



## **TAMIL NADU ELECTRICITY OMBUDSMAN**

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

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

#### **Appeal Petition No. 4 of 2013**

M/s Fomra Polymers Ltd.,  
Mahiya Industrial Estate,  
Uranganpatty,  
Madurai – District.

. . . . Appellant  
( Rep by Tmt. Saravana Porchelvi,  
Advocate )

Vs

The Junior Engineer,  
Distribution /Uranganpatty,  
Madurai Electricity Distribution circle  
TANGEDCO  
Madurai -20

. . . . . Respondent  
(Party in Person )

**Date of hearing : 9.4.2013 & 21.5.2013**

**Date of Order : 30-5-2013**

The above appeal petition No.4 of 2013 came up for hearing before the Electricity Ombudsman on 9.4.2013 & 21.5.2013. Upon perusing the above appeal petition, the counter affidavit, documents furnished in support of the arguments and after hearing both sides, the following order is passed by the Electricity Ombudsman.

## **ORDER**

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

The appellant prayed to pass an order allowing the appeal thereby setting aside the order dated 31.1.2013 passed by Consumer Grievance Redressal Forum of Madurai Electricity Distribution Circle in petition No.001/2012-13, consequently setting aside the demand dated 31.1.2012 made by the respondent with respect to SC No.213, uranganpatty distribution section.

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

Industrial service connection bearing SC No. 213 stands in the name of M/s Sigma mat (p) Ltd., and M/s Polymers is a lessee under M/s Sigma mat (p) Ltd., and is in possession of the premises. The above service is coming under the jurisdiction of the respondent. Based on the inspection report of the revenue intelligence squad, a demand notice dt.31.1.2012 was issued by the respondent raising a demand of Rs.1,15,984/- as shortfall amount for the assessment period 4/2008 & 6/2008. Aggrieved over the demand raised by the respondent, the appellant filed a petition before the CGRF of the Madurai EDC. The CGRF of Madurai EDC in its order dt.30.1.2013 has confirmed the demand raised by the respondent. Aggrieved over the above order of the forum, the appellant filed this appeal petition before the Electricity Ombudsman. The Appellant has also deposited Rs.28,996/- with the licensee towards 25% of the shortfall amount.

### **3. Findings of the CGRF of Madurai EDC :**

The conclusion given on the order dt.31.1.2013 of the CGRF of Madurai EDC is given below :

*“Conclusion :*

*After careful consideration of documents produced and on hearing both side arguments, this forum has observed the following aspects.*

- 8.1 The unauthenticated production chart produced by the petitioner can not be considered by the forum as authenticated evidence for lesser productivity and confirm that the production is in order.*
- 8.2 The petitioner had failed to produce the evidence for the absence of his workmen from April 2008 to June 2008 and hence forum confirmed that the argument by the petitioner for the absence of the workmen by the petitioner can not be taken as conclusive proof.*
- 8.3 The petitioner had submitted the authenticated sales tax statement only as evidence.*
- 8.4 But, scrutinizing the sales tax report produced by the petitioner , it is confirmed that there is no difference in sales (bimonthly) of aforesaid less production period mentioned by the petitioner.*
- 8.5 Scrutinizing the details produced by the respondent, it is found that the assessment of current consumption during April & June months for the year 2008 is higher than the assessment of the next year (2009) and which is on the higher side for the past year (2007) also.*
- 8.6 It is also found that, the less energy consumption recorded for the months from April 2008 to June 2008 is only due to sluggish recording in the meter caused due to the defect and subsequent melting of the terminal block and fused.*
- 8.7 The average shortfall amount was assessed based on the previous 4 months consumption (ie) from December 2007 to February 2008, as per the regulation of 11.2 stated in Tamil Nadu Electricity Regulatory*

*Commission Supply Code and levied a sum of Rs.1,15,984/- which is in order.*

*In view of the findings stated above, the forum orders that the shortfall amount of Rs.1,15,984/- becomes final and it should be payable by the petitioner. With the above findings, the petition is disposed of on merits.*

**4. Contention of the appellant :**

(i) The Appellant has been provided with industrial service connection (LT) in SC No.213 and the Electricity consumption reading is taken on bimonthly basis. On the basis of an inspection report by revenue intelligence squad with respect to SC No.213, a demand notice dated 31.1.2012 was issued by the respondent raising a demand for payment of a sum of Rs.1,15,984/- as shortfall amount for the period 4/2008 and 6/2008, payable by the Appellant . The reason for levy of the said short fall amount being, decreased energy consumption in the above said service connection, due to defectiveness (sluggishness ) of the meter and hence based on earlier four months average consumption the amount was arrived at and levied.

