



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

A.P.No.7 of 2012

M/s.Saraswathi Match Works,
Rep.by its Special Power Agent G.Sabapathi
Silamalai Patty Road,
Peraiyur,
Madurai District.

..... Petitioner
(Rep by Thiru. R. Rajmohan/
Advocate)

Vs.

1. The Assistant Executive Engineer(Distribution),
Tamil Nadu Electricity Board,
T.Kallupatty,
Madurai District.
2. The Assistant Engineer,
Tamil Nadu Electricity Board,
Peraiyur, Madurai District.
3. The Chairman/Superintending Engineer,
Consumer Grievance Redressal Forum,
K.Pudur, Madurai-7

..... Respondents
(Rep by Thiru. V. Selvaraj /
AEE/Distribution/Paramakudi)

Date of hearing : 18-7-2012

Date of Order : 28.8.2012

The above appeal petition No.7 of 2012 came up for final hearing before the Electricity Ombudsman on 18-7-2012. Upon perusing the above appeal petition, counter filed by the respondent and connected papers furnished by the respective parties and after hearing both sides, the following order is passed by the Electricity Ombudsman.

ORDER

1) Prayer of the Appellant :

The appellant prayed to set aside the orders of Consumer Grievance Redressal Forum issued in order No.அ. எண்.1226/II நாள் 30-12-2011 and also set aside the original impugned order made in letter No.AEE/D/T.K.LPTY/FDKT/D.No.625/10-11 dated 27-12-2010 and order refund of Rs.1,00,000/- deposited by the Appellant as per the direction of Hon'ble High Court, Madurai Bench.

2) Facts of the case :

The Appellant have established M/s.Saraswathi March Works at Peraiyur in 1992 and the LTCT service connection number of the above industry is 141-022-305. The service connection was effected on 1-8-90 with a load of 25 HP. But now the said load is 108 KW. On 29-11-2010, the AEE/Distribution inspected the service and found the 'R' phase voltage is missing. The MRT wing has confirmed that the 'R' phase voltage was missing and meter reading is absent in one phase. It was also confirmed that the PT fuse in 'R' phase has blown out. On scrutiny of meter reading register, it was found that the 'R' phase potential was missing from April 2008 onwards. Accordingly the average billing was worked out for 2 years period and the Appellant was asked to pay Rs.2,56,991/- as shortfall amount within 15 days. The service was disconnected on 13-1-2011. The appellant filed a Writ petition in WP No.639/2011 and sought to quash the impugned demand notice and also sought interim direction in MP No.1/11 to restore the Electricity connection. The Hon'ble High Court by order

dated 18-1-2011 directed to restore the electricity connection immediately on payment of Rs.1,00,000/-. The High Court also directed to file appeal before the SE, TNEB, Madurai within 4 weeks from the date of receipt of copy of the order. Based on the above, the Appellant filed a petition before CGRF of Madurai EDC and the CGRF of Madurai EDC has confirmed the shortfall levied by the AEE in his order dated 27-12-2010. Aggrieved over the above orders, the Appellant filed this petition to Electricity Ombudsman. The Appellant already paid Rs.1,00,000/- out of Rs.2,56,991/- based on the direction of the Court, the said amount of Rs.1,00,000/- is more than 25% of the short fall amount, and hence the Appeal Petition is satisfying the conditions laid down in regulation 8 of the Regulations for CGRF and Ombudsman 2004.

3) Contentions of the Appellant :

The Appellant has contended the following in his appeal petition.

i) The Appellant states that they have established Match Works industry in the name and style of M/s.Saraswathi Match Works at Peraiyur in the year 1992. It is a partnership concern. For the said match work firm they obtained Low Tension Electricity Service Connection on 1-8-1990 under service number LTCT Sc.No.141-022-305 and the capacity of the electricity service is 25HP. Right from the date of starting the match works the appellant have been running the said match factory without any deviation of Electricity Service Rules.

