



## **TAMIL NADU ELECTRICITY OMBUDSMAN**

19- A, Rukmini Lakshmipathy Salai, (Marshal Road), Egmore, Chennai – 600 008.

Phone : ++91-044-2841 1376 / 2841 1378/ 2841 1379 Fax : ++91-044-2841 1377

Email : tnerc@nic.in Web site : www. tneo.gov.in

**BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI**

**Present : Thiru. A. Dharmaraj, Electricity Ombudsman**

**Appeal Petition No. 16 of 2012**

Thiru K.Ottmal Jain,  
10, Kesava Iyer Street,  
Park Town,  
Chennai-600003.

..... Appellant  
(Rep. by Thiru. C. Selvaraj)

Vs.

Superintending Engineer,  
CEDC/Central  
TANGEDCO,  
Valluvarkottam,  
Chennai.

..... Respondent  
(Rep.by Thiru T.A..Seralathan  
EE/O&M/Anna Salai)

**Date of hearing : 26.7.2012**

**Date of Order : 10.9.2012**

The above petition No.16 of 2012 came up for final hearing before the Electricity Ombudsman on 26-7-2012. Upon perusing the above petition counter and after hearing both sides, the following order is passed by Electricity Ombudsman.

## **ORDER**

### **1. Prayer of the Appellant:**

The Appellant prayed for the following:

- a) to declare the order of the CGRF as illegal and not maintainable for its failure to adhere to the time schedule.
- b) to grant exemption from paying any amount based on the illegal order of CGRF.
- c) to stay the operation of 30 days mentioned in the order of CGRF and the direction of 30 days found in the letter dated 4-4-2012 of Assistant Engineer /PT.
- d) to order for the refund of the excessive billing imposed on him for the billing period December 2011 and Feb.2012
- e) to order payment of compensation for not replacing the defective meter within the prescribed time limit.
- f) to order for the dispensing with the direction of Assistant Engineer /PT in his letters 5-1-2012 and 4-4-2012.
- g) to order for the supply of copy of proceedings held on 13-3-2012.
- h) any other order or direction as deemed fit and necessary in the circumstances for the continuing harassment inflicted upon him.

### **2. Facts of the case:-**

Thiru K. Ottmal Jain is having a service connection bearing No.195-045-166 and is being charged under tariff-V. The Appellant requested the Assistant Engineer /Park Town to replace the defective meter and also requested to refund the excess amount collected as the consumption for December 2011 assessment period was recorded as 460 units. The Assistant Engineer inspected the site and found the meter has burnt. The Assistant Engineer informed the Appellant to pay the cost of the meter. The Appellant filed a petition

to the CGRF on 13-1-2012 for withdrawal of the letter of Assistant Engineer informing him to pay the cost of meter. Subsequently he filed another petition to CGRF of CEDC / Central with the following prayer :

- i) refund of the excess CC charges.
- ii) to order compensation for not replacing the defective meter and
- iii) to order for immediate fixing of meter.

The CGRF of Central EDC has issued its order on 21-3-2012. Aggrieved over the above order, the Appellant has filed this Appeal Petition to Electricity Ombudsman.

### **3. Orders fo CGRF of CEDC/Central :-**

The orders of CGRF are furnished below:-

*“During the enquiry, the petitioner has put forth his argument for refund of excess billing during December 2011 and payment of compensation for not replacing the defective meter within the prescribed time limit.*

*The respondent, EE/O&M/Anna Salai has explained that the average units was erroneously calculated as 460 and it will be revised for the entire period, the meter was defective and the revised bill will be sent to the applicant shortly. Further the defective meter could not be replaced as desired by him, since he did not pay the cost of the burnt meter as advised by the department.*

*On going through the records and having heard the arguments on both side, this Hon'ble Forum has directed the EE/O&M/Anna Salai to send the revised bill as committed by him. In regard to compensation claimed, there is no justification for payment of such compensation and it also does not arise since the complainant did not pay the cost of the burnt meter inspite of repeated requests made to him both in writing and orally.*

*The Forum also directed the department to replace the burnt meter immediately to give immediate relief to the petitioner. Also the Forum directs the petitioner to pay the cost of burnt meter within the period of 30 days from the date of issue of this order.”*