(ii) Low consumption during 4/2008 and 6/2008 was due to low production , which is due to absence of workmen, who are predominantly from north India and who went on vacation. In the succeeding years namely 2009 to 2012 during April to June the same pattern gets repeated.

(iii) A new electronic meter was installed on 10.10.2006. On 8.7.2008, it was found that meter terminal block melted and got fused. The Appellant has reported the same immediately. Prior to that no defects were noticed in the

functioning of the meter and periodical inspection by respondent also has not revealed any defects such as sluggishness etc.,

(iv) The consumer forum failed to appreciate that the meter cannot be termed defective, without following the relevant procedure as stated in Electricity Act and Rules. There was no MRT test result with CMRI downloaded data to substantiate that the meter is defective.

(v) When the defectiveness of the meter has not been proved, the fixation of consumption and corresponding charges based on preceding four months reading, when conditions in regard to use of electricity are not same, is erroneous.

(vi) The Consumer forum failed to appreciate that, the computed calculation sheet produced by the respondent, extracted in page 8 of the order, itself clearly shows that the consumption pattern for the corresponding period for the year 2009 to 2012 is low when compared to preceding or succeeding billing month. This crucial fact has been totally missed by the forum.

(vii) The consumer forum failed to appreciate that when low consumption has been recorded for the corresponding period during subsequent years the respondent has not made any claim against the Appellant.

(viii) The consumer forum erred in not placing reliance on the production chart produced by the Appellant stating it to be unauthenticated.

(ix) The finding arrived at by the Consumer Forum that less energy consumption was recorded due to defectiveness on account of melting of

terminal block is erroneous . Melting of terminal block will make the meter stop recording consumption.

**5. Contentions of the respondent :**

- (i) Normally if meter in any service connection is defective the same will be inspected by the respondent herein and the defective meter will be released and healthy meter fixed by the respondent. If any consumer raises dispute about the defectiveness of the meter then only the meter will be sent to MRT lab for testing. In this particular issue the Appellant has not made any objection at the time of releasing the defective meter. Hence, testing the meter at MRT lab did not arise.
- (ii) There was shortfall amount of Rs.1,15,984/- for the period of 4/2008 and 6/2008. The reason for shortfall is meter defective (i.e) sluggishness. Thereafter, the meter was removed on 8.7.2008 and a new electronic healthy meter was fixed on 4.8.2008. Since the meter was defective from 4/2008 and 6/2008 average was taken as per regulation 11 (2) of TN Electricity Supply Code. The average was arrived by taking the meter reading recorded during the period from 12/2007 and 2/2008, which is the basis for arriving the average.
- (iii) In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the licensee, the licensee will have the

right to demand an additional amount in case of under charging and the consumer will have the right to get refund of excess amount in the case of overcharging. The present demand is not hit by limitation since, the limitation starts from the date of bill.

- (iv) The less energy consumption were recorded for the months of April 2008 and June 2008 respectively due to the defect in meter. The defective meter was released on 8/7/2008 and new meter fixed on 4/8/2008. The data could not be download from the released meter through CMRI due to defective in it.
- (v) The Hon'ble CGRF has granted opportunity to the Appellant to produce authenticated documents to prove their case. But the Appellant has not produce any authenticated documents.
- (vi) The Appellant has paid 25 % (i.e) Rs.28,996/- of the shortfall amount . The receipt for the same was issued on 16.2.2013.
- (vii) There is no merit in the appeal and is liable to be dismissed .

