



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

A.P.No.51 of 2012

Thiru S.Jeganathan,
Proprietor,
T.V.S.Packaging Industries,
Pernaickenpatti,
2/1742, Sankarnagar,
