



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 5 of 2012

M/s. Sigma Mat (P) Ltd
Shed No. 52, Mahiya Industrial Estate
Uranganpatty, Madurai
through its partner Mr. Sashikumar Fomra

. Appellant

Vs

Junior Engineer / Distribution
TANGEDCO
Uranganpatty, Madurai

. Respondent
(Rep by respondent in person)

Dates of hearing : 17-5-2012 & 13-6-2012

Date of Order : 20.6.2012

The above appeal petition No. AP 5 of 2012 came up for hearing before the Electricity Ombudsman on 17-5-2012 & 13.6.2012. Upon perusing the petition filed by the Appellant, Counter filed by the Respondent and after hearing the respondent (Appellant has not attended both the hearings) the following order is issued by the Electricity Ombudsman.

Order

1. **Prayer of the Appellant:**

The Appellant prayed to set aside the order dated 29-12-2011 of the CGRF of Madurai Electricity Distribution Circle which confirmed the shortfall amount of Rs.3,86,196/- raised by the Junior Engineer / Uranganpatty in his demand letter dated 7-5-2011.

2 . **Facts of the Case:**

The Appellant is the owner of that LT Industrial service connection No. 213 which is coming under the jurisdiction of the respondent. The service was effected on 4-4-2006. The meter fixed in the above service got burnt during June 2006 and a new meter was installed on 10-10-2006. For 6/2006, 8/2006 assessment periods based on 4/2006 consumption the average consumption was worked out and paid by the Appellant as demanded by the respondent. However, based on the audit remarks an additional demand of Rs.3,86,196/- was demanded by the Junior Engineer in letter dated 7-5-2011 for the assessment period 6/2006, 8/2006 & 10/2006 considering the consumption recorded from 10-10-2006 to 27-10-2006 after installing the new meter. Aggrieved over the above assessment the Appellant filed a petition to CGRF Madurai Electricity Distribution Circle which confirmed the order of the Junior Engineer, Uranganpatty. Hence, the Appellant filed this appeal petition to Electricity Ombudsman after paying a sum of Rs.96,549/- being 25% of the amount to be paid by the Appellant as ordered by the Forum.

3. **Contentions of the Appellant:**

The Appellant has contended the following in his appeal petitions.

- I) The appellant is engaged in recycling of plastic scrap into granules in the above mentioned address. The appellant was provided with industrial service connection (LT) in SC No. 213 for a load of 45 HP on 4-4-2006. The same was assessed under tariff III B. The first bimonthly assessment was made on 20-04-2006 and the energy consumption was recorded as 5318 units and a quantum of Rs.23,825/- was calculated as consumption charges. The electricity meter for the above said service connection got burnt during first week of June 2006 and the same was removed by the officials on 17-06-2006. Subsequently a new meter was installed on 10-10-2006. For the billing period of May – June 2006 and July – August 2006 the earlier assessed charge for April was demanded and the appellant has paid the said quantum.
- II) The appellant applied for an additional load of 33 HP during June, 2006. But the machinery for additional capacity was installed during October, 2006. Hence additional capacity was utilized by the appellant only from October, 2006. On the basis of an inspection made by audit team and report submitted by it, the respondent herein issued a communication dated 7-5-2011 in Lr. No. JE/Distribution/U.patti/Va.Aa/Ko.42/A 17/11 wherein an additional demand of Rs.3,86,196/- was raised for the assessment periods 6/06, 8/06 and 10/06.
- III) The audit term had classified the burnt out meter to be defective and on that basis after calculating the energy consumption from 10-10-2006 to

27-10-2006, after installation of new meter, applied the said calculation and assessment for the assessment periods 6/06, 8/06, and 10/06.

