

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 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/092/2019
(Present: A.S. Dasappan)
Dated: 30th January 2020

Appellant : Sri Harikumar Mohandas,
Managing Director,
Trivandrum Motors Pvt. Ltd,
Neeranjanam Towers,
Thakarapparambu, Fort P.O,
Thiruvananthapuram

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Fort,
Thiruvananthapuram

ORDER

Background of the case:

The appellant is a consumer under Electrical Section, Poonthura bearing Consumer No. 12638 and has been paying the regular electricity bills promptly. The appellant availed service connection on 19.05.2016 with a connected load of 35.781 kW at LT -VII A (3 phase). The said connected load was increased to 49.963 kW in April, 2017. While so the appellant was issued a short-assessment bill dated 05.07.2018 for Rs. 2,38,871/- alleging that only 2/3rd energy consumption was recorded in the meter since there was anomalies in the meter. It is alleged by the respondent that the energy consumed through one phase was not recorded in the energy meter for a period from July 2016 to September 2018 due to CT failure and that the said defect was found during the inspection conducted by the APTS Team of KSEB on 29/06/2018. 3. The appellant had submitted a complaint in OP. No. 3/2019 before the Consumer Grievance Redressal Forum, KSEB Ltd, Southern Region, Kottarakkara. The CGRF vide its order dated 8th April 2019 had quashed the short assessment bill of Rs. 2,21,521/- The Forum had further ordered to issue the short assessment bill based on the difference between recorded consumption of the month of 09/2018 (4280) with the consumption of the months to be revised. As per the order the bill has been revised taking average of 3960 units for the period of 23/7/2016 to 2/7/2018 for amounting Rs 3,24,086/- and issued to the appellant on 11/11/2019. Against the decision of the CGRF, the appellant has filed the Appeal petition before this Authority on 26-11-2019.

Arguments of the appellant:

The appellant was issued a short assessment bill dated 05.07.2018 for Rs.2,38,871/- alleging that only 2/3rd energy consumption was recorded in the meter since there was anomalies in the meter. The appellant had submitted a representation to the KSEB Ltd, against the said bill and requested to keep the said bill in abeyance and to rectify the alleged CT defect and then to watch the meter reading of 3 months and to determine the unmetered energy if any on pro rata basis. Accordingly, the CT was replaced on 01.09.2018.

Allegedly the consumption there after was 4280 kWh, 3980 kWh and 3620 kWh during the months of September, October and November 2018 and the average consumption after replacement of CT was allegedly 3960 kWh. So, the respondent had revised the said short assessment bill to Rs. 3,24,086/-. Thereafter the said bill was again revised to Rs. 2,21,521/- with due date on 07.01.2019 on the basis of alleged average consumption 3960 kWh.

The CGRF had found that 1/3rd hike in energy consumption was not recorded by the meter after rectification of defect and that the respondent could not prove that 1/3rd consumption was unrecorded in the meter. Accordingly, the CGRF vide its order dated 8th April 2019 had quashed the short assessment bill of Rs. 2,21,521/- The Forum had further ordered to issue the short assessment bill based on the difference between recorded consumption of the month of 09/2018 (4280) with the consumption of the months to be revised.

The appellant had received the copy of the impugned order on 23/04/2019 and ought to have filed the appeal on or before 22/05/2019. But the appellant was happened to be abroad and hence could not peruse the impugned order and take decision whether to file appeal on the said order. The Forum below had rightly found that the respondent failed to prove that 1/3rd consumption was not metered during the period of the short assessment bill and was also pleased to quash the bill under challenge. So, the staff of the appellant was under the impression that the impugned order was in favour of the consumer. Due to lack of expertise the staff could not trace the hidden trap in the second part of the impugned order. The appellant had returned from abroad on 24/10/2019.

On perusal of the impugned order the appellant also could not detect the implication of the second part of the impugned order. So, he had to seek legal opinion as well as opinion of an accountant. Accordingly, the appellant has been advised that the second part of the impugned order directing to issue the short assessment bill based on the difference between recorded consumption of the month 9/2018 (4280) with the consumption of months to be revised is essentially to be challenged in appeal.

In the meantime, the K.S.E.B Ltd., has issued a fresh revised short assessment bill for the relevant period herein for Rs. 3,24,086/- dated 11.11.2019 threatening disconnection if failed to remit on or before

28.11.2019. The said bill is neither in terms of the impugned order, nor under the presumption of skipping of 1/3rd consumption. But it was upon getting the said bill that the appellant became aware of the real undesired implication of the impugned order.

So, there is a delay of 06 months days in filing this appeal and the said delay may be condoned in the interest of justice.

