



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 2 of 2012

Alm Sree Badrakaliamman – Mariamman Devasthanam,
Rep by its Managing Trustee / President,
Thiru. A. Kumaravel,
Sivakasi town,
Virudhunagar Dist.

..... Appellant
(Rep by Thiru. Venkatakrishnan /
Advocate)

Vs

The Junior Engineer/O&M,
Town North,
Virudhunagar Electricity Distribution Circle,
Sivakasi.

..... Respondent
(Rep by Thiru. K. Sivakumar/AE/
Town/North/Sivakasi)

Dates of hearing : 26-4-2012 & 16.5.2012

Date of order : 28-6-2012

The above appeal petition No. 2 of 2012 came up for hearing before the Electricity Ombudsman on 26-4-2012 & 16.5.2012 Upon perusing the above petition and connected records and after hearing both sides, the following order is passed by Electricity Ombudsman.

ORDER**1. Prayer of the Appellant :-**

The Appellant prayed to set aside the order dt. 4.10.2010 of consumer grievance Redressal forum of Virudhunagar EDC which dismissed the petition of the appellant praying to set aside the audit short fall amount of Rs.1,38,934/- levied by the JE/Town /North, Sivakasi.

2. Condonation of Delay :

The Appellant filed an Appeal Petition on 2.11.2010 against the order of CGRF of Virudhunagar EDC issued on 4.10.2010. But the above appeal petition was returned to the petitioner with a direction to file a fresh petition along with required details as per regulation 17(3) vide order dt. 29.11.2010 of the Electricity Ombudsman. But the revised petition was filed only on 18.1.2012 after a delay of 415 days.

The Appellant has informed that the orders of Electricity Ombudsman was received by the Sivakasi Hindu Nadar Uravinmurai Mahamai Fund office address and received by the Staff Members of the office instead of consumer/temple. The order of Electricity Ombudsman was misplaced with other files in the head office and not brought to the Appellant for proper follow up action. The above order was found out only on 25.12.2011 during rearrangement of the head office and the appeal was filed without further delay. The Appellant has also stated

that the delay in filing the appeal in proper form is neither willful nor wanton but due to the reason stated above.

As per regulation 8 of Regulation for the CGRF & Electricity Ombudsman 2004, the Electricity Ombudsman may entertain an appeal after expiry of the said period of 30 days if Electricity Ombudsman is satisfied that there was sufficient case for not filing within the above period. Hence, the delay is condoned and the appeal petition is admitted.

3. Facts of the Case :

The appellant is having a service connection bearing No.133 in the jurisdiction of the respondent and the above service is charged under tariff V. The above temple is being maintained by the Sivakasi Hindu Nadars Uravinmurai Mahimai Fund. Based on the audit slip the respondent has issued a demand notice on 2.6.2004 for Rs.1,38,934/- towards escaped assessment for the period from 5/2001 to 5/2002 due to meter defect. The Appellant made a representation to the respondent and higher authorities stating that the reduction in consumption is due to non usage of power during the relevant period on account of maintenance works and dryness of the borewell. The respondent has also requested, the audit to drop the proceeding based on the explanation given by the Appellant. But on 26.3.2010, the respondent again demanded the payment of Rs.1,38,934/- based on the same audit slip dt.5.2.2003. Hence, the appellant filed a petition before the CGRF and it was dismissed on 4.10.2010. Hence, the Appellant filed his appeal petition on 2.11.2010 before the Electricity Ombudsman. But the above appeal petition was returned with a direction to file

a fresh petition along with required details as per regulation 17(3) vide order dt.29.11.2010. But, after a delay of 415 days from the date of Electricity Ombudsman's Order the appellant filed this petition with a request to condone the delay. The Appellant has also paid a sum of Rs.34,740/- towards 25% of the amount ordered by the CGRF of Virudhunagar EDC.

4. Contentions of the Appellant :

The appellant has contended the following in his petition.