ii) On 4-12-10 the appellant's match factory electricity meter was inspected by the MRT/PSQ wing along with the respondents 1 and 2 herein. During the said inspection the appellant match factory staff Mr.K.V.Kannan was

present. After inspection it was recorded by the MRT wing that all the seals were intact. On further inspection it was found that PT fuse failure in R phase only and the PT fuse failure in R phase was found occurred during the month of April 2008 and continued till date.

iii) The appellant met the Executive Engineer and the 1st respondent herein and asked them as to how the match work is responsible for the PT fuse and further even if it is so, how the appellant is liable to pay average billing right from April 2008 onwards. But, the respondents have not given proper reply. Hence, on 20-12-10 the appellant sent a detailed representation to the 1st respondent herein by RPAD and requested them not to take any coercive steps. The 1st respondent herein has received the said letter and thereafter without even holding any enquiry straight away issued the impugned order dated 27-12-10 with a direction to pay a sum of Rs.2,56,991/- within a period of 15 days.

iv) On receipt of the said impugned order, immediately the appellant sent a reply to the 1st Respondent and requested them to consider the issue, since they are not responsible for the PT fuse.

v) Even assuming that without admitting the fact that if the PT fuse failure was noticed, how the damage could be calculated from April 2008 onwards, because every month Assistant Engineer, Peraiyur, the 2nd respondent herein used to take meter reading and the PT fuse failure could be noticed by

him at the time of meter reading. But, he has not made any objection from April 2008 onwards.

vi) Further the MRT wing has not found any electricity theft. But, the respondents without considering the said fact, directed the 2nd respondent herein to disconnect the service connection and as per that on 13-1-2011 the 2nd respondent herein disconnected the service connection No.F 305 of appellant's Saraswathi Match Works.

vii) Since electricity was disconnected, the appellant is not in a position to run the Match factory and therefore the appellant has filed writ petition in WP No.639/2011 and sought to quash the impugned demand notice and also sought interim direction in MP NO.1/11 to restore the electricity connection.

viii) The Hon'ble High Court by order dated 18-1-2011 directed the 2nd respondent herein to restore the electricity connection immediately on condition to deposit a sum of Rs.1,00,000/-. The appellant had deposited the said amount and electricity connection was restored to their Match unit.

ix) As per the direction of the Hon'ble High Court the appellant filed appeal before the 3rd respondent herein through his advocate. The 3rd respondent herein without even sending any enquiry notice on the appeal either to advocate or to his counsel, called upon to appear before them on 23-6-2011 over phone and on that date he appeared before the 3rd respondent along with his counsel. Thereafter, the case was adjourned without mentioning any date

and they were asked to appear for further hearing as soon as intimation is received from them. But the 3rd respondent has not sent any communication to him or to his counsel. In the meantime, in order to prove his case by letter dated 10-10-2011 the appellant sent Central excise Returns from December 2007 to November 2010 along with comparison statement showing electricity consumption charges. The said letter was received by the 3rd respondent. But the 3rd respondent without even giving a further opportunity to their shock sent the impugned order dated 8-12-2011 which was signed by the 3rd respondent on 29-12-2011 and sent to them on 30-12-2011 and the same was received by them on 3-1-2012. The impugned order passed by the 3rd respondent is against the Principles of Natural justice and the same are liable to be quashed.

x) The 3rd respondent ought to have seen that before passing the impugned order, proper opportunity of being heard has to be given to the appellant herein. In the present case, no such opportunity was given to the appellant.

xi) The respondents ought to have seen that there was no electricity theft found or seal of the meter was found defective. The appellant's Match Factory is in no way responsible for the PT fuse. The electricity meter is available with the transformer and it could be visited only by the TNEB officials and not by the appellant. For no fault on the side of the appellant herein, they are not liable to pay the huge amount of Rs.2,56,991/-. The 3rd respondent has

not at all considered the grounds raised in the appeal and simply confirmed the original impugned order of 1st respondent.

xii) The 3rd respondent failed to see that the appellant firm is producing Matches by using electricity and in the absence of electricity; they are manufacturing Matches by using generators. The appellant firm is having two generators with the capacity of 62 ½ K.V.A. and 45 K.V.A. Therefore, the findings arrived at by the 3rd respondent is totally perverse. It shows the non-application of mind.