The impugned order is to issue the short assessment bill based on the difference between recorded consumption of the month of 9/2018 with the consumption of the months to be revised. The term "months to be revised" pertains to the period from July 2016 to Sep. 2018. According to the KSEB Ltd, the consumption (prior to meter change during the month of July 2016) was 374 and there was gradual increase in consumption during subsequent period and it was 3760 in July 2018. The appellant's establishment is still in its infancy stage. There was only a few machineries in 2016 and hence the consumption was below 2000 kWh up to October 2017 and less than 3000 up to March 2018. There was more work during September 2018 because of Onam festival and hence the consumption was high in that month. The consumption was Zero during April 2017. So it can be seen that the consumption varies from month to month based on the use of power. Being so it is not justifiable to presume that the appellant has consumed energy at the rate of September 2018 during the whole period from July 2016 to September 2018. The Forum had gone wrong in accepting such an unjustifiable presumption in the impugned order. The Forum below ought to not have allowed to issue fresh revised bill because the non-metering of energy if any is solely due to the default of the licensee.

Even if a fresh short assessment bill is to be issued the same is to be proportionate to the increase between the average monthly consumption prior to the changing of meter and that after the changing of meter.

It is prayed that the ombudsman may be pleased to modify the impugned order quashing the impugned order in the interest of justice.

Arguments of the respondent:

Average consumption of the appellant for the year 2017 is 1717 kwh and that of the year 2018 is 3197 kwh. An Inspection of APTS was conducted in the premises of the consumer on 29.06.2018 infer alia noted certain anomalies. In the inspection it was revealed that R phase showed current 0 A; Y phase current 1.86A and the B-phase current 2.06A, whereas the R-phase Voltage-211 V; Y phase Voltage-206 V; B phase voltage-211V. The meter back-up details were downloaded using URJA-DLMS software. The downloaded details showed that due to the anomalies in meter only 2/3 of the energy consumption recorded in the meter. That is a portion is unrecorded energy from registering in the meter. The energy is consumed by the consumer, but a portion is unable to bill due to the 'non recording' of actual energy. The liability to pay current charge is statutory liability.

In order to compensate the unrecorded portion of energy, a short assessment bill for Rs. 2,38,871/- was served on 05.07.2018. The consumer by their letter dated 12.07.2018 requested the Board to keep in abeyance of the said demand and to watch the consumption for at least 3 months after rectifying the said CT defect. The consumer further stated to cancel or modify the said demand based on the consumption of each month. The consumer further requested to allow 10 monthly instalments to remit such modified demand. The grievance of the consumer was examined and the CT was replaced on 01.09.2018.

Consumption of the consumer in the month of September, October, and November, 2018 was 4280 kWh, 3980 kWh and 3620 kWh and the average consumption after replacement of the CT works to 3960 kWh. Based on the said average consumption, short assessment revised to Rs. 3,24,086/- and requested to remit the demand by 17.12.2018.

In the letter dated 22.12.2018, the consumer took the stand that the method of calculation adopted in arriving the consumption during the period is irregular and improper. It may be noted that as mentioned earlier, the average consumption of the consumer for the year 2017 is 1717 kWh and that of the year 2018 is 3197 kWh. That is 86% increase in consumption in 2018 as compared to the previous year. As per regulation in force the load has to be balanced one. Since with the failure of the CT, the energy was not registered in the meter, the actual energy consumed by the consumer has to be accounted and compensated to the Distribution Licensee. That is one third of the consumption consumed by the consumer has to be compensated. One third of the unrecorded energy with respect to the recorded consumption for the relevant month is added to the recorded consumption in arriving out the computed consumption limiting to the average consumption of 3960 kWh and bills are revised accordingly. That is after due process of law, and applying the principle of equity, the grievance of the consumer was addressed. Revised bill to a sum of Rs.2,21,521/- was served on the consumer with due date of 07,01.2019 and the said invoice challenged before the Forum.

The bill is not a penalised one. Since the load is balanced one and only a portion of energy recorded in the meter, the unrecorded portion arrived is based on scientific principles and on technical parameters. Also, due weightage has been given in redressing the grievance of the consumer. The CGRF has issued the following orders.

- 1) The short assessment bill of Rs 2,21,521/- is quashed
- 2) To issue short assessment bill based on the difference between recorded consumption of the month of 9/2018 (4280) with the consumption of the months to be revised. Accordingly, clarification had been sought from KSEB Law section regarding the order of CGRF, whether to comply the order or to prefer appeal against the order of CORF. KSEB Law section had studied the matter in detail and issued order DD&IT no 1393/2019(LF.11/3421/2019) to revise and issue the bill taking average unit of 3960 for a period of 24 months as per regulation 125&152(3) of the Kerala Electricity Supply Code 2014. As per the order the bill has been revised taking average of 3960 units for the

period of 23/7/2016 to 2/7/2018 for amounting Rs 324086/- and issued to the consumer on 11/11/2019.

Regulation 134 of Supply Code under charged bills and over charged bills.- (1) 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 thirty days shall be given to the consumer for making payment of the bill. (2) If, after payment of any bill, it is established that the licensee has overcharged the consumer, the excess amount shall be refunded to the consumer with interest at bank rate as on the date of remittance of such excess amount.

