

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/084/2017
(Present: A.S. Dasappan)
Dated: 27th October 2017

Appellant : Sri. Athikkal Muhammed
M/s Athikkal Bricks & Clay Works,
Edavanna,
Malappuram

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Wandoor,
Malappuram

ORDER

Background of the case:

The appellant is an industrial consumer with consumer No. 4235 under Electrical Section, Edavanna having a connected load of 75 kW. The Audit team of Regional Audit Officer, Manjeri conducted an inspection during the month of November 2015 and found that the consumer was issued with undercharged bills from 10/2013 to 08/2015. Accordingly the appellant was issued with a short assessment bill amounting to Rs. 60,091/- (Rupees sixty thousand and ninety one only). Aggrieved by this, the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 06/2016-17. The Forum quashed the short assessment bill for Rs. 60,091/- and directed the respondent to issue short assessment bill in compliance with Regulation 134 of KESC 2014 for ToD energy charges, demand charges electricity duty and meter rent as per the readings recorded in the office register. The respondent had filed a review petition before the CGRF requesting to review the order dated 30-06-2016 issued in OP No. 06/2016-17. It is submitted by the respondent that the Forum erred and failed to see the power factor incentive/disincentive has been introduced by the licensee from 01-09-2013 based on the order of the Regulatory Commission published in Kerala Gazette

dated 9th September 2013 and it is constructive notice and hence a separate notice is not mandatory. The Forum allowed the review petition vide order dated 31-03-2017 in review petition no. 07/2016-17. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant is having an industrial connection under Electrical Sec. Edavanna. The consumer no. is 4235. The consumer was served with a short assessment bill for Rs. 60,091/- alleging that there was low PF for a period from 10/2013 to 8/2015. As per tariff order of Hon'ble Commission it is mandatory to have ToD metering from 01-01-2013, as per Clause 11 of General conditions. ToD tariff shall be applicable to LT IV Industrial consumers having connected load 20kW and above and LT 1A domestic (3Phase) consumers having monthly consumption of above 500 units. The charges and other terms & conditions for ToD tariff is given as Annexure 'D & E' to the schedule. The scheme shall be effective from 01-01-2013.

Here the claim starts from 10/2013. If KSEBL have been providing the consumer with proper bill indicating all required parameters like zone wise kWh, zone wise kVA, cumulative kVAh and cumulative kWh the consumer would have understood the magnitude of penalisation towards low PF and they would have taken corrective measures by adding capacitors.

Now the consumers have lost the opportunity for the correction and hence this claim is not reasonable. Also as per Supply Code, 2014 Regulation 123, KSEBL is liable to provide with detailed bill indicating all the 56 details including power factor, kVA, cumulative kWh, cumulative kVAh etc. AE have not provided with the detailed bill which surmounts to non compliance of the directives.

All the ToD meters are having MRI facility and it is the bound duty of KSEBL to provide the consumer with details of short assessment. The consumer is not aware the reason for the short assessment and also about the meter readings cumulative kWh and kVAh and also average PF. The bills given violating all rules and norms by KSEBL do not indicate the required parameters and it is not know from where and how these penal amounts came.

The impugned bill given to the consumer is based on an audit report. The audit report is in general nature pointing out the dereliction of the duty from the part of KSEBL employees pointing out grave lapses. They have found a lot of discrepancies in meter reading register even it is stated that the meter reading is not entered in certain months in the register and the columns are left blank. They also have found out that the power factor is also not entered.

The calculation register with ToD details is not at all maintained. Without calculation register and meter reading details what they have done is to have some arbitrary amount entered in the 'amount' column of consolidated statement. The KSEBL cannot collect any payment towards tariff short assessment without elaborating the ToD details indicating zone wise kWh and KVA consumption and also average power factor. Because of these the expunged bill is to be cancelled.

The CGRF Calicut have had an unusual proceedings by having hearing 4 times on 26-04-2016, 12-05-2016, 23-05-2016 and 14-06-2016. Even though the CGRF have been demanding the meter reading register, the KSEBL could not able to produce the same harassing the consumer 4 times. As the matters stood the decision of the CGRF extending permission to the KSEBL to have further short assessment bill as per reading recorded in the office register is ridiculous.