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

In order to enable the appellant and the respondent to purforth their views in person, a hearing was proposed on 28.3.2013. As the learned advocate represented the Appellant prayed for an adjournment , the hearing was adjourned to 9.4.2013 and both the parties have attended the hearing on 9.4.2013. In the hearing conducted on 21.5.2013, neither the Appellant nor his representative attended the hearing. The respondent alone attended the hearing on 21.5.2013.

**7. Argument of the appellant :**

7.1 Tmt. M. Saravana Porchelvi, Advocate has represented the appellant. She reiterated the contents of the appeal petition.

7.2 The learned advocate argued that the meter has been declared defective on 8.7.2008 as the meter terminal block melted. The above was also informed to the respondent only by the Appellant. But the respondent is claiming average for the previous two assessment periods also (ie) for 6/2008 and 4/2008 on the assumption that the meter would have been defective from 4/2008. But, no test results or downloaded details are produced by the respondent to prove that the meter is defective from 4/2008.

7.3 The learned advocate argued that reduction in consumption during 4/2008 & 6/2008 is actually due to reduction in production which is due to absence of workmen. She also furnished copies of production statement for the period January 2008 to December 2008 which was furnished by the Appellant to the TNEB along with his letter dt.7.12.2009.

7.4 The learned advocate also argued that the consumption pattern for 2009 is also similar (ie) low consumption during April and June assessment period. She also argued that even in the subsequent years also the consumption pattern is more or less similar.

7.5 The learned advocate was requested to furnish records to prove that there was reduction in staff due to absence of workmen. She also informed that normally 6 to 7 persons will work in the factory but during the assessment period of April 2008 & June 2008, only 2 to 3 persons have attended the factory for the

production works. She informed that she will arrange to furnish the details available with her the client in this regard. She also informed that there is no other authenticated production details such as returns furnished to any Govt. Agency etc.,

7.6 Subsequently, the Appellant has furnished the Xerox copies of (i) Attendance register for the period from January 2008 to March 2009 and (ii) white meter card for the period from 2/2007 to 4/2012 vide his letter dt.24.4.2013 as agreed during the hearing on 9.4.2013.

## **8. Argument of the respondent :**

8.1 The respondent, Thiru. B. Ravichandran AE/D/Uraganpatty himself has presented his case.

8.2 The Assistant Engineer argued that the meter was changed due to burning of 'B' phase terminal. As one phase was burnt, there was no supply in one phase and the consumer has made a complaint and accordingly meter was changed after collecting the charges. As the Appellant has not raised any dispute regarding the defectiveness of the meter at the time of releasing the defective meter, the meter was not sent for testing. The Assistant Engineer also informed that due to burning of terminal, the data could not be downloaded from the released meter through CMRI.

8.3 The Assistant Engineer / D/Urangampatty argued that when compared to the previous year, (ie) 2007 consumption, it is noted that there was reduction in the recorded consumption which is due to sluggishness of the meter. He also cited the remarks of AEE/MRT's Pasumalai, letter dt.5.12.2013 in support of his

argument wherein the AEE/MRT has informed that in any electronic meter, there is a possibility for intermittent stoppage of energy recording, less energy recording of consumption etc., while in service.

8.4 The AE/D/Urangampatty has also argued that the Appellant has not produced any proof such as attendance register in support his claim of less staff during the period in question . He also pointed out that the production details are only statement submitted by the Appellant without any supporting documents.

8.5 On 21.5.2013, the AE/Distn argued that the Xerox copy of the attendance register now sent by the Appellant was not brought before the CGRF and hence it need not be considered.

8.6 In the Xerox copy of attendance register it is noted that the employees have not put their signature, only 'P' was marked for their presence. The person who marked 'P' has also not authenticated. He also pointed out that in some months out of 31 days all the persons have attended the factory for 30 days. (ie) there is no weekly off for the employees. Citing the above, the Asst. Engineer argued that the above documents could not be relied for arriving any decision.

## **9. Issues for consideration**

I have heard the arguments of both Appellant and Respondent and perused the documents adduced before me. On a careful consideration of the submission of bothsides, I find the following as issues for consideration.

(1) Whether meter become defective from the assessment period 4/2008 as contended by the respondent ?

(2) Whether the reduction in consumption is due to sluggishness of the meter as contended by the respondent ?