**4. Contention of the Appellant :-**

- a. The Appellant made an appeal to CGRF on 13-1-2012 for the illegal direction given by Assistant Engineer /Park Town. The Assistant Engineer /Park Town has removed the meter on 10-2-2012 and continued to make average billing for the month of December 2011 and Feb. 2012. This necessitated filing of additional grievance to the CGRF on 6-3-2012.
- b. The order passed by the CGRF is totally not maintainable, as it is not based on the proceedings of the enquiry and is not a speaking order. The order is not specific to the kind and mode of revision of bill. The forum has failed to consider or taken into account the reasons and claims made by him on the justification for directing him to make payment of the cost of the meter. The forum has totally failed to see the actual condition that the meter was in fact not burnt.
- c. The direction of the forum claiming the meter has burnt and to pay the cost within 30 days is baseless, unreasonable, arbitrary, unfounded and with sole intention to support the opposite party.
- d. Now the impugned meter has been replaced by another meter on 31-3-2012. The Assistant Engineer /PT has served a letter dated 4-4-2012 claiming it as a revision of bill based on the order of CGRF. It is found from this letter that the Assistant Engineer has devised a new period from April 2010 for the purpose of revision of bill. Even now he has not spelt out as to how he has arrived at the average unit of 340. It is also illegal and baseless.
- e. The order of the CGRF to make payment within 30 days and the direction of the Assistant Engineer /PT to make payment for the revised bill needs to be stayed from its operation. Accordingly it is prayed before the ombudsman to stay the order and direction as above, as the same are illegal, baseless and in violation to subsisting rules and procedures.

- f. The CGRF is duty bound to dispose of his complaint within 60 days. In this case the CGRF has not taken any action within the stipulated period. Even the enquiry was not conducted within the stipulated period. The order was also passed much later. Hence the entire proceedings and order of the CGRF is liable to be quashed as it is not maintainable because of the failure to adhere to the stipulated rules. Accordingly making any payments based on the illegal order of CGRF before filing this appeal to the Ombudsman does not arise.

**5. Contention of the Respondent :-**

The respondent has contended the following in his counter:

- i) *Petitioner has requested the Assistant Engineer /O&M/Park Town to replace the defective meter in his service vide his letter dated 30-12-2011 as the petitioner felt that the consumption for the month of Dec'11 is on the higher side (460 units).*
- ii) *Based on the request, the Assistant Engineer /O&M/Park Town has checked the meter, found the meter burnt and informed the petitioner to pay the cost of the meter. The petitioner made a representation to CGRF on 6-3-2012.*
- iii) *The Consumer Grievance Redressal Forum has conducted an enquiry on 13-3-2012 and recorded the statements of both the parties.*
- iv) *During the enquiry, Executive Engineer/O&M/Anna Salai had deposed that the meter had been affected due to overloading on the Y ph of the 3 ph meter, installed in that premises. This is only due to the fault on the part of the consumer and not due to any fault on the part of the TANGEDCO.*

- v) *The Executive Engineer /O&M/Anna Salai deposed that only average billing to the tune of 460 units had been billed for the month of Dec'2011 and corrected average billing would be made subsequently. For this, the consumer, Thiru K.Ottamal Jain had not also disputed except that no evidence or explanation had been given for the burnt meter.*
  
- vi) *The petition was admitted under CGRF on 18-1-2012. The enquiry was conducted on 13-3-2012 and final order was issued on 21-3-2012 and there is no delay in the part of CGRF.*
  
- vii) *The intention of the consumer is to cheat the TANGEDCO by refusing to pay the average charges. He has paid CC for 10 units for more than 2 years which clearly shows the petitioner is not a loyal consumer to the TANGEDCO.*
  
- viii) *It is prayed that payment of compensation does not arise since the meter has melted due to the fault on the part of the petitioner, and requesting order to pay the bill revision amount for the electrical consumption made by the petitioner and the meter cost immediately.*
  
- ix) *He prayed that this Hon'ble Electricity Ombudsman may be pleased to dismiss the above appeal No.16 of 2012, as having no merits and render justice.*

**6. Hearing held by the Electricity Ombudsman:**

A hearing was held before the Electricity Ombudsman on 26-7-2012 to enable the Appellant and the Respondent to putforth their arguments in person.

**7. Arguments of the Appellant:**

7.1 The Appellant was represented by Thiru C.Selvaraj. He reiterated the contents of the appeal petition.

7.2 The Appellants representative argued that the CGRF has to issue its order within 2 months period as per the regulations. But for petition dated 13-1-2012, the CGRF order was issued on 21-3-2012. Hence the order is to be quashed.

7.3 With regard to payment of cost of burnt meter, he argued that as per regulation 7(iii) of the supply code, the licensee has to bear the cost unless it is proved that the burning out is due to the consumer fault. Hence he argued that the onus of proving that the meter burnt due to the consumer fault is on the respondent's side. He also argued that the Y-phase terminal melting may be due to loose connection for which the respondent is responsible.