xiii) The respondents ought to have seen that as per section 126 (5) of the Electricity Act, 2003, the authorities can levy maximum period of six months immediately preceding the date of inspection for all the categories of service. The respondents have no right to issue separate terms and conditions by overriding the Act and the same is arbitrary and unsustainable in law.

xiv) The respondents ought to have seen that there is no excess current consumption in the appellant's match factory from 2008 onwards and the current consumption by the appellant's match factory depends upon their production only. Therefore the average billing taken by the respondents is totally arbitrary. The appellant has also used generator during the periods mentioned in the impugned order. Further the appellant is having returns submitted to the Central Excise Duty to show their production during the periods from 2008 onwards and the same has been produced before the 3rd respondent, but the 3rd respondent has not properly considered the same. The conclusion arrived at by the 3rd

respondent is a non speaking order. The impugned order is ex facie illegal and unreasonable one and the same is liable to be quashed.

4) Contentions of the Respondent :

The Respondent has contended the following in his counter :-

i) The petitioner industry in the name of M/s.Saraswathi Match works was established at Peraiyur in Madurai Electricity Distribution Circle Jurisdiction with a connected load of 25 HP in the year 1992. But now the industry is having a sanctioned load of 108 KW and the industrial service connection is provided with LT CT metering arrangement with SC No.141-022-305. The Petitioner's statement of 25 HP load capacity at his industry is denied. The petitioner has paid Electricity current consumption charges regularly.

ii) On 29-11-2010, the Assistant Executive Engineer, T.Kallupatti has inspected the Petitioner's Service connection and found that the potential (voltage) in the R Phase of the CT meter was missing and noticed that there was no recording in the R Phase. Being a CT service connection, meter relay testing wing, was informed and the above service connection was again checked jointly by AEE/ T.Kallupatti and MRT Engineers on 4-12-2010. During the check on 4-12-2010, the MRT wing has confirmed that 'R' phase voltage was missing and the meter recording is absent in one phase (R Phase).

iii) During the joint inspection with MRT, the meter performance was checked in the presence of company representative Mr.Kannan. All the security seals provided by MRT wing was found in tact and there was no tampering,

meddling of metering arrangement. The meter would record perfectly only if all the three voltages in R Phase, Y Phase, and B Phase feed properly. In this specific case, as one of the voltage is absent and there is no connectivity in 'R' phase potential. It resulted in less recorded consumption and it is confirmed that there is defect in the metering arrangement due to fuse blown out in PT 'R' phase.

iv) Every month meter reading is taken by the respective AE, Peraiyur and the meter reading parameters were entered in the meter reading register. Scrutiny of meter reading register would reveal and confirm that there is a crystal clear evidence of the missing potential in R phase right from April 2008. So, it is confirmed that there is defect in the metering circuit right from April 2008. Accordingly average billing has been worked out for 2 years period and the petitioner has been addressed to pay the short fall amount which works out to Rs.2,56,991/-. The amount so arrived is very reasonable, genuine and in accordance with the Regulations stipulated in Hon'ble TNERC supply code.

v) Though the defect in the metering circuit persist right from April 2008, it was noticed by AEE, T.Kallupatti on 29-11-2010 and confirmed by MRT Engineers on 4-12-2010. The EB meter reading in the above service was taken by AE, Peraiyur, but he has miserably not noticed the fuse failure due to oversight which is a human error. The parameters noted in the meter reading register is a documentary evidence and scrutiny of the meter reading register

could confirm that there is defect in the metering circuit from April 2008 which warrants revision of billing.

vi) It is once again submitted that the petitioner is in no way connected with the defect in the metering arrangement by means of tampering or any other means. It is only a technical defect and problem which was noticed at a latter date. The consumer has enjoyed and utilized full load in his industry where as there was no proportionate consumption which was found recorded in the meter which necessitates revision of billing.