- (i) The respondent board has provided meter to the petitioner's service connection and the reading is being taken by the opposite parties every bimonthly and the officers have neither informed the petitioner about any defect in the meter nor found any sluggishness in recording of the actual consumption.
- (ii) The respondent served a demand notice dated 2.6.2004 informing that the meter card of the service connection was inspected by the board audit and in the inspection it was found that the assessment was not properly made on the average consumption during the meter defective period (5/2001 to 5/2002) and a demand was made that the petitioner is liable to pay the escaped assessment of Rs.1,38,934/- for the said period.
- (iii) The petitioner made representations to the opposite party and the superior authorities on 9.6.2004 and 16.8.2004 against the legality of the demand on the ground that reduction in consumption is due to non usage of power during the relevant period on account of maintenance work and Borewells

were gone dry. Further it was also submitted that the High Quality Meter was replaced with High Quality Electronic Meter under normal course and no defect in meter was reported during the relevant period and requested cancellation of the impugned demand on the basis of the audit slip. It is further submitted that the opposite party marked a letter addressed to the audit to drop the proceeding on the basis of the explanations given by the petition.

- (iv) The opposite party by its communication dated 26.3.2010 demanded payment of a sum of Rs.1,38,934/- on the basis of audit slip dated 5.2.2003.
- (v) The CGRF rejected the representation and directed the petitioner to pay the demanded amount made by the opposite party on the basis of audit slip dt. 5.12.2003.
- (vi) The consumer Grievance Redressal Forum ought to have found that the opposite party's action in raising the demand on the basis of the audit slip without referring the meter to the test by the recognized expert body as mandated under the section 26(6) of the Electricity Act, 1910 and sub regulation (2) of the regulation 15 of the Central Electricity Authority (Installation and Operation of Meters) regulations 2006 and regulation 7 of the Supply Code is illegal and arbitrary exercise of power.
- (vii) The CGRF erred in putting the burden on the petitioner to prove the fact that reduction in consumption was due to non usage of power during the relevant period when it is not the case of the opposite party that the meter

was sluggish and not recording the actual consumption during the relevant period and failed to produce any documents to show under what circumstances the meter was replaced and ought to have found that the meters were replaced under normal course and not on detection of any defect in the meter and demand on the basis of audit slip is bad and illegal.

(viii) The action of the respondents in raising the demand without issuing a show cause notice before raising the demand on the basis of the audit objection and failure to afford an opportunity to the petitioner to submit his explanation is violative of principles of natural justice and the mandatory regulations and thus liable to be set aside.

(ix) The action of the opposite party in raising the demand for the 12 months starting from 5/2001 to 5/2002 for escaped assessment failure in sending the meter to the Electrical Inspector for his opinion, who is the appropriate authority under the provisions of the Act, and quantifying amount payable by the petitioner is illegal.

(x) The action of the opposite party in demanding a sum of Rs.1,38,934/- in the 2010 on the basis of the audit slip dated 5.12.2003 is against the mandatory provisions in section 56(2) of the Act and Regulation 21(2) of Supply Code, 2004.

5. Contentions of the Respondent :

The respondent has furnished the following in his counter.

- (i) The appeal itself is not maintainable because the appeal has been filed earlier and it has been returned on 29.11.2011 . The petitioner

did not file the appeal in time and the reasons said in the appeal are artificial and unsustainable in law.

- (ii) The fact remains that without the knowledge of the petitioner and their subordinates the employees of the Electricity Board could not have installed any new meter or any device inside the petitioner's premises. The employees duly informed to the petitioner and their office bearers regarding the sluggishness in recording the actual consumption. Hence, there is no question of any communication gap created between the petitioner and the respondent.
- (iii) It is very apparent that the meter reading graph shows that the petitioner has been consuming electricity for which the consumption charges would come to nearly Rs.27,000/- to Rs.30,000/- bimonthly. Hence, there is a constant use of electricity being used by the petitioner but unfortunately due to the mechanical defect occurred in the reading meter the petitioner trying to utilize the opportunity by way of filing this vexatious petition and appeal. The electricity board had recorded the mechanical defect occurred during the period of 5th month 2001 to 5th month 2002.
- (iv) The petitioner failed to produce any relevant documents to establish that the maintenance work have been taking place during the above said period. The petitioner is highly imaginative and has fabricated a new story that during the said period the bore wells were under dry.