7.4 He argued that the defective meter has to be replaced within 30 days by the licensee. The meter was declared defective on 31-12-2011 but was changed only on 31-3-2012. Hence he pleaded that compensation as per the Tamil Nadu Electricity Distribution Standards of Performance has to be paid to the appellant.

7.5 Regarding claiming average, for a back period of two years he argued that the CGRF has ordered only to revise the average of 460 units claimed by the respondent for December 2011 and Feb.2012 assessments. But the respondent has revised it from April 2010. The above is against the orders of CGRF and the recorded proceedings of the CGRF. Further, he also argued that as per the computer entry, the meter was defective from Dec.2011 only and not from any previous period as it has been recorded by the licensee that the assessment status as normal.

7.6 With regard to the question of zero and 10 units consumption recorded in these period, he cited regulation 7(5) of the Supply Code and argued that, if the meter is not declared as defective, the quantity of electricity recorded by such meter shall be taken as the quantity supplied by the licensee. He also cited clause 8(5) of the supply Code and argued that in case of LT services, after taking the meter readings energy consumption and charges payable are recorded in the meter card and as per section 8(6) of the Supply Code, payment for the energy supplied shall be made by the consumer according to the meter readings entered in the meter card. In this case, the Appellant has paid whatever the charge recorded in the meter card. Hence he argued that the licensee cannot claim arrears for back period.

**8. Argument of the Respondent:-**

8.1 The respondent has also reiterated the contents of the counter.

8.2 He argued that the petition was admitted in the CGRF on 18-1-2012 and enquiry was conducted on 13-3-2012 and a final order was issued on 21-3-2012. Hence, there is no delay on the part of CGRF.

8.3 Regarding collecting of meter cost from the consumer, he argued that there are six services in the above premises and no meter has burnt except the one in Appellant's service. If the burning of meter is due to licensee fault, there would have been such occurrences in other services also. Hence, he argued that the meter has burnt only due to consumer side fault.

8.4 The Executive Engineer/O&M/Anna Salai also argued that the Appellant was informed to pay the meter cost by the Assistant Engineer /Park Town. But he has not paid the amount. Hence, the meter was not changed. No further

action was also taken to include the amount in the next bill as he has filed a petition to CGRF. The meter was changed on 31-3-2012 as per the direction of the CGRF pending payment of the meter cost by the Appellant. Hence, he argued that there is no delay on their part and consequently there is no need to pay compensation.

8.5 Regarding average billing, he argued that the average assessment of 460 units per assessment period was revised to 340 units and it was also levied from 4/2010 as ordered by the CGRF only. He argued that during the hearing conducted by CGRF he deposed that the consumption recorded by the meter is very low as zero and 10 units for the back period also and hence requested for revision for the entire period and accordingly, the CGRF has ordered to revise the bill as committed by him. He also argued that though the consumer was charged less than his consumption from 12/2008, the licensee has levied short fall amount only from 4/2010. He also argued that the short fall amount claimed is not full compensation but only for a partial loss suffered by the licensee due to meter defect. He also informed that it is the lapse on the part of the employee of the organisation to identify the meter defect at the appropriate time and department action will be taken on the person responsible for such lapse. But Board should not loose its legitimate revenue due to the above.

8.6 Regarding arriving 340units per assessment as average he informed that on a review of meter reading it is noted that the consumption has started reducing from 10/2008 onwards. Hence , the previous two assessment for 8/2008 and 6/2008 were taken for arriving the average (i.e. 300 and 380 units)

and the average was arrived at 340 units as provided in regulation 11 of the supply Code. Though, the Board is entitled for the short fall amount from 12/2008, the shortfall amount was claimed only for a period of 2 years from 4/2010. Hence he argued that the shortfall amount levied is reasonable and conforming to code provisions.

**9. Written argument of the Respondent :**

9.1 During enquiry at CGRF the Executive Engineer / O&M/Anna Salai that corrected average billing would be made up to December'11 including the back period for which meter was defective for this, the consumer, Thiru. K. Ottmal Jain had not disputed except that no evidence or explanation had been given for the burnt meter.

9.2 Based on the CFC instruction vide reference Lr.No.CFC/DFC/AO/R/E4/1025/2004 dt. 12.10.2004 from Member (Accounts), the bill was revised for a period of two years and the consumer was intimated accordingly.

**10. Rejoinder to Written argument of the respondent : -**

10.1 There was no recordings containing the words "corrected average billing would be made upto December'11." It was never said the meter was defective except the 'Y' phase terminal melt. Even for the sake of argument , the matter of back period was recorded in the proceedings the aspect is beyond the scope of grievance raised before CGRF.