vii) As per the directions of Hon'ble Madurai Bench of Madras High Court, in WP No.639/2011, the consumer has paid a sum of Rs.1,00,000/-. The Hon'ble High Court has directed the petitioner to make an appeal to SE, TNEB Madurai EDC.

viii) Based on the directions of Hon'ble High Court, the petitioner was requested to appear before the CGRF, on 23-6-2011. The petitioner was served with a notice to attend before the forum and in addition to this, he was also informed over phone and the allegation made by the petitioner is false and denied.

ix) After a detailed study of the petitioner's request, the forum has requested petitioner to produce further authenticated supporting evidence if any to confirm the utilisation of the energy for the above said period (Stock maintenance register, auditor's monthly statement etc.,)

x) While scrutinizing the production records submitted by the company, no uniformity is found. A comparative study of production and electricity usage is detailed below :

Periods	Production	Consumption (in units)
December – 2007	52176	5472
January – 2008	45936	6468
December – 2008	54944	6820
January – 2009	49283	5944
November – 2010	29404	4015

When the production increases, the consumption of electrical energy should increase. But, the above chart would show the actual recorded units which is not matching the production. Therefore, the Central Excise record is not an acceptable evidence.

xi) The existence of Generator has no relevance with defect in the metering arrangement and average billing and the allegation is denied.

xii) The average billing was worked out in accordance with the TNERC Supply Code. Clause 12(1), 14(3) and the contention of the petitioner levying penalty for 6 months under section 126(5) of Electricity Act 2003, is not applicable in this case and it is submitted that the consumer petitioner has misconstrued the provisions in the Electricity Act 2003, and Regulations stipulated in the TNERC Supply Code. The consumer had presumed wrongly and his contention is refuted.

5) Hearing held by Electricity Ombudsman :

In order to enable the Appellant and the respondents to put forth their views in person, a hearing was proposed on 24-5-2012, but it was adjourned to 22-6-2012 as prayed by the Appellant's advocate and again adjourned to 18-7-2012 as prayed by the Appellant's advocate. The final hearing was conducted on 18.7.2012.

6) Argument of the Appellant :

6.1 The Appellant was represented by Tmt.M.Kavitha, Advocate on 24-5-2012, and by Thiru R.Raj Mohan on 22-6-2012 and 18-7-2012.

6.2 The learned advocate furnished a written argument on 18-7-2012. Further he reiterated the contents of the Appeal petition.

6.3 He argued that, the safety of the meter alone is the responsibility of the Appellant and the Appellant is not responsible for fuse failure. He argued that the readings were taken by the AE a qualified person only. Hence for the mistake of the licensee's employee, the appellant cannot be punished. The learned counsel also cited para 6 of the counter and informed that the respondent himself has stated that the petitioner (appellant) is in no way connected with the defect in the metering arrangement by means of tampering or any other means. Hence, he argued that the appellant cannot be punished for PT fuse failure .

6.4 The learned counsel also cited the section 126 of the Act and informed that even if any shortfall is to be claimed it shall be only for six months. He also argued that there is no basis for charging the shortfall amount from April 2008.

7) Argument of the Respondent :

7.1 The respondent was represented by Thiru.V. Selvaraj, AEE/T.Kallupatty on all the three days. He also reiterated the contents of the counter.

7.2 He informed that as per the meter reading register, it is noted that the potential of 'R' phase is missing from April 2008. He has shown the register wherein the voltage for Phase 'A' (i.e R) is in single digit from April 2008 onwards instead of a value of 230 or so. He also informed that in the above register both the licensee's representative and the appellants representative have affixed their signatures. Hence, he argued that the missing of potential in 'R' phase is established. Further he argued that due to missing of 'R' phase potential, there is no energy recording, in 'R' phase and therefore, the energy recorded in the energy meter is less than what was actually consumed.

7.3 With regard to the Appellants argument that only six months average can be claimed as per section 126 of Electricity Act, the AEE argued that the above provision is applicable for misuse of tariff cases only and the case on hand is not misuse of tariff but recording of lesser consumption due to fuse failure in 'R' phase and hence, the above section is not applicable.