As per regulation 152 of Supply Code, anomalies attributable to the licensee which are detected at the premises of the consumer. -

(1) Anomalies attributable to the licensee which are detected on inspection at 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 which such anomalies persisted.

Analysis and Findings

The hearing of the case was conducted on 30-12-2019 in the chamber of Electricity Ombudsman at Edappally, Kochi. Sri V. Venugopalan Nair and Sri D Anand Bhasker represented the appellant and Sri. Ajaya Kumar, Assistant Executive Engineer, Electrical Sub Division, Fort appeared for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during 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 thereof.

The APTS has inspected the consumer's premises on 29-06-2018 and found CT current in 'R' phase of the energy meter was not recorded against the load current, thus resulting in the recording of a lower consumption than what is actually consumed. The connected load of the appellant in the premises at the time of availing connection on 19-05-2016 was 35.781 kW at LT -VIIA (3 phase) and it was enhanced to 49.963 kW in April, 2017. A site mahazar was prepared on 29-06-2018 and meter data was downloaded on 01-02-2019. As per the data downloaded, the missing of CT current in one phase was from 23-07-2016 onwards. The CT was replaced on 01-09-2018. The appellant was issued a short assessment bill for two years to recover the energy escaped from billing due to CT's fault in one phase. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable and hence the consumer is liable to pay the amount, by

issuing a short assessment bill based on the difference between recorded consumption of the month of 9/2018 (4280) with the consumption of the months to be revised.

The issue arising for consideration in this appeal is whether the period assessed and the quantum of energy loss computed are in order and the appellant is liable for the payment of short assessment for Rs. 324086 /- as per Regulation 134 of Supply Code, 2014, as claimed by the respondent.

It is also found that the consumption of the appellant before and after the disputed period and during the disputed period is not in a consistent pattern. The site mahazar dated 29-06-2018 justifies missing of CT current in one phase of the appellant's metering equipment in the appellant's premises. In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording in two phases from 23-07-2016 onwards, after two months from the date of connection.

The respondent has issued the short assessment bill for a period of two years by taking $1/3^{\text{rd}}$ of the average of three months recorded consumption after CT replacement.

Any defect in any part or component of meter is defect in meter. The fact of the matter is, the metering system was defective since current in one phase was missing in the meter. Under the regulation 113, sub clause (7) of Supply Code 2014 requires the licensee to test the CT, PT and the wiring connections, where ever applicable while testing the meter.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Hence revision of the bill on the basis of the test report is not possible in this case. Here in this case, the respondent confirmed the non recording of one phase on the basis of the inspection conducted in the premises and issued the short assessment bill for two years based on the dip in consumption during the disputed period. There is three phase load and single phase load in the premises. The respondent has reported that only 4 three phase motors having a total capacity of around 15 kW are connected in the premise. All other loads are single phase load and majority of single phase load is connected on Y and B phase at the time of inspection by the respondent. R phase shows 0.5 amp, Y phase shows 1.5 amp and B phase shows 1.6 amp. This shows that the load is not balanced at this premises. The respondent has argued that the short assessment bill raised is only for the electricity consumed by the appellant and it is the responsibility of the consumer to pay electricity charges for the energy he has used and the same is issued without any interest.

As per the downloaded data of the energy meter and the meter reading details furnished by the respondent, the defect of the CT in 'R' phase was there from the beginning of the connection, or otherwise the connection was effected with a defective CT in the R phase. Hence there is no convincing consumption of energy prior to the defective metering system. The nature of load connected in the premise is both single phase and three phase. The

respondent has reported that major portion of single phase load is connected in 'Y' phase and 'B' phases. Even on enhancing connected load from 36 kW to 50 kW in 03/2017, the respondent had not conducted any testing of the metering system to ensure the correctness. The disputed short assessment period covers two distinct connected load, the higher at the time of inspection and hence the average consumption after the rectification of the metering system cannot be taken for the reassessment during the entire period of 24 months. Though the monthly average consumption for 3 months after the CT replacement in 9/2018 is 3960 units, the average consumption became to the reduced level from 2966 units in between 12/2018 and 12/2019. As such the respondent has to inspect the premises and test the metering system and certify the correctness.

Decision

For the reasons detailed above, it is decided to issue a revised short assessment bill for a period of 18 months for the consumption from 3/2017 (date of enhancement of connected load) to 8/2018 (prior to the date of rectification of metering system) by taking 50% the recorded consumption from 3/17 to 8/2018.

The order dated 08-04-2019 in OP No. 03/2019 of CGRF, Kottarakkara is set aside. The appellant is allowed instalments without interest, to remit the revised short assessment bill, if he desires so.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant stands disposed of as such. No order on costs.

ELECTRICITY OMBUDSMAN

P/092/2019/_____ /Dated:_____

Delivered to:

1. Sri Harikumar Mohandas, Managing Director, Trivandrum Motors Pvt. Ltd, Neeranjanam Towers, Thakarapparambu, Fort P.O, Thiruvananthapuram
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Fort, Thiruvananthapuram

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.