- IV) The original meter got burnt and was taken away. Hence the periods which were assessed have to be treated as periods where meter was not installed.
- V) As per Terms and Conditions of Supply of Electricity, the quantity of electricity supplied during a period where meter was not installed has to be determined by taking the average of electricity supplied during preceding two assessment periods.
- VI) The consumer forum failed to appreciate that only in case of defective meter, succeeding assessment can be taken into account. That too only if the conditions regarding usage of electricity are not different.
- VII) The appellant installed additional machinery and started utilizing additional load from October 2006. Hence using the assessment made for the period 10-10-2006 to 27-10-2006 for arriving at assessment for earlier periods is erroneous.
- VIII) The consumer forum failed to see that there is no necessity for the appellant to produce any document to confirm utilization of energy such as stock register, monthly statement to auditor as observed by the Commission, since the manner and method of assessment is regulated by the Terms and Conditions of Supply of Electricity.

4. **Contention of the Respondent :**

The respondent has contended the following in his counter.

- (i) The appellant have an Industrial Service Connection No. 213 with a load of 45 HP under Tariff IIIB and the SC was effected on 04-04-2006 with initial reading 34.3 and the first bimonthly reading was taken on 20-04-2006 and the reading noted as 5352. The consumption charge billed for 5318 units (5352-34.3 = 5317.7) was Rs.23815/-. In between the next assessment period, the meter burst due to consumer fault. Due to the non-availability of meter then the burst meter was replaced by healthy meter on 10-10-2006 with initial reading 1.6. After fixing the new meter, the assessment was made on 27-10-2006 and the reading noted as 9555.
- (ii) The unit consumed by the appellant was (9555-1.6)9553.4 units for the period from 10-10-2006 to 27-10-2006 (i.e) for 17 days. Based on the above actual consumption and as per the TNERC's Distribution Code Clause 11(4) the Assessment for 6/2006 & 8/2006 was calculated and also short fall for 10/2006 was calculated as follows:-

Month	To be collected Units / Amount	Already collected Units/ Amount	Shortfall to be Collected
6/2006	33718 Rs.1,61,223	5318 Rs.23,825	--- Rs.1,37,398
8/2006	33718 Rs.1,61,223	5318 Rs.23,825	--- Rs.1,37,398
10/2006	33718 Rs.1,61,223	--- Rs.49,823	--- Rs.1,11,400
			----- Rs.3,86,196 -----

Hence the above shortfall amount of Rs.3,86,196 has to be paid by the appellant and the same was detected by Audit Branch of TANGEDCO and it was communicated by JE/P/Uranganpatty vide Lr. No. இ.மி.பொ./U/உ.பட்டி/வ.சூ.தோ42/ அ.எண்.17/11 நாள் – 07.05.2011

- (iii) The appellant applied for an additional load of 33 HP during June 2006 and the additional load was effected on 08-11-2006. But the shortfall amount of Rs.3,86,196/- is for consumption period from 6/06 to 10/06. Hence, the shortfall amount of Rs.3,86,196 is in order as per the TNERC Distribution Code Clause 11(4).
- (iv) Aggrieved over the demand of shortfall amount of Rs.3,86,196/- the appellant herein preferred an application before the Consumer Redressal Forum. The Hon'ble Forum by its order dated 8-12-2011 dismissed the application and upheld the demand of shortfall amount of Rs.3,86,196/-. Against the order of the Forum the present appeal has been filed.
- (v) The appellant has sent a DD for Rs.96,549/- being 25% of the shortfall amount.

5. Rejoinder of the Appellant:

The appellant has contended the following in his rejoinder.

- a. Regulation 11 of the Supply Code contemplates that 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 or if the meter becomes defective immediately after the service connection is effected the quantity 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 period after installation of a correct meter provided in both this contingencies condition in regard to the use of electricity shall be same. In respect of non installation of meter, clause 4 as stated in the counter affidavit, on the basis of which assessment is said to have been made relates to a situation when a meter becomes defective. In the instant case the meter got burnt and was removed. Hence it is a case of non installation of a meter, conceding without admitting the adoption of method as provided under regulation 11(4) is proper, the audit committee ought to have taken four months average consumption. Instead the audit committee has taken 17 days consumption into account for calculation after the installation of new meter, which is contrary to regulation 11, Moreover in the subsequent 4 months after installation of new meter, conditions existing for consumption were not the same due to enhanced capacity.