7.4 He also argued that as per regulation 12.1 of the Supply Code, in the event of any clerical error or mistakes in the amount levied, the licensee is having right to demand an additional amount in case of under charging and the consumer is having right to get refund in case of overcharging. Hence, he argued that licensee is having right to claim the shortfall amount.

7.5 The AEE also cited clause 21(2) of the supply code and argued that they can claim arrears upto 2 years.

8) Issues for consideration :

I have heard both sides and perused the documents adduced before me.

On a careful consideration of the submissions of both sides, I find the following are the issues to be considered.

- i) Whether the contention of the Appellant that he is not responsible for 'R' phase fuse failure is correct ?
- ii) Whether 'R' phase potential is missing from April 2008 ?
- iii) Whether licensee can claim only six months shortfall amount only as contended by the Appellant?
- iv) Whether the licensee's the claim of short fall amount from December 2008 to November 2010 due to 'R' phase fuse failure is reasonable ?
- v) Whether the average consumption arrived for the 'R' phase potential missing period is correct?

9. Findings on First Issue :

9.1 The appellant's advocate has argued that identifying the failure of fuse in 'R' phase and renewal of the fuse are the duties of the respondent and the Appellant is only responsible for the safe custody of the meter. The respondent also in his counter has stated that the appellant is in no way connected with the defect in the metering arrangement by means of tampering or by any other means. The respondent also informed that the AE / Peraiyur has failed to notice the above defect due to oversight and it is a human error.

9.2 In this regard regulation 7(4) of the Supply Code is reproduced below :

“(4) The meter shall ordinarily be installed at the point of entry to the consumer.s premises at a suitable and easily accessible place as the Engineer may decide. After installation, the security seals shall be affixed

in the presence of the consumer or his representative on the meter box over, current transformer chamber, terminal cover of the meter, test block, cut outs, air-break switch and gate and such other part of the installation as the Licensee may decide. The consumer shall be responsible to ensure that the meter and the seals are not stolen, damaged or tampered with. The consumer shall run his wiring from such point of supply.”

9.3 It is noted from the said regulation that the consumer are only responsible to ensure that the meter and seals are not stolen, damaged or tampered. Hence, it is held that the safe custody of the meter alone is the responsibility of the consumer and for the defects in metering circuit like fuse blown out etc., the licensee is responsible.

9.4 Hence, I am of the view that the Appellant is not responsible for ‘R’ phase fuse failure. However, maintaining potential circuit fuse and levy of short fall due to reduction in recording the consumption consequent to fuse failure in metering circuit are to be viewed differently.

10. Findings on the Second issue :

10.1 Regarding ‘R’ phase potential missing, the reports of the MRT has to be studied first.

10.2 The AEE/MRT inspected the service and furnished the following as his report:-

“The AEE/T.Kallupatty has informed that the meter was showing very low voltage (about 9V) in R phase and requested to set right the problem. This LT CT service was inspected by MRT/PSQ wing and found that all the seals were intact. On further inspection it was found out that PT fuse failure in R phase only. The PT fuse was renewed and the meter performance was checked with reference meter at consumer loads and found satisfactory. There is no change in MF. The PT fuse failure in R phase was found occurred during the month of

April 2008 and continued to till date. Hence average billing may be made for the PT fuse failure period as stated above as per Supply Code. MRT seals were provided and sealed wherever necessary.”

10.3 The percentage error before fuse renewal is noted as -32.6% and after fuse renewal is noted as 0.244 %.

10.4 To confirm the R-phase potential missing, the meter reading register of the appellant's service has to be scrutinized. A Xerox copy of the monthly meter readings recorded in the above service for the period from 10/2007 to 5/2012 was furnished by the respondent. The respondent has shown the original register also during the hearing conducted on 18-7-2012.

10.5 On a scrutiny of the register it is seen that the AE has recorded about 24 parameters of the meter while taking monthly reading for every month. Out of the 24 parameters, the parameters 14, 15 and 16 are the phase voltage.