- (v) The consumer grievance redressal forum considering all material evidences and available records and properly pursuing the case of the petitioner as well as the respondent passed the impugned order only on the merits.
- (vi) The petitioner raised the grounds that the demand notice issued on the basis of audit slip without referring the meter to the test by the recognized expert is false and it is apparent that the petitioner returned the faulty meter and paid the entire amount for the faulty meter on 7.5.2002. It has been entered in the meter change register maintained by the respondent during the period of 2002.
- (vii) It is entirely discretionary of the board to replace the old reading meter version into new reading meter version.
- (viii) There is no violation in following the mandatory provisions of section 56(2) of the Act and the regulation 21(2) of the Supply Code. The petitioner has been enjoying the service connection from the year 2001 to till date. The board has not disconnected the service connection to the petitioner.

6. Hearing held by the Electricity Ombudsman :

In order to enable the appellant and the respondent to put forth their arguments in person, a hearing has held on 26.4.2012 and the hearing was adjourned to 16.5.2012 as prayed by the advocate of the Appellant.

7. Argument of the Appellant :

7.1 The appellant was represented by Thiru. M. Venkatakrisnan, Advocate.

7.2 The learned counsel argued that the meters were released only to change the High Quality Meter by a Static Meter and not due to defect in the meter. From the beginning, the appellant is insisting only to prove that the meter is defective. But so far no proof like results of test conducted on the meter has been given by the licensee to establish the High Quality meter in service was defective.

7.3 The demand was raised based on an audit slip only. Audit is an internal matter of the licensee to find the mistakes done by the employees of the board. Hence, audit slip cannot be quoted as reason for claiming the short fall amount.

7.4 The respondent himself has informed that he has sent a proposal to audit to drop the above demand. Hence, it shows that the claim of the appellant is supported by the respondent. But all of a sudden after 6 years the same demand was raised on the ground that audit slip is not dropped.

7.5 The learned counsel also argued that during the said period, the maintenance works were carried out in the temple and the bore well has gone dry. It was also informed that 17nos. Sodium Vapor lamps were not in use during the above period.

7.6 The learned counsel also argued that being an appeal, the respondent cannot say now that the meter is changed only due to defect since it has been recorded in the CGRF order that there is no records specifying the reasons for changing the existing meter by a electronic meter available in the section office.

8. Argument of the Respondent :

8.1 The respondent was represented by the Thiru. K. Sivakumar AE/Town/North /Sivakasi.

8.2 He reiterated the contents of the counter . He argued that the High Quality meter was replaced due to defect only on 7.5.2002 (ie) due to earth fault and the meter was changed after collecting a sum of Rs.1880/- towards the meter cost based on a complaint filed by the appellant . Hence, he argued that it is known to the appellant that the meter was changed due to defect only. He also showed the meter change register in support his argument.

8.3 The AE/Town/North/ Sivakasi has also argued that on changing the meter, the consumption increased to 5617 for 6/2002 assessment period whereas the consumption recorded in 4/2002 when the old meter was available is only 1140 units. Hence, he argued that the High Quality meter in service from 5/2001 to 5/2002 is sluggish and hence the audited amount is reasonable.

8.4 The AE/Town/North/Sivakasi has also informed that if there is any reduction in load due to maintenance or some works, the consumer has to give information to the licensee about the reduction load in writing but no such information was given by the appellant. Hence, reduction of consumption is due to less utilization due to maintenance works is only an after thought.

9. Issues for consideration :

I have heard both sides arguments and perused the appeal petition and the counter affidavit. On a careful consideration of the above, I find the following as the issues to be decided.