- b. The proper procedure which ought to have been adopted by the department is either to follow the procedure as contemplated in regulation 11 (2) or 11 (5) of the Tamil Nadu Electricity Supply Code, 2004. Hence the calculation based on which the respondent has

demanded consumption charges is contrary to the provisions of the code.

6. Hearing held by the Electricity Ombudsman:

A hearing was held before the Electricity Ombudsman on 17-5-2012 to enable the appellant and respondents to put forth their arguments in person. The respondent Thiru M. Krishnasamy, Junior Engineer, Uranganpatty has attended the hearing. But the appellant was absent. Hence in order to give a chance to the appellant to argue his case in person, another hearing was conducted on 13-6-2012. But, the appellant did not present on that day also. The respondent Thiru Krishnasamy, Junior Engineer / Uranganpatty has attended the above hearing also. As the appellant was not appeared on both the hearing days it is decided to pass the orders based on the appeal petition and rejoinder furnished by the appellant.

7. Argument of the Respondent:

The respondent has reiterated the contents of the counter. He argued that the meter was burnt, the subsequent consumption recorded after changing the meter was taken for arriving the average consumption for the period when there was no meter in the service. He argued that the above is in conformity with regulation 11(4) of the Supply Code. He also argued that the appellant has not furnished any details such as stock maintenance register, production details Auditors monthly statement, etc in support of lesser utilization during the period in question.

8. Issue for consideration :

On perusal of the Appeal petition and the Rejoinder filed by the appellant, counter filed by the respondent and after hearing the argument of the respondent, I find that the only issue to be considered is which regulation of Supply Code that is to be followed for assessment of the average consumption when consecutive four months consumption is not available.

9. Findings:

9.1 The Appellant has stated that as the meter got burnt and removed it is a case of non installation of a meter, conceding without admitting, the adoption of method as provided under regulation 11(4) of the Supply Code is proper. The Audit Committee ought to have taken four months consumption. Instead the audit committee has taken 17 days consumption after installation of meter into account for calculation which is contrary to the said regulation 11. The Appellant also informed that he has started utilizing the additional load from October 2006. Hence, using the assessment made from 10-10-2006 to 27-10-2006 is erroneous as the load is more.

9.2 Further, the appellant also stated in his rejoinder that the proper procedure to be adopted by the department is to follow the procedure as contemplated in regulation 11 (2) or 11(5) of the Supply Code 2004. But the respondent has not followed the above provision and hence the average consumption arrived is contrary to the code provision. He also contended that there is no necessity for the appellant to produce any documents to confirm utilization of energy such as stock register, monthly statement to auditor as

observed by CGRF as the method of assessment is regulated in Terms and Conditions for Supply of Electricity.

9.3 The respondent argued that initial assessment was issued based on the consumption from 4-4-2006 to 20-4-2006. However, after installing the meter on 10-10-2006, the consumption for 17 days was available. Further, on 1-11-2006 additional load of 33 HP was effected. Hence the consumption after 1-11-2006 is for enhanced load and could not be considered for arriving the average consumption. As the load varied after 1-11-2006, the consumption recorded from 10-10-2006 to 27-10-2006 was considered for arriving the average consumption by adopting regulation 11(4) of the Supply Code.

9.4 As both the appellant and respondent have referred regulation 11 of Supply Code, and cited different sub regulations in support of their contentions the relevant regulation 11 of Supply Code 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.

9.5 The appellant has stated that regulation 11(2) or 11(5) of the Supply Code is applicable for arriving the average consumption for the period in dispute and the respondent has stated that regulation 11(4) of the Supply Code is applicable. Hence, the applicability of the above sub regulations are discussed below :-

9.5.1 On a plain reading of the Regulation 11(2), it is noted that 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 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.