10.6 On a scrutiny of the values furnished by the respondent it is seen that the value against item No.14 R phase voltage is 240.8V on 28-3-2012 and the value is in single digit (ie) from 4/2008 to 11/2010 and is 228.2 V on 25-12-2010 and is more than 200V after 12/2010. Hence it is confirmed that the R-phase potential to the meter is very low and recording of consumption in the meter is lesser than the actual consumption.

10.7 With regard to April 2008, it is not known when the fuse in the R-phase has blown out . As the meter reading taken on 28-3-2008 shows 240.8V the 'R' phase voltage is ok on 28-3-2008 but the voltage recorded on 28-4-2008 is 1.96 volts. Hence, the fuse would have blown out in between any days from 28.3.2008 to 28.4.2008. Hence, I am of the view that the consumption recorded during April 2008 is also not the actual but less. Regarding the period

between May 2008 to 4-12-2010, it is seen that in every month reading, the 'R' phase voltage is very low (ie) it varies between 2 to 9 volts. Hence, there is a clear proof that 'R' phase voltage is very low and consequently, the consumption recorded in the meter will be lower than the actual usage. As per the load check results, the percentage error is -32.6% before renewal of fuse and 0.244% after fuse renewal. Hence, it is confirmed that the consumption is about 32.6% lesser than the actual.

10.8 As the readings, in the meter reading register are authenticated by both the parties I am of the view that the R-phase potential is a meagre value from 28-4-2008 onwards upto 4-12-2010 and consequently there will be reduction in recording of consumption in the meter.

11. Findings on Third issue :

11.1 The Appellant argued that as per section 126(5) of the Electricity Act, the authorities can make assessment for a maximum period of six months immediately proceeding the date of inspection for all categories of services. The respondents have no right to issue separate terms and conditions by over riding the Act and the same is arbitrary and unsustainable in law.

11.2 The respondent argued that the contention of the Appellant for levying assessment for six month under section 126 (5) of Electricity Act, 2003 is not applicable in this case as it deals with unauthorised use of electricity. The case on hand is levying of shortfall amount due to R-phase failure and consequent reduction in consumption.

11.3 In this regard, the section 126 of the Electricity Act is reproduced below:-

“126 Assessment- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under subsection (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in subsection (5).

Explanation.- For the purposes of this section,-

(a) “ assessing officer” means an officer of a State Government or Board or

licensee, as the case may be, designated as such by the State Government

(b) “ unauthorised use of electricity” means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised.

11.4 On a careful reading of the said section 126 of the Electricity Act, it is noted that it deals with assessment in case of unauthorised use of electricity by a person.

11.5 In the said section 126(5), it has been stated that if the assessing officer comes to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding date of inspection (The appellant has stated six months whereas as per the amendment issued on 29.5.2007 the period is 12 months if the period cannot be assessed and entire period if period is known).

11.6 In the Appellant case, it has been established that their case is a case of R-phase fuse failure in the metering circuit and consequent reduction in recording the consumption and not a case of unauthorised use of electricity. Hence, it is held that the said section 126(5) of the Electricity Act is not applicable for this case.

12. Findings on Fourth issue :

12.1 The respondent argued that the R-phase potential recorded in the meter reading register is very low (i.e.) in the order of 2 to 9V instead of around 230V from April 2008. He also informed that the consumer has also signed in the register. He argued that consumption recorded in the meter is not the actual but less by 'R' phase consumption and as there is a clear evidence of very low voltage in R-phase from April 2008, the licensee has to be compensated for the loss in recording the actual consumption.

12.2 The AEE also cited clause 21 of the Supply Code and argued that the licensee is entitled to claim arrears for a back period of two years.

12.3 He also cited Regulation 12.1 of the Supply Code, and argued that the licensee is authorised to claim the short fall amount in case of under charging the consumer. As the consumer has been under charged due to R-phase fuse failure, he argued that the licensee is entitled for the shortfall amount from April 2008.