**10. Findings on the First Issue :**

10.1 The Appellant argued that the meter was declared defective on 8.7.2008 due to burning of the terminal block. Hence, the meter could be defective from that date only.

10.2 The learned advocate representing the Appellant also argued that there is no test conducted on the meter to prove that the meter was sluggish from 4/2008. CMRI downloaded details are also not furnished to establish the defectiveness of the meter. There was no information regarding the meter's sluggishness while taking the meter reading either in 4/2008 or in 6/2008. Hence, the learned advocate argued that the contention of the respondent that the consumption is low due to sluggishness of the meter is only an after thought and not supported by any scientific results.

10.3 The respondent argued that the static meter was fixed on 10.10.2006 . It was reported by the Appellant that the terminal block has burnt. Hence, on 8.7.2008, the meter was checked and found that the 'B' phase terminal has burnt. The supply is not available to the consumer on 'B' phase . Hence, as the meter has burnt, the meter was changed on 4.8.2008 after collecting the cost of the electronic meter on 8.7.2008. He also informed that in any electronic meter there is a possibility for intermittent stoppage of energy recording, less recording of consumption etc., while in service. He said that the above was the remarks of MRT / Pasumalai. Hence, he argued that there may be intermittent stoppage of

energy recording in the electronic meter fixed in the above service which lead to the reduction of consumption during 4/2008 and 6/2008. He also argued that as soon as the meter was changed there was increase in consumption. Hence, the AE argued there was some sluggishness in the meter recording the consumption from 4/2008.

10.4 The Assistant Engineer also informed that as the meter has burnt, no test was conducted. He further informed that the consumer has not raised the issue of testing of the meter at the time of removing the meter. Hence, the burnt meter was removed and devoluted to stores.

10.5 Regarding not downloading the details, the Assistant Engineer informed that as the terminal has burnt, it is not feasible to download the details.

10.6 On a analysis of the details and arguments received, it is noted that the licensee has claimed average for 4/2008 and 6/2008 only based on the remarks of revenue intelligence squad. The consumption recorded during 2/2008, 4/2008, 6/2008,8/2008 and 10/2008 are detailed below :

2/2008	-	26550 units
4/2008	-	19110 units
6/2008	-	10520 units
8/2008	-	30470 units
10/2008	-	30980 units

10.7 It is seen from the above readings, that the consumption recorded has been low during 4/2008 and 6/2008 when compared to previous and subsequent consumption recorded after changing the meter. Hence, the revenue intelligence

squad has suggested to levy average charges for 4/2008 and 6/2008 assessment period after reviewing the consumption pattern.

10.8 When the respondent was requested to intimate the action taken by the licensee when there was a reduction in consumption during 4/2008 and 6/2008, the respondent informed that no action was taken to test the meter.

10.9 As per licensee circular dt.13.6.2003, the defective static meter shall be sent to MRT for examination and downloading the details recorded. Had this been done, there may a possibility to check the data to confirm the intermittent stopping of the electronic meter as contended by the respondent. But this has not been done. The argument putforth by the respondent for not down loading the details is due to burning of the terminal block. In such cases, the meter could have been sent to the manufacturer for downloading the details. But, the licensee has not done the above also.

10.10 It is observed that the consumption of 26550 units recorded during February 2008 has reduced to 19110 units in 4/2008 assessment period and further reduced to 10520 units in 6/2008 assessment period. The reduction during 4/2008 is 28% and during 6/2008 is 60% when compared to the consumption of February 2008. When noticing such a drastic reduction in consumption, the licensee ought to have checked the meter for its healthiness and accuracy . At least, the details recorded could have been downloaded to analysis the cause for such reduction either during 4/2008 or 6/2008 on noting the reduction in consumption. But, the licensee has not done the above exercises to establish the meter's defectiveness from 4/2008 to 6/2008.

10.11 As there was no test results, or downloaded details to establish the meter become sluggish from 4/2008 assessment period, I am of the view that respondent has failed to establish that the meter is sluggish in recording the consumption from 4/2008.

