main contention of the appellant is that no provision exists within the law to revise retrospectively the electricity bills once issued. **Regulation 134(1) of Kerala Electricity Supply Code, 2014 states "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 case at least 30 days shall be given to the consumer for making payment of the bill".**

In several cases the Hon'ble High Court has established the right of the licensee to demand and realize the short assessment amount actually due from the consumer. In the judgment of OP No. 5930/1985 which was filed by Mr. V.A Balakrishnan, the Hon'ble Court held that "If there is a mistake or there is an under billing, it is always open to the respondents to rectify their mistakes and to demand the proper charges due from the consumer." Also in judgment dated 09-02-2012 of WA No. 211/2012 in WP(C) No. 34768/2011, the Hon'ble High Court of Kerala held that "the question of normal period of limitation is not applicable both, towards electricity and water charges". Hence the bill issued to the consumer in accordance with the law of the land to realize the undercharged amount for the unaccounted portion without any penal charges is legal.

In the light of above submission it is requested that appeal petition filed by the appellants may be rejected.

Analysis and Findings

The hearing of the case was conducted in my chamber at Edappally, Kochi on 16-03-2016. The appellants, Sri V. Krishnan, Administrative Head, HDFC Bank appeared for appellants' side and Sri Babujan S, Assistant Executive Engineer, Electrical Sub Division, KSEBoard Ltd, Kottayam represented for opposite side. Both sides have presented their version on the lines as stated above. On perusing the petition of the appellants, statement of facts filed by the respondent, the arguments made 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 argument of the appellants that he had paid all the bills raised by the respondent and the recovery of short assessment in case of fault in Meter or CT not attributable to the appellants is without any relevant provision in the Act or Rules. According to the respondent, the meter and CT's were found working properly but only the multiplication factor (MF) taken for calculating the actual energy consumption was gone wrong. At the same time, the contention of the appellants that no provision exists within the law to revise retrospectively the electricity bills once issued also stands invalid as per Regulation 134 of Supply Code 2014. **Regulation 134 (1) of Kerala Electricity Supply Code, 2014 states "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 case at least 30 days shall be given to the consumer for making payment of the bill.**

Regulation 152 of the Supply Code, 2014 deals with *Anomalies attributable to the licensee which are detected at the premises of the consumer* which reads thus: **"(1) Anomalies attributable to the licensee which are detected on inspection of 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. (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during such anomalies persisted. (3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be 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.”

On going through the energy consumption of the appellant after the enhancement of connected load it can be seen that the consumption pattern is not consistent but varies considerably. The respondent has assessed the appellant for the actual consumption based on the meter readings on the date of inspection and the date of connected load enhancement multiplied by 2/3rd. This method lacks fairness as there is single phase loads in the premises of the appellant and all the phases are not balanced always.

The Regulations authorizes the licensee to set right the omission occurred while assessing the consumer and to prefer the correct demand. Though it was a fault on the part of licensee to apply the correct Multiplication Factor, it cannot be ignored that the consumer has actually used the energy and hence liable to pay the charges for the energy he has consumed. Hence I am of the opinion that the appellant shall be reassessed based on the average energy consumption after rectifying the multiplication factor during the period of wrong application of multiplication factor.

Decision

In view of the above facts it is hereby ordered that the appellant shall be reassessed as per his average consumption for a period of 3 months after rectifying the defects for the period from 07-06-2014 to 27-05-2015 i.e., the period of wrong application of multiplication factor. This should be done at any rate within a period of 30 days from the date of receipt of this order. No interest or surcharge need be levied during appeal pending period and up to the date of revised bill ordered now. The appellant may be allowed suitable installments if requested for.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant is found having some merits and is allowed to the extent as ordered. The related order of CGRF in OP No 1589/2015 is set aside. No order as to costs.