**11. Findings of the Electricity Ombudsman:-**

Though, the Appellant has given eight prayers, the four are the real issues and other prayers are only staying the operation of Assistant Engineer 's

short fall levy, exemption from payment based on CGRF order and staying of CGRF order. Hence, the following four prayers have alone been considered and the Appellant also agreed for the above.

- (i) to declare the orders of CGRF as illegal and not maintainable for its failure to adhere to the time schedule.
- (ii) to order licensee to bear the meter cost.
- (iii) to order payment of compensation for not replacing the defective meter
- (iv) to order refund of the excessive billing imposed on the Appellant for the billing period Dec.2011 and Feb.2012 and to cancel the Assistant Engineer 's short fall claim of Rs.18,034/- demanded in letter dated 4-4-2012.

## **12. Findings on the First prayer :-**

12.1 The Appellant argued that the order of the CGRF is not maintainable as the order was issued after the time schedule of two months provided in the Regulation.

12.2 The relevant regulation 7(7) of the Regulation for CGRF and Ombudsman 2004 is reproduced below:-

*“7(7) Grievance handling procedure for the forum: On receipt of the comments from the licensee or otherwise, the forum shall intimate an enquiry in regard to the complaint after serving a notice of the said enquiry on the complainant and the licensee concerned, mentioning “date, time and venue” of the enquiry by registered post with acknowledgement and complete the said enquiry as expeditiously as possible and every endeavour shall be made to pass appropriate order on the complaint within a maximum period of 2 months from the date of receipt of complaint by the forum.”*

12.3 On a careful reading of the said regulation, it is noted that the CGRF has to complete the enquiry as expeditiously as possible and every endeavour shall

be made to pass appropriate order on the complaint within a maximum period of 2 months from the date of receipt of the complaint.

12.4 Here, a maximum period of two months has been fixed, however, it has also been stated that every endeavour shall be made to pass the order within a maximum period of two months (i.e.) the forum has to make serious effort to complete the process within the stipulated time. But the said regulation does not make it a mandatory that CGRF shall pass its orders within 2 months from the date of filing of complaint before it and that the orders issued after two months is invalid and not maintainable in law.

12.5 Further it is also relevant to point out that as per 17(4)(a) of the Forum Regulations, if the complainant has not received any reply within 2 months from CGRF, they can file an appeal petition to the Electricity Ombudsman. Hence, the consumer has a remedy and he can file a petition before Electricity Ombudsman, if his complaint is not disposed by CGRF within 2 months.

12.6 In the present case, the respondent has stated that the complaint was registered on 18-1-2011. The Appellant also informed that he filed another petition on 6-3-2012 with additional grievances after the CGRF intimated the meeting date 13-3-2012 in its letter dated 3-3-2012. Hence, the CGRF has taken both the petition and disposed. As the additional grievance petition was filed by the Appellant on 6-3-2012, the Appellant's grievance petitions attained full shape only on 6-3-2012 and the petition was disposed on 21-3-2012 taking into account of the grievances filed in petition 6-3-2012 also. Hence, I am of the view that

there is no delay in the part of the CGRF in issuing its order. Hence, the first prayer is decided in favour of the respondent.

**13. Findings on the Second prayer:-**

13.1 The Appellant prayed not to collect the meter cost from him as he is only responsible for the safety of the meter.

13.2 The respondent argued that the y-phase terminal got melted only due to fault in the consumer installation and hence the cost of the meter has to be recovered from the Appellant. He also argued that if there is any external fault, then the meters in other services in the premises would have also been burnt. But there is no disturbance in any other services. During the hearing the EE/Annasalai informed that there is no failure of fuse in consumer installation and the current coil of the meter has also not opened. He also informed that the consumer wire connected to the meter has also not been burnt. He further informed that the connected load of the service is 2.2 KW.

13.3 The procedure for replacement of defective/damaged/burnt meter has been given in regulation 7(10) of the Supply Code and the same is reproduced below:-

*“7(10) The procedure to be followed for replacement of defective/damaged/ burnt meter shall be as follows:*

*(i) It is the responsibility of the Licensee to replace all defective meters belonging to the licensee at his cost*

*(ii) Since the safe custody of the meter is the consumers responsibility, replacement of meter due to damages shall be at the cost of consumer.*

*(iii) The cost of replacement for burnt meters shall be met by the Licensee unless it is proved otherwise that the burning out is due to the fault of the consumer.*

*(iv) When the meter is owned by the consumer and becomes defective / damaged or when the meter is burnt due to the fault of the consumer, it is the responsibility of the consumer to replace the meter by a healthy one, if he elects to continue to have his own meter. Otherwise the Licensee shall replace the meter and enter into an agreement for hire and collect the specified deposits.”.*

13.4 In the case on hand the issue is replacement of a burnt meter and hence regulation 7(10)(iii) is applicable. On a careful reading of the said regulation, it is noted that the cost of replacement of burnt meter shall be met by the licensee unless it is proved otherwise that the burning out is due to the fault of the consumer. Hence, the regulation stipulates that the cost of meter could be collected from the consumer only if the burning is due to the fault on the part of the consumer.