- (1) Whether the Terms and Conditions of Supply of erstwhile of TNEB or Supply Code and Distribution Code are applicable ?
- (2) Whether the High Quality meter is defective ?
- (3) Whether the reduction in consumption is due to defect in meter (or) due to reduction in load ?
- (4) Whether average consumption adopted is correct ?

10. Findings on the First Issue :

The demand notice for audit short fall amount of Rs.1,38,934/- was issued by the licensee for period from 18.5.2001 to 7.5.2002. The TN Elec. Supply Code and Distribution Code were published on 21.7.2004. As the audit short fall period falls before publication of the Supply Code and Distribution Code, it is held that the Terms and Conditions of Supply of erstwhile TNEB are applicable.

11. Findings on the Second Issue :

11.1 The respondent informed that the High Quality meter was changed as it was faulty. He produced the meter change register in support of his argument. He also informed that the appellant has paid Rs.1880/- towards cost of the meter.

11.2 The learned counsel for the Appellant argued that the licensee has never informed that the meter is defective. He also cited the order of the CGRF wherein it has been recorded that there is no record in the section office indicating the reason for changing the meter. Hence, he argued that the

respondent cannot say now that the meter was defective by showing the meter change register.

11.3 In the meter change register , it has been mentioned that meter was changed due to earth fault. It is also noted that the consumer has paid Rs.1830/- vide PR No. 228056 & PCB No. 95959 dt. 7.5.2002. The Appellant's representative also informed that the meter was changed due to defect but disputed that it was during 2001 and not during 2002.

11.4 The AE/Town/North /Sivakasi has also sent a copy of letter dt.6.5.2002 of the Appellant vide his letter dt.30.5.2012 wherein the Appellant has stated that he is not getting supply properly and requested for changing the meter. He has also furnished the copy of PCB No.75959 wherein it has been indicated that Rs.1880/- was collected for SC No.133 from Thiru. Palanisamy towards cost of meter.

11.5 Hence, it is confirmed that the high quality meter was changed only due to earth fault on 7.5.2002 and not during 2001 as stated by the appellant.

12. Findings on the third Issue :

12.1 The appellant argued that the reduction in consumption from 5/2001 to 5/2002 when the high quality meter in service was due to reduced consumption as the maintenance works were carried out in the temple. He also informed about 17 nos of sodium vapour lamp and the bore wells were not in service during the maintenance period.

12.2 The respondent argued that the reduction in load was not informed to the licensee by the appellant. Further, he also pointed out that immediately on

changing the meter there was increase in consumption. If the reduction in consumption is due to reduction in load, then consumption pattern shall also be same without any increase. But there is substantial increase in consumption after changing the meter. Hence, he argued that only due to the sluggishness of the meter, there was less consumption.

12.3 On an analysis of the consumption pattern of the above service it is noted that the consumption of the above service before installation of high quality meter and after changing the meter by electronic meter are on the higher side. In other words consumption was low during the period of one year when the high quality meter was in service. The one year consumption before 5/2001 & after 5/2002 and also the consumption from 6/2001 to 4/2002 when the high quality meter was in service are furnished below :

Consumption recorded from 6/2000 to 4/2001 when electro mechanical meter was in service		Consumption recorded from 6/2001 to 4/2002 when high quality meter was in service.		Consumption recorded from 6/2002 to 4/2003 when Electronic Meter was in service.	
6/2000	6230	6/2001 6474* (Meter was changed on 18.5.2001)		6/2002	5617
8/2000	5250	8/2001	2230	8/2002	7516
10/2000	6500	10/2001	1810	10/2002	6956
12/2000	5780	12/2001	2020	12/2002	} 11694
2/2001	7000	2/2002	1470	2/2003	
4/2001	6380	4/2002	1140	4/2003	6670
* Consumption before changing the meter 4864 Consumption after changing the meter 1610					

12.4 It is noted from the above, the consumption recorded during 5/2001 to 5/2002 where the High quality meter was in service is very low (ie) about 17% to

43 % of the consumption recorded for the corresponding period of the previous and subsequent year by the electro mechanical meter and the electronic meter in service. It could also be seen that the consumption recorded by the Electro Mechanical Meter and the Electronic Meter for the respective bi-monthly assessment are comparable and are within 10% variation except for August assessment.