12.4 The learned advocate for the appellant argued that the failure of the fuse in the meter circuit is not the fault of the Appellant. It is the duty of the respondent to watch the failure of fuse and for his mistake of not checking the fuse, he cannot claim the shortfall amount for a back period of 2 years (i.e.) from November 2010.

12.5 The learned advocate also furnished a statement comparing the production with that of the consumption in units from December 2007 to November 2010. The average consumption of power per Kg of production for

four months prior to 'R' phase fuse failure works out to 0.118 units per kg as per the above statement . But on an analysis of the consumption of power per kg of production furnished by the Appellant it is noted that the above value is lower than 0.118 and varies from 0.027 to 0.098 in all the months except for November 2008, January 2009, July 2009, August 2009, November 2009 and November 2010. The lower value indicates that the consumption is less and not in commensurate with the production. Further, it is also noted that the consumption has decreased when production has gone up and also vice versa. Hence, I am unable to find any linear relationship between the production and the consumption and use the same for arriving any conclusion.

12.6 As seen from the findings, on second issue, it is established that the R-phase potential is very low (i.e) in the order of 2 to 9V from 28-4-2008 onwards to 4-12-2010.

12.7 In this regard it is to be pointed out that the section officer who has taken the reading on every month has recorded the low voltage in 'R' phase (A phase). But he never suspected that the consumption is low and checked the fuse. He simply mechanically recorded the readings without applying his mind. He has not at all understood the reasons for taking all these readings. The licensee has to properly educate his officers to avoid such mistakes. The mistake of the section officer has resulted in renewal of fuse after 32 months.

12.8 As stated by the respondent, the licensee has restricted the shortfall claim for two years even though, the reduction in consumption due to 'R' phase fuse

failure was established from April 2008 to 4-12-2010 9 (i.e.) about 32 months from the date of failure.

12.9 As the respondent has cited regulation 12.1 of the Supply Code and argued that the licensee is eligible for claiming the short fall amount, the relevant regulation 12.1 of Supply Code is reproduced below :

“12. Errors in billing

(1) In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Licensee, the Licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging.

(2) Where it is found that the consumer has been over-charged, the excess amount paid by such consumer shall be refunded along with interest at the rate applicable for security deposit. The interest shall be computed from the date on which the excess amount was paid. Such excess amount with interest may be paid by cheque in the month subsequent to the detection of excess recovery or may be adjusted in the future current consumption bills upto two assessments at the option of the consumer. The sum which remains to be recovered after two assessments may be paid by cheque. Interest shall be upto the date of last payment.

(3) Wherever the Licensees receive complaints from consumers that there is error in billing, etc. the Licensee shall resolve such disputes regarding quantum of commercial transaction involved within the due date for payment, provided the complaint is lodged three days prior to the due date for payment. Such of those complaints received during the last three days period shall be resolved before the next billing along with refunds / adjustments if any. However, the consumer shall not, on the plea of incorrectness of the charges, withhold any portion of the charges.”

12.10 On a careful reading of the regulation 12.1 of the Supply Code, it is noted that in the event of any clerical error or mistake in the amount levied, demanded

or charged by the licensee, the licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in case of overcharging.

12.11 Regarding claiming the shortfall for a back period of two years, the respondent has cited regulation 21(2) of the Supply Code, which is reproduced below :

“21(2). Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the Licensee shall not cut off the supply of the electricity. The provision of the Act as in sub-section (1) above are in addition to and not in derogation of any other law for the time being in force. Accordingly the Licensee shall be entitled to disconnect the supply of electricity subject to the provisions of Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and control of pollution) Act, 1981 and Environment (Protection) Act, 1986, etc.”

12.12 It is noted that as per regulation 21(2) of the Supply Code, no sum from any consumer under this section shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. As per the said regulation, any sum due from the consumer has to be collected within 2 year, from the date of such sum become first due. However, they can also be collected beyond 2 years, if the above sum has been shown continuously as arrears.