13.5 In this case, it was reported by the Assistant Executive Engineer /MRT that the seals are intact and y-phase terminal got melted at terminal block end and the meter may be treated as burnt.

13.6 As per the details given by the EE/Anna Salai during the oral hearing on 26-7-2012, the connected load is only 2.2KW whereas the meter capacity is 10 – 40 A. Hence, even the entire load of the above service is put on any one of the phases by the consumer (as he has stated that he is having a phase change over switch in his establishment) the load current would be around 10 Amps. Hence, there is no possibility of overloading due to transfer of load to a single phase in the Appellant's premises.

13.7 Further, it is also to be pointed out that if there is any short circuit in the consumer installation then, the fuse would have blown out but it is reported that there is no blowing out of fuse is noticed. It was also informed that the consumer wire connected to the y-phase has not been burnt or damaged. Had there been any fault in the consumer installation, the fuse would have blown out and the current coil of the meter may also have been burnt and there may be some damage in the wire connected to the meter if the fuse has not blown out. But it was reported that no such thing was noticed. Hence, I am of the view that the 'Y' phase terminal melting may be not due to the fault of the consumer and hence, the meter cost shall not be recovered from the Appellant.

**14. Findings on the Third prayer:-**

14.1 The appellant argued that he has informed the Assistant Engineer to change the meter on 31-12-2011 and the meter was changed only on 31-3-2012. Hence the Appellant has requested for payment of compensation as per Tamil Nadu Electricity Distribution and Standards of Performance Regulations for not changing the burnt meter within the stipulated period.

14.2 The respondent argued that the Appellant was informed to pay Rs.1517/- towards the meter cost for changing the meter vide Assistant Engineer's letter dated 5-1-2012. The Appellant has not paid the amount but made a representation to CGRF of Chennai EDC/Central on 13-1-2012 to withdraw the letter of Assistant Engineer dated 5-1-2012. As the matter was pending with CGRF, the licensee has not taken any further action to collect the amount and change the meter. Hence, payment of compensation under the Tamil Nadu Electricity Distribution Standards of Performance Regulations does not arise.

14.3 In this regard, the relevant regulation 11 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations is reproduced below:-

*“11. Replacement of meter: Wherever the licensee receive complaints or the licensee found during inspection/meter reading, that the meter in a service connection is not correct or defective or burnt, the licensee shall replace the meter after collecting the charges as applicable and within 30 days.”*

14.4 On a plain reading of the said regulation it is noted that the burnt meter has to be changed after collecting the charges as applicable and within 30 days. Hence there are two conditions one is payment of the required charges and the other is 30 days time limit. In the said regulation it has been clearly stated that after collecting the charges as applicable the meter could be changed. Hence, meter could be changed only if the required charge is paid.

14.5 In this case, the licensee has informed the Appellant to pay Rs.1517/- towards replacement of meter on 5-1-2012 in response to the Appellant's request for replacement of meter on 30-12-2011. The Appellant has not paid the above amount but filed a petition before CGRF of Chennai, EDC/Central for withdrawal of the Assistant Engineer's letter dated 5-1-2012 and to set right the defect found in the meter. Further, he has also filed another petition to CGRF with additional grievances on 6-3-2012, when the CGRF informed the date of meeting of the CGRF on 13-3-2012 and finally both the petitions were disposed off by the CGRF in the meeting conducted on 21-3-2012 and the order of CGRF was issued on 23-3-2012. The CGRF has directed the respondent to change the meter immediately and also directed petitioner to pay the meter cost within 30 days. The respondent has obeyed the order of CGRF and changed the meter on

31-3-2012. But the appellant has not paid the meter cost but preferred an appeal to Electricity Ombudsman.

14.6 It could be noted from the previous para, that the Appellant has not paid the meter cost and represented the matter to CGRF. As the matter is pending with CGRF, the respondent has to wait for the orders of CGRF before taking any action. In view of the above, I am of the considered opinion that the respondent could not be blamed for not changing the meter within 30 days since the matter was brought before the Forum before expiry of 30 days time and the matter becomes sub-judice.

**15. Findings on the Fourth prayer:-**

15.1 The Appellant prayed for refund of excess amount collected for the billing period Dec.2011 and Feb.2012 and to cancel the short fall claim of Rs.18,034/- demanded in Assistant Engineer s letter dated 4-4-2012.

15.2 This prayer consists of two issues. The first issue is refund of the excess charge collected from the Appellant for the assessment period of Dec.2011 and Feb.2012 and the second issue relates to cancellation of the average consumption levied by the Assistant Engineer for the period from 4/2010 to 10/2011.

15.3 During the hearing on 26-7-20112, the Appellants representative argued that the average consumption for the meter defective period (i.e) December and Feb.2012 alone could be claimed by the respondent. He also argued that the prayer made to the CGRF and the order issued was also with regard to fixing of average consumption charges for above period only. But the respondent has

issued demand for a period from 4/2010 to 2/2012 which is violative of CGRF order.

15.4 Regarding meter defect he cited the computer statement of the respondent and argued that the respondent has recorded assessment status as normal upto 12/2011 assessment and recorded defective in 12/2011 assessment and without meter on 2/2012 assessment. Hence, he argued that the respondent can claim average consumption only for the above period. Further he argued that average consumption can also be calculated based on previous two assessments or any two consecutive two assessment period during the preceding 12 months. But the respondent has calculated the average consumption based on 8/2008 and 6/2008 which is not correct.

15.5 The Appellants representative also cited regulation 7(3) and 7(5) of the supply Code and argued that it is the responsibility of the licensee to erect high quality, high precision and accuracy meter in the service and the quantity of electricity recorded by such meter shall be taken as the quantity supplied by the licensee.

15.6 He also cited regulation 8(5) and 8(6) of the Supply Code and argued that in case of LT services, the particulars of readings, energy consumption and charges payable shall be incorporated in the meter card and the consumer shall make payment for the above charges entered in the meter card. He argued that the Appellant has paid the charges as recorded in the meter card which are taken from the meter erected in the service. Hence, whatever consumption

recorded in the meter has been recorded in the meter card and paid by the consumer. Hence, there is no need to pay the shortfall as claimed by the respondent.

15.7 The Executive Engineer/O&M/Anna Salai argued that during the CGRF meeting conducted on 21-3-2012, the consumption recorded in the past period as zero less than 10 units were discussed in the CGRF meeting and was informed that the shortfall will be claimed for the entire period also. The entire period means, the period in which the consumption recorded is very low. He argued that after 8/2008, the meter become sluggish and shown less consumption. He also argued that as per regulation 11(2), the immediate 4 month consumption has to be taken for arriving at the average. Accordingly the 8/2008 and 6/2008 consumption were (300 units and 380 units) taken for arriving the average consumption of 340 units. He further informed though, the consumer has paid less than his actual usage from 10/2008 assessment period onwards, shortfall was claimed only for a back period of two years from 4/2012.

15.8 In this connection, on a scrutiny of the consumption recorded from 10/2008 to 10/2010 (the period upto which shortfall was claimed) it is noted that the consumption is zero for 5 assessments and 10 units for 5 assessment periods. The connected load in the service is 2.2 KWs and the Appellant has informed that his service is having one Air conditioner also from 2008 onwards.

15.9 After hearing both side views on the fourth prayer of the Appellant, I fix the following are the issues to be considered for arriving the findings

- a) Whether the meter is defective? If so the period from which it is defective?
- b) What is the average consumption to be adopted for the defective period?
- c) Whether the Appellants contention that he shall be charged average consumption from 12/2011 only is correct?

**15.10. Findings on issue 'a' :**

(i) It is reported by the Assistant Executive Engineer /MRT in his report dated 20-2-2012 that the Y-phase terminal got melted at terminal block end. Hence this meter may be treated as burnt and take action as per rules in vogue.

(ii) As the MRT has declared the meter as burnt, there is no dispute that the meter is defective. But the real dispute is when did the meter become defective. The Appellant argued that the meter has become defective only from 12/2011 as recorded in the computer statement. The respondent argued that on an analysis of the consumption recorded, the meter is sluggish and recorded the consumption less than the actual after 8/2008 assessment and hence it is defective from 10/2008 onwards.

(iii) In order to arrive at a solution, the consumption pattern of the service has to be studied. The consumption pattern of the above service for the years 2007, 2008, 2009, 2010, 2011 and 2012 are furnished below:-

Assessment in period	Consumption in units					
	2007	2008	2009	2010	2011	2012
2	180	160	20	0	0	460 (Ave)
4	300	360	150	10	0	20
6	340	380	90	10	10	270

8	300	300	60	10	0	220
10	280	210	30	10	0	-
12	180	60	10	0	460 (Ave)	-
Total	1580	1470	360	40		-
average consumption/ bimonthly	263	245	60	7	-	-

(iv) On an analysis of the consumption recorded from 2007 to 2011, it is noted that the average consumption per assessment is 263 units in 2007 and 245 units in 2008 and has come down to 60 units in 2009 and 7 units in 2010. The service is tariff V service with a connected load of 2.2 KW. The Appellant also informed that he is having an Air conditioner also in his service but he stated that he is using it sparingly.