12.5 Further, it is noted that the high quality meter was fixed on 18.5.2001 in the above service. The initial reading and the consumption from 18.5.2001 are as below :

Initial Reading as on : 00020
18.5.2001

Reading on 19.6.2001 : 01630
Consumption : 1610 units

The per day consumption after fixing the high quality meter works out to 50.3 units.

12.6 In the same bimonthly billing period the consumption from 20.4.2001 to 18.5.2001 (ie) the consumption before changing the meter is 4864 units. Thus the average consumption per day before erecting the high quality meter works out to 173.7 units.

12.7 It is noted from the above, that the per day consumption has reduced from 173.7 units to 50.3 units after fixing the high quality meter in the same bimonthly billing period of the service.

12.8 Similarly on the date of fixing electronic meter, (ie) on 7.5.2002 the high quality meter reading was noted as 10622. The consumption recorded in the

high quality meter from 18.4.2002 to 7.5.2002 is 322 units (10622-10300). The average consumption per day works out to 16.9 units.

12.9 In the same billing period, the consumption from 7.5.2002 to 20.6.2002 recorded in the electronic meter is 5295 units. The average consumption per day works out to 120.3 units.

12.10 It is observed from the previous para that the consumption per day has increased from 16.9 units to 120.3 units after installing the electronic meter by removing the defective high quality meter.

12.11 It is noted from the paras 12.5 to 12.10 above that the consumption per day in a same billing period is very low when the high quality meter was in service when compared with the consumption recorded in the meters which were in service before and after the period of its service. Hence, I am of the view that the reduction in consumption is due to defect in the high quality meter which was in service during period of audit short fall.

13. Findings on the Fourth Issue :

13.1 As per the findings on the first issue, the erstwhile board's Terms and Conditions of Supply are applicable for the period in question to decide about the average consumption where the meter is defective.

13.2 The relevant clause of Terms and Conditions of Supply is reproduced below :

"17.10 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, will be assessed as mentioned hereunder :

The quantity of electricity, supplied during the period in question will be determined by taking the average of the electricity supplied during the preceding four months in respect of High Tension service connections and two assessment periods (four months) in respect of Low Tension service connections, provided that the conditions in regard to use of electricity during the said four months/ two assessment periods were not different from those which prevailed during the period in question.

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

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 two assessment periods, provided the conditions in regard to the use of electricity in respect of such Low Tension service connections are not different.

17.11 If the conditions in regard to use of electricity during the two periods as mentioned above were different, assessment will 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.”

13.3 The high quality meter was fixed on 18.5 2001. As the respondent opined that the meter is defective he has taken the previous assessment period consumption (ie) 4/2001 and 2/2001 for arriving the average consumption for the period 5/2001 to 5/2002 the period in which the high quality meter was in service.

13.4 The respondent have followed clause 17.10 of the Terms and Conditions of Supply for arriving at the average consumption . As the average calculated is as per the said clause 17.10 of the Terms and Conditions of Supply, I am of the view that the average consumption calculated is correct.

14. Conclusion :

In view of the findings given in paras 10 to 13 above, I am unable to interfere with the orders of CGRF of Virudhunagar EDC.

With the above findings the AP No. 2 of 2012 is finally disposed of by the Electricity Ombudsman. No Costs.

(A.Dharmaraj)
Electricity Ombudsman

To

- 1) Alm Sree Badrakaliamman – Mariamman Devasthanam,
Rep by its Managing Trustee / President,
Thiru. A. Kumaravel,
Sivakasi town, Virudhunagar Dt.
- 2) The Junior Engineer/O&M,
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