9.5.2 In the case on hand, the service was effected on 4-4-2006 and the first bimonthly reading was taken on 20-4-2006. The meter burnt after taking reading on 20-4-2006 and the meter was removed from service on 17-6-2006. A new

meter was fixed on 10-10-2006. Here the consumption for 17 days only is available and there is no possibility to take four months consumption prior to the meter defective period since the service was effected only on 4-4-2006.

9.5.3 On a plain reading of the regulation 11(4) it is noted that if 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 electricity supplied during the succeeding four months periods after installation of correct meter, provided, the conditions regard to the use of electricity in respect of such low tension service are not different.

9.5.4 It is noted that the new meter was fixed in the above service on 10-10-2006. But additional load of 33 HP was effected in the above service on 1-11-2006. Hence, the condition in regard to use of electricity is same only upto 1-11-2006 (i.e) for 20 days only. Therefore, here also, no consecutive four months consumption after fixing the new meter with the same load is available for arriving the average consumption.

9.5.5 The regulation 11(5) stipulates that if the condition in regard to use of electricity during the periods as mentioned in the preceding sub regulation (2) to (4) were different, assessment shall be made on the basis of any four consecutive months period during the preceding twelve month when the conditions of working were similar to those in period covered by the billing.

9.5.6 As the service was effected only on 4-4-2006 the previous one year reading is not available to choose the four months assessment which are similar in consumption to the period in question. Hence there is no possibility of selecting a set of four months.

9.6 It could be noted from the previous paras, that four months consumption immediately prior to meter defective date (or) any consecutive four months consumption in the previous one year where the consumption is similar to the period in question (or) succeeding four months consumption after replacement of burnt meter are not available in this case (only 17 days consumption prior to meter defective period and 17 days consumption after installing a new meter are available). Hence, the regulation 11(2), 11(4) & 11(5) could not be adopted for arriving the average consumption for the period in question.

9.7 In such a situation, the regulation 11(6) has to be referred. As per the said regulation, when, 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 connection by the Engineer in charge of the distribution on the basis of the connected load and the hours of usage of electricity by the consumer.

9.8 As per regulation 11(7) in case the consumer does not agree, the assessment made by the Engineer then 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 CGRF of the licensee.

9.9 In the said regulation 11(6) it has been clearly mentioned that where it is not possible to select a set of four months, the quantity of electricity supplied will be assessed by the Engineer in charge of the distribution.

9.10 In this case, no set of consecutive four months consumption as detailed in regulations 11(2), 11(4) & 11(5) are available to assess the average consumption for the period when there was no meter in the service. Hence I am of the view that the regulations 11(2), 11(4) & 11(5) of Supply Code could not be adopted.

9.11 As regulation 11(6) it is stipulated the method to arrive at the average consumption when there is no set of four consecutive four months consumption, I am of the considered opinion that the above regulation 11(6) is the regulation to be followed for arriving at the average consumption for the period from 20-4-2006 to 10-10-2006. In case, the consumer does not agree with the assessment made by the Engineer the licensee has to adopt regulation 11(7) of the Supply Code.

10. Conclusion :

In view of my findings in para 9 above, the respondent is directed to assess the average consumption for the period from 20-4-2006 to 10-10-2006 by following regulation 11(6) of the Supply Code and issue a revised demand notice within 30 days from the date of receipt of the this order. In case, the consumer does not agree with the above assessment, the provisions in regulation 11(7) shall be followed. A compliance report on the above shall also be sent to this office within 45 days from the date of receipt of this order.

11. With the above findings, the AP No. 5 of 2012 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

- 1) Thiru. Sashikumar Fomra
Partner,
M/s. Sigma Mat (P) Ltd
Shed No. 52, Mahiya Industrial Estate
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- 2) Junior Engineer / Distribution
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Uranganpatty, Madurai
- 3) Superintending Engineer
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