(v) On an analysis of consumption recorded in the year 2010 and 2011, it is noted that the energy recorded in the meter is zero in 2 assessment period and 10 units in four assessment period in 2010 and zero in four assessment period and 10 units in one assessment period in 2011. The above consumption per assessment period is very low and definitely lower than the actuals. The above very low consumption may be either due to meter sluggishness or there is really no activities/usage in the above service. When the Electricity Ombudsman asked the appellant whether zero units consumption in an assessment period is correct, he simply replied that it may be correct without specifying the reasons. He said that he uses only some fans and lights and uses the air conditioner rarely. However he has not indicated that the shop was closed for some period or any other valid reason for such a low consumption of zero or 10 units. If there is no usage in the service then the consumption of 20

units for 4 days 270 units for 6/12, and 220 units for 8/12 assessment period after changing the meter would not have occurred. The average consumption per day is 5 units in 4/2012 4.4 units per day in 6/2012, and 3.7 for 8 / 2012.

(vi) In view of the facts furnished in the previous paras, I am of the view that the meter is only sluggish and has not recorded the correct consumption during 2009, 2010 and 2011, further, the consumption recorded in 12/2008 assessment period is also only 60 units which is also below the average consumption per assessment period. However, the 10/2008 assessment period consumption is 210 units, and it is nearer to 8/2012 assessment period consumption of 220units. Hence, I am of the view that the meter is not sluggish during 10/2008. Hence, it is construed that the meter has recorded consumption less than actual from 12/2008 assessment period onwards. As there is less consumption than the actual, I am of the view that the meter is defective after 10/2008 assessment period.

**15.11 Findings on issue 'b':**

(i) Regarding arriving the average consumption, 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.”*

(ii) On a perusal of the above, regulation, it is seen that either regulation 11(2) or 11 (5) has to be adopted for arriving the quantity of electricity supplied during the meter defective period.

(iii) The respondent has adopted regulation 11.2 for arriving at the average consumption for the defective period. As per the respondent the meter is defective after 8/2008 assessment period (i.e) from 10/2008 assessment onwards. Hence the respondent has taken the consumption of 8/2008 and 6/2008 (ie.) the immediate preceding four months and arrived the average consumption of 340 units.

(iv) The Appellant also agreed that the regulation to be followed is either 11(2) or 11(5) of the Supply Code. But, his contention is that the meter is defective from 12/2011 only and hence average has to be worked out either based on 8/2011 and 10/2011 consumption or based on any two consecutive assessment periods between 12/2010 and 10/2011. If his argument is taken then the average consumption could be either zero or 5 units. As the bimonthly consumption of a trader with one air conditioner though sparingly used cannot be 5 units, I am not accepting the contentions of the Appellant.

(v) The Appellant however agreed to take the average consumption based on subsequent 2 assessment period if the average consumption is charged only from 12/2011 onwards upto the date of provision of new meter.

However, the respondent is not agreeable for the above and argued that the average charged by him is correct and is conforming to regulations.

(vi) As per the findings on issue “a”, the meter is defective after 10/2008. Hence, applying regulation 11.2, the average consumption could be arrived by taking the average of 10/2008 and 8/2008 consumption recorded. The average consumption thus worked out to 255 units. Hence, I am of the view that the average bimonthly consumption for the defective period may be taken as 255 units.

**15.12 Findings on issue ‘c’ :-**

(i) The Appellant’s representative argued that he has filed a petition to CGRF for revising average consumption of 460 units charged for Dec.2011. But, the respondent has revised the average consumption as 340 units and claimed the shortfall amount for the period from 4/2010 onwards. This is violation of CGRF orders. He informed that the shortfall amount could be claimed only from Dec.2011 to 31-3-2012.

(ii) The Appellant’s representative also argued that the respondent have declared the meter as defective only during Dec.2011 and not before. hence, whatever recorded in the meter has to be treated as energy supplied for the respective assessment period as per regulations 7(3) and 7(4) of the Supply Code and charges can be levied for the above recorded units only as per regulation 8(5) and are to be paid as per regulation 8(6).

(iii) In this regard, the relevant regulation of the Supply Code viz., 7(3), 7(5), 8(5) and 8(6) cited by the Appellant’s representative are reproduced below:-

*“Installation of Meter 7(3): Unless the consumer elects to purchase his own meter, the Licensee shall provide meter of high quality, high precision and accuracy and may require the consumer to give adequate security for the price of the meter and pay the hire charges therefor. Where the consumer elects to purchase his own meter, the Licensee shall ensure that such meter is of high quality, high precision and accuracy and shall arrange to recalibrate the same at consumer cost.*

*7(5) The quantity of electricity recorded by such meter shall be taken as the quantity actually supplied by the Licensee.*

*8(5) In case of LT services, after taking the meter readings, the particulars of meter readings, energy consumption and charges payable will be incorporated in the consumer meter card.*

*8(6) Payment for energy supplied shall be made by the consumer according to the meter readings referred to above and on delivery of a bill therefor in the case of High Tension consumers and incorporation of current consumption charges in the consumer meter card or assessment slip in the case of Low Tension consumers.”*

(iv) On a careful reading of the said regulations, it is noted that the meter erected in the consumer installation shall be of high quality, high precisions and accuracy as per regulation 7(3) of the Supply Code and the consumption recorded by such meters shall be taken as the quantity actually supplied by the licensee as per regulation 7(5). As per regulation 8(5) of the supply Code, the meter reading and consumption are to be recorded in the meter card in case of LT services and the charges recorded in the meter card are to be paid by the consumer as per regulation 8(6).

(v) The Appellants argument is as he has paid the charges for the consumption entered in the consumer meter card, the payment in respect of billing period before 12/2011 is correct as per the above regulation.

(vi) In this regard, it is to be noted that the said regulations are applicable only if the meter is not defective. But, in the case on hand, on a review of consumption recorded and paid by the Appellant for the year 2011, 2010 as furnished in para 15.10(iii), it is noted that the consumption recorded is zero in six assessment periods and 10 units in 5 assessment periods. The service in question is charged under tariff V and its connected load is 2.2 KW which includes one air conditioner also. Considering the nature of the service and connected load, the consumption of zero units/10 units in an assessment period of 2 months will definitely be leading to a conclusion that meter is defective. When the meter is defective, the consumption recorded in the meter cannot be taken as actual consumption of the service for charging the electricity consumption charges as contemplated in regulation 7(3) and 7(5).

(vii) It is true that the respondent has not noted the low consumption in the service and taken action to test and change the meter. But at the same time, the lapse on the part of an employee of the licensee shall not result in unjust enrichment to the consumer and non recovery of legitimate revenue to the licensee.

(vii) It is also to be pointed out that though the meter is defective after 10/2008 assessment, the licensee has claimed shortfall only for a period of 24 months from 4/2010. In this regard, it is to be pointed out that for 2/2010 consumption charges paid by the consumer is for zero units and for 12/2009, the same is for 10 units. Hence, the licensee is losing its revenue for about 18

months for its mistake of not identifying the meter defect even after the claim now demanded by the licensee.

In view of the reasons furnished in previous paras, I am of the view that the licensee's claim of short fall for 4/2010 can be considered as correct as the meter has recorded less consumption even before 4/2010.

**16. Conclusion :**

16.1 The findings on the prayers discussed in paras 11 to 15 are furnished below:

**Prayer (i)**: As per the findings in para 12, there is no delay on the CGRF in disposing the petition.

**Prayer (ii)**: As per the findings furnished in para 13, the charges towards replacement of burnt meter has to be borne by the licensee and it need not be collected from the Appellant.

**Prayer(iii)**: In view of my findings in para 14, I am unable to order any compensation for not changing the defective meter within the time limit specified in Tamil Nadu Electricity Distribution Standards of Performance Regulations.

**Prayer (iv)**: In view of my findings given in para 15, it is held that the Appellant is liable for payment of shortfall amount from 4/2010 to 2/2012 at the rate of 255 units per assessment period.

16.2 With the above findings the A.P.No.16 of 2012 is disposed of by the Electricity Ombudsman. No cost.

**(A.Dharmaraj)**  
Electricity Ombudsman

To

1. Thiru K.Ottmal Jain,  
10, Kesava Iyer Street,  
Park Town,  
Chennai-600003.
2. Superintending Engineer,  
CEDC/Central  
TANGEDCO,  
Valluvarkottam,  
Chennai.
3. The Chairman  
TANGEDCO,  
NPKR Malaigai,  
144, Anna Salai,  
Chennai – 600 002.
4. The Secretary  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai  
Egmore,  
Chennai – 600 008.
5. The Assistant Director (Computer) - **for hosting in the website.**  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai  
Egmore,  
Chennai – 600 008.