**11. Findings on the Second Issue :**

11.1 The Appellant argued that the reduction in consumption is due to low production during 4/2008 and 6/2008 in the factory as the operators who are from Northern part of India have gone on leave during the period from April to June. He also informed that during the above period, they are unable to operate their plant properly due to less number of workmen. The learned advocate also informed that the work force is 6 to 7 persons during normal period and the same will be reduced to 2 to 3 persons during April to June. The Appellant has furnished the consumption during 2007 to 2012, to justify its argument. The details are furnished below :

Month/ Year	2007	2008	2009	2010	2011	2012
Feb	43173	26550	27190	14416	15970	14400
April	38632	19110	19940	16154	7510	10660
June	33342	10520	13312	10690	5420	17750
August	37921	26893	21519	18520	14830	18420
October	31510	30570	17260	15410	18920	18350
December	27430	30980	18939	12700	18900	19240

11.2 The learned advocate has also furnished production details from January 2008 to December 2008 in support of the claim of low production during April to June. The Appellant has furnished Xerox copies of attendance register for the period from January 2008 to March 2009 to show that there was reduction in

staff strength during April 2008 to June 2008. As per the Xerox copy of the attendance register furnished, the staff strength is reduced to 2 nos only from April to June 2008 as against the normal strength of 5 nos in other periods.

11.3 On scrutiny of the Xerox copies of the attendance register the following were observed :

(i) Five persons name alone find place in the attendance register and their presence was marked as 'P' only. The individuals have not put their initials in the attendance register in proof of having attended the work.

(ii) The supervisor or the person who has marked the attendance have also not signed in proof of having marked the attendance.

(iii) There is correction in the year and in 'P' marking in certain case, but corrections are not authenticated.

(iv) The page nos for January 2008 is 42 & 43 and for February 2008 is 44 & 45. But, the page nos for April and May 2008 is 34 & 35 and thereafter the pages are in the ascending order. Hence, it is noted that for the continues period from January 2008 to December 2008 the page number in the attendance register is not continues.

(v) The February 2008 being a leap year has 29 days . But in the attendance register, the number of days shown for February is 28 days.

(vi) There is no specific weekly off for any one of the employees. Either all of them present or all are absent. In some months, the number of non working days is one or two only.

11.4 In order to verify the original and to clarify the above points with the

Appellant, a hearing was conducted on 21.5.2013. But, the Appellant has not attended the above hearing and also not sought any adjournment.

11.5 In view of the discrepancies found in the Xerox copy of the attendance register furnished, I am unable to take the evidence of the attendance register furnished by the Appellant to arrive at the conclusion.

11.6 The respondent argued that the reduction in consumption is due to sluggishness of the meter only. He cited 2007 consumption pattern and argued that the consumption has come down during 2008 when compared to the corresponding period consumption in the year 2007. Further, after changing the defective meter, the consumption has increased and comparable to other months. He argued on comparison of the consumptions recorded in all the assessment periods in 2008, the consumption is less only during April 2008 and June 2008. Hence, he argued the sluggishness is the cause for reduction in consumption.

11.7 The respondent argued that the production details furnished by the Appellant is not an authenticated details. It is a statement signed by the Appellant and there is no supporting documents to confirm the statement. Further he has also argued that in the attendance register respective employees have not put their signature but only 'P' has been marked in support of their presence and the person who has marked the attendance has not also not signed in the register in proof of having marked the attendance etc., in support of their claim of less staff attended the work during the period in question. Hence, he contended that the Appellant's argument of low production due to less staff may be rejected.

11.8 It is noted from the arguments of both parties, that the Appellant is arguing that the reduction in consumption during 4/2008 6/2008, is due to low production which is due to the absence of operators to run the factory. But, the proof given by the Appellant is not acceptable to me as per my views furnished in para 11.3, 11.4 & 11.5. Similarly, the respondent's argument is the reduction in consumption is due to meter sluggishness, but no test results or downloaded details to substantiate the claim was submitted. Hence, both side arguments are without any supporting documents only.