12.13 As per the findings on second issue the licensee has established that the potential of 'R' phase is very low (ie..) in the order of 2 to 9volts. Hence, there is no doubt that the consumption recorded in the meter from April 2008 to 2-12-2010 is less than the actual consumption consumed by the Appellant in his Match Works But the respondent has restricted his claim from December 2008 only. In view of the above I am of the view that the claim of shortfall amount for a period of 24 months from November 2010 is reasonable as it falls within the period of 'R' phase fuse failure which has resulted in recording of less consumption than the actual usage.

13. Findings on the Fifth Issue :

13.1 The respondent argued that the average consumption for the metering circuit defective period was calculated by taking average of the four months consumption prior to April 2008. The respondent has taken March 2008, February 2008, January 2008 and December 2007 consumption for arriving at the average consumption.

13.2 In this regard the regulation 11, which relates to assessment of billing in cases where there is no meter or meter is defective is reproduced below :

“11.Assessment of billing in cases where there is no meter or meter is defective :
(1) Where supply to the consumer is given without a meter or where the meter fixed is found defective or to have ceased to function and no theft of energy or violation is suspected, the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective, shall be assessed as mentioned hereunder.
(2) The quantity of electricity, supplied during the period in question shall be determined by taking the average of the electricity supplied during the preceding four months in respect of both High Tension service connections and Low Tension service connections

provided that the conditions in regard to use of electricity during the said four months were not different from those which prevailed during the period in question.

(3) In respect of High Tension service connections, where the meter fixed for measuring the maximum Demand becomes defective, the Maximum Demand shall be assessed by computation on the basis of the average of the recorded demand during the previous four months.

(4) Where the meter becomes defective immediately after the service connection is effected, the quantum of electricity supplied during the period in question is to be determined by taking the average of the electricity supplied during the succeeding four months periods after installation of a correct meter, provided the conditions in regard to the use of electricity in respect of such Low Tension service connections are not different. The consumer shall be charged monthly minimum provisionally for defective period and after assessment the actual charges will be recovered after adjusting the amount collected provisionally.

(5) If the conditions in regard to use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any consecutive four months period during the preceding twelve months when the conditions of working were similar to those in the period covered by the billing.

(6) Where it is not possible to select a set of four months, the quantity of electricity supplied will be assessed in the case of Low Tension service connections by the Engineer in charge of the distribution and in the case of High Tension service connections by the next higher level officer on the basis of the connected load and the hours of usage of electricity by the consumer.

(7) In case the consumer does not agree with the assessment made by the Engineer or the higher-level officer as the case may be, the matter may be referred to the next higher-level officer of the Licensee. In case the consumer is still not satisfied, the consumer is at liberty to approach the respective Consumer Grievance Redressal Forum of the Licensee.”

13.3 On a plain reading of the above regulation, it is noted that either sub regulation (2) & (5) could be applied for arriving the average consumption . The licensee has adopted regulation 11.2 for arriving the average consumption.

13.4 As the licensee has arrived the average as per Supply Code provision, I am of the view that the average arrived is correct.

14. Conclusion

In view of my findings in paras 9 to 13 above, I am unable to interfere with the orders of the CGRF. With the above findings, the A.P. No. 7 of 2012 is finally disposed of by the Electricity Ombudsman. No costs.

(A. Dharmaraj)
Electricity Ombudsman

To

- 1) M/s.Saraswathi Match Works,
Rep.by its Special Power Agent G. Sabapathi
Silamalai Patty Road,
Peraiyur,
Madurai District.
- 2) The Assistant Executive Engineer(Distribution),
TANGEDCO(formerly TNEB),
T.Kallupatty,
Madurai District.
- 3) The Assistant Engineer,
TANGEDCO(formerly TNEB),
Peraiyur, Madurai District.
- 4) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
K.Pudur,
Madurai-7
- 5) The Chairman & Managing Director,
TANGEDCO,
NPKRR Malaigai,
144, Anna Salai, Chennai – 600 002.
- 6) The Secretary,
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai – 600 008.
- 7) The Assistant Director (Computer) - **FOR HOSTING IN THE WEBSITE.**
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai
Egmore, Chennai – 600 008.