Even though CGRF have analyzed and found that the information provided in the bill is insufficient they came to a conclusion that 'Provided that the bill shall not become invalid only because of any one or more item of information are absent in the bill'. The consumer has never claimed that the bill is invalid. He has paid entire bills promptly. But he lost the opportunity of shifting the load from peak hours to off peak hours if he could have got the information that the peak hour tariff is 1.5 times higher and the off peak tariff is only 75% of the normal tariff. If KSEBL have given a proper detailed bill as contemplated in Supply Code the consumer would have got an opportunity for correction. This is a denial of natural justice and hence enhancement of bill the pretext of consumption during peak hours may not be permitted. Similarly the acceptance of the calculation statement of the short assessment by CGRF stating that 'This being a document furnished by the responsible officer of the licensee is accepted by the forum', can be considered only as a biased statement. If he was a responsible officer he would have given a detailed bill in complied with Supply Code and he will never put his consumer in trouble. More than that, the internal team has found out that 'Discrepancies were found out in the maintenance of monthly meter reading register. RNF/D/L were not entered for certain months in the register, initials of Sub Engineer and Senior Assistant were not found in reading registers basic details of consumers and consumption are not furnished. Meter reading of certain months are not entered in the register and relevant column in the manual registers are left blank. The Senior Superintendent has not verified the meter reading registers. Sporadic case of lapse in entering the power factor for incentive/disincentive in respect of some consumers in the reading register were detected'.

The auditor also proceeded as 'The calculation register, with the details of the bill issued to ToD consumers, is not maintained in this office. KVA of consumers converted from kW is wrong in the case of some consumers. The

power factor for the incentive/disincentive calculation is erroneously taken as 0.8 instead of 0.9 which cause revenue loss'.

The observation and finding of regional audit officer Manjeri is correct and sufficient to prove that either there is no meter reading register or even if it is there it is incomplete and maintained in a haphazard manner. If KSEBL want to issue any subsequent bills or to rework out from the available datas, it is not possible to do it because of the lack of information.

The CGRF after issuing the first order considered the revision petition filed by KSEBL. The filing of the revision petition by the license is not envisaged in Act, Rules, or Regulations. The CGRF is a forum exclusively for solving the consumer Grievance. It is not intent to accept any petition from KSEBL. Hence the second order of the CGRF may be cancelled as such.

The second order of the CGRF is also without analyzing the genuinity of the records. Hence Hon. Ombudsman may examine the records maintained by KSEBL, because it can be fabricated at any time.

Relief Sought for by the appellant are:

1. To direct KSEBL, not to disconnect the supply till hearing and disposal of the petition.
2. To cancel the impugned bill.

Arguments of the respondent:

1. It is true that the appellant is an industrial consumer with consumer No. 4235 under Electrical Section Edavanna having a connected load of 75 kW.
2. The Audit team of Regional Audit Officer, Manjeri conducted an inspection during the month of November 2015 and found that the consumer was issued with undercharged bills from 10/2013 to 08/2015. Accordingly the appellant was issued with a short assessment bill amounting to Rs. 60,091/- (Rupees sixty thousand and ninety one only). The short assessment comprises of the following parts since it was not included in the regular bills
 - a) Power factor disincentive
 - b) Difference due to zone wise billing of energy charges
 - c) Short assessment in energy charges
 - d) Short assessment in electricity duty
 - e) Short assessment in meter rent

The details of the short assessment against the consumer are as follows:

Incentive/ Disincentives due to power factor

The Disincentive due to power factor from 11/13 to 7/14 is collected from the consumer taking reference power factor as 0.9 and from Aug 2014 to July 2015 the disincentive / incentive due low/high power factor was not done due to omission in billing by the KSEB. Also consumer was billed with 0.8 as power factor as reference instead of 0.9 during the month of October 2013. Hence an amount of Rs, 6249/- towards disincentive is due from the consumer for the above period in this head.

As the consumer has already paid the disincentive/ incentives from November 2013 to July 2014 and the disincentive/ incentive is not done from Aug 2014 to July 2015 this is a case of under charging as per section 134(1) of Electricity Supply Code 2014

Short assessment due to energy charges

The ToD billing of the energy charges has been done from Oct 2013 to July 2014 and the consumer has paid the amount. The billing has been done based on normal tariff from Aug 2014 to June 2015. Again the ToD billing has been done from July 2015 until now. Hence there was a short assessment during the period from August 2014 to June 2015 amount Rs 12329/-. This is due to wrong application of tariff. Instead of billing the consumer with zone wise tariff, the consumer was billed with normal tariff which was paid by the consumer and the balance to be paid is as per short assessment. This is a case of undercharging as per Section 134 (1) of Electricity Supply Code, 2014.

Short assessment in Demand charges

The short assessment in demand charges is also due to wrong application of contract demand. The demand charge was calculated based on 0.5625 (0.75* 0.75) times the contract demand instead of 0.75 times the contract demand from October 2013 to August 2015. The consumer has paid the demand charges as per the normal bills and the balance to be paid due to calculation error amounts to Rs. 39936/-. This clearly shows that it is a short assessment as per Section 134 (1) of Electricity Supply Code, 2014 as the consumer has already paid the demand charges corresponding to 0.5625 times the contract demand.

Short assessment in Duty

The short assessment in duty is due to revised energy charge which amounts to Rs. 1,406/- for the entire period.

Short assessment in Meter Rent

The short assessment in meter rent is due to tariff revision from Aug 2014 which amounts to Rs. 2,172/- for the entire period.

3. As per Regulation 134 (1) of Kerala Electricity Supply Code, 2014 , "if the Licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making payment of the bill" As per the above regulation the Licensee is eligible to recover the amount undercharged from the consumer and the bill was issued accordingly.

4. The Hon'ble CGRF (NR) vide its order dated 30-06-2016 has disallowed the claim of disincentives on the ground that no prior notice was given to the consumer. The respondent filed a review petition before the Hon'ble CGRF and submitted that the Hon'ble Forum erred and failed to see that the power factor incentive/disincentive has been introduced by Kerala State Electricity Board Limited from 10/2013 based on the order of the Regulatory Commission published on the Kerala Gazette dated 9th September 2013. Since the above publication is a constructive notice separate notice is not mandatory.

Here, the invoice issued by me Respondent as per Regulation 134 (1) of the Kerala Electricity Board Supply Code 2014 is to recover the undercharged portion only. Thus, demanding of undercharged portion cannot said to be illegal and the respondent has acted strictly in accordance with rules and regulations. The Hon'ble CGRF disposed the Review petition No. 07/2016-17 filed by the respondent vide its order dated 31-03-2017 by admitting the Review Petition and directing the respondent to allow instalment facility on request of the consumer.

Hence it is respectfully submitted that the appellant is not entitled for any relief as sought for in the above petition and prayed to declare that the action of the respondents are well within the purview of the prevailing rules and regulations and is in order and prayed to dismiss the petition with cost.

Analysis and findings:

Hearing of the case was conducted on 04/10/2017 in the Court Hall of CGRF, Kozhikode. Sri Ahammed Muneer, appeared for the appellant and Sri. Harikumar A.B., Assistant Executive Engineer, Electrical Sub Division, Wandoor and Sri. John Aloysious Senior Superintendent, Electrical Section, Edavanna appeared for the respondent. Both sides have presented their arguments on the lines as stated 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, in his appeal petition submitted before this Authority, has firstly challenged the maintainability of the review petition by the licensee before the CGRF. As per Regulation 27A of the KSERC (CGRF & Electricity Ombudsman) Regulations, 2005, an application for review shall be filed within a period of fifteen days from the date of receipt of the order. The appellant submits that the application of any person aggrieved by an order is only permitted to file a revision before the CGRF and the Ombudsman and it doesn't mean that the revision can be filed by a licensee as 'any person' because the 'any person' can only be a person defined in Clause 2 (e) of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations 2005. According to him, the definition of 'complainant' can only be considered as 'any person'. But I am of the view that the licensee can also point out any mistake or apparent error on the face of the record since he is one of the party in the litigation.

The ToD billing was effective in the appellant's premises from 10/2013 onwards and accordingly ToD billing of the energy charges has been done from 10/2013 to 07/2014. Thereafter during the period from 08/2014 to 06/2015, the licensee had failed to collect the energy charges under ToD billing. Hence the short assessment was calculated comprising power factor disincentive, short assessment in energy charges, demand charges duty and meter rent amounting to Rs. 60,091/-. During the period from August 2014 to July 2015, the disincentive/incentive due to low/high power factor was not collected due to omission by the respondent. The respondent assessed short assessment on this account amounting to Rs. 6,249/-. The calculation error under demand charges for the period from 10/2013 to August 2015 due to wrong application of contract demand comes to Rs. 39,936/-. There was also short assessment in energy charges, electricity duty and meter rent amounting to Rs. 12,329/-, Rs. 1,406/- and Rs. 2,172/- respectively.

As argued by the appellant, it is found that the impugned short assessment bill which was prepared on the basis of the audit report and the audit report part II A contained the short comings in entering the details of meter reading and grave lapses and dereliction of duty on the part of the respondent. The audit party had reported that there were a lot of discrepancies in the meter reading register and the calculation register with ToD details was also not maintained. This Authority has verified a copy of the meter reading register of the consumer and found that it lacks the relevant details required in many months. Without such details, it is difficult to prepare a proper short assessment bill including penalty. The respondent has also not furnished the details of revenue loss sustained to the KSEBL which was prepared by the audit party.

The details of ToD billing calculation done by the respondent and the bill copies from 10/2013 to 08/2015 were obtained and verified. On verifying the records, it is found that revenue assessment of Rs. 60,091/- comprising of short assessment in energy charges due to the non implementation of zone wise billing, electricity duty, demand charge, meter rent and a fresh assessment of penalty for low power factor which is the newly generated demand. Others are actually the reassessment of short collected amount for the period from 10/2013 to 08/2015. Monthly bills of energy consumption (zone total) and demand charge were remitted by the appellant without any objection. Electricity duty is connected with energy consumption and meter rent is a fixed amount. As such the amount of penalty is the only new one, is seen included in the short assessment based on the power factor. It revealed from the records that no error occurred on the part of the respondent in calculating the shortage of revenue in energy charge (zone wise billing), demand charge, electricity duty and meter rent. But error in raising demand of power factor penalty occurred on the part of the respondent. In the meter reading register, power factor is not furnished from 10/2013 to 03/2014 and 06/2014 to 10/2014, but penalty is assessed in the calculation statement for Rs. 6,249/-. Power factor entered in meter reading register from 10/2013 to 08/2015 is not at all convinced. As per Regulation 2 (15) of Supply Code, 2014, "(15) 'average power factor' for a billing period means the ratio of the total kilowatt hours (kWh) to the total kilovolt ampere hours (kVAh) supplied during that period; ratio being rounded off to two decimal places". kVAh is seen only furnished from 02/2016 onwards in the meter reading register. There is no document on the part of the respondent to prove the power factor entered in the meter reading register is "average power factor" which can only be taken for the calculation of incentive/disincentive. Here the respondent has failed to explain how the power factor was computed either as above or directly from the energy meter. There is enough chance to make the calculation based on "instantaneous power factor" as the meter reading register lacks proper entries on kVAh etc. However it is found that in the latest bills for 06/2017 to 09/2017, the average power factor is seen calculated from total Kwh and total kVAh as 1, 0.95, 0.9, and 0.9 respectively.

Decision

From the conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 60,091/- issued to the appellant. The respondent is directed to revise the short assessment bill by deducting the incentive/disincentive from the calculation statement and issue the revised bill to the consumer within fifteen days. No interest is payable by the consumer up to the due date of the revised bill as ordered now.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the consumer is allowed as ordered and stands disposed of as such. The order of CGRF, Kozhikode in OP No. 06/2016-17 dated 30-06-2016 is upheld and the order of CGRF in Review Petition 07/2016-17 in OP No. 06/2016-17 dated 31-03-2017 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/084/2017/ _____ /Dated: _____

Delivered to:

1. Sri Athikkal Muhammed, M/s Athikkal Bricks & Clay Works, Edavanna, Malappuram.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Wandoor, Malappuram.

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, Gandhi Road, Kozhikode.