11.9 Hence, in order to find the cause for reduction in consumption, the consumption pattern of the above service is to be analysed. Hence, the consumption pattern for the above service for the year 2007, 2008, 2009, 2010, 2011 and 2012 are furnished below

<b>Month/ Year</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Feb	43173	26550	27190	14416	15970	14400
April	38632	19110	19940	16154	7510	10660
June	33342	10520	13312	10890	5420	17750
August	37921	26893	21519	18520	14830	18420
October	31510	30570	17260	15410	18920	18350
December	27430	30980	18939	12700	18900	19240

11.10 On a analysis of the consumption pattern from 2007 to 2012 it is noted that there is a dip in the consumption during assessment period April when compared to the consumption of Feb assessment period except during 2010. Similarly, the consumption recorded during June assessment period is also less than the April assessment period except in the year 2012.

11.11 The percentage variation between February and April assessment period and between April and June assessment period is furnished below :

2007		2008		2009		2010		2011		2012	
Con	Diff										
43173	-10.51%	26550	-28.02%	27190	-26.66%	14416	+12.05%	15970	-52.97%	14400	-25.97%
38632	-13.69%	19110	-44.95%	19940	-33.24%	16154	-32.59%	7510	-27.82%	10660	+66.51%
33342		10520		13312		10690		5420		17750	

11.10 It is noted from the above statement that the consumption during the assessment period ending April is less than the previous period consumption by 10.51% in the year 2007, less by 28.02 % in the year 2008 less by 26.66% in the year 2009 less by 52.97% in the year 2011 and less by 25.97% in the year 2012. Out of the six years taken for analysis, the reduction in consumption is more than 25% in four years (ie) 2008, 2009, 2011 and 2012 and 10.51% in one year (ie) in 2007 and increased by 12.05% in one year (ie) during 2010. In otherwords, the consumption during April assessment period is less than the February assessment period in all the years taken for analysis except the year 2010.

11.11 Similarly, the June bimonthly assessment period's consumption is also compared with the consumption of April and noted that the consumption for the period ending June is less by 13.69% in the year 2007, less by 44.95% in the year 2008, less by 33.24% in the year 2009 less by 32.59% in the year 2010 and less by 27.52% in the year 2011. But of six years taken for analysis the reduction in consumption is more than 25% in 4 years (ie) 2008,2009,2010 & 2011 and 13.69% in one year (ie) during 2009. Here also during the year 2012 alone, the consumption is more by 66.51%. In otherwords, the consumption during June assessment period is less than the consumption recorded during April assessment period in all the year taken for analysis except, the year 2012.

11.12 It is observed from the analysis discussed in previous paras, 11.10 & 11.11 that the consumption of M/s Fomra Polymers is less during April and June assessment period generally (ie) the out of the five years taken for analysis, there is dip in consumption in 4 years excluding the year 2008. Hence, I am of the view that the reduction in consumption during the year 2008 may also due to working pattern of the company and may not be due to sluggishness of the meter as contended by the respondent.

## **12. Conclusion :**

12.1 In view of my findings in paras 10 & 11 above, the order dt.30.1.2013 of CGRF of Madurai EDC is set aside.

12.2 The respondent is directed to adjust the 25% of the amount paid by the Appellant, in the CC bill of the respondent in the next billing cycle.

12.3 With the above findings the Appeal Petition No. 4 of 2013 is finally disposed of by the Electricity Ombudsman . No Costs.

**(A. Dharmaraj)**  
Electricity Ombudsman

To

1. M/s Fomra Polymers Ltd.,  
Mahiya Industrial Estate,  
Uranganpatty,  
Madurai – District.

2. The Junior Engineer,  
Distribution /Uranganpatty,  
Madurai Electricity Distribution circle  
TANGEDCO  
Madurai

3. The Chairman,  
(Superintending Engineer),  
Consumer Grievance Redressal Forum,  
Madurai Electricity Distribution Circle,  
TANGEDCO(formerly TNEB),  
K.Pudur, Madurai 625 007.

4. The Chairman & Managing Director,  
TANGEDCO,  
NPKR Malaigai,  
144, Anna Salai, Chennai – 600 002.

5. The Secretary  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmi pathy Salai  
Egmore,  
Chennai – 600 008.

6. The Assistant Director (Computer) - **FOR HOSTING IN THE WEBSITE**  
Tamil Nadu Electricity Regulatory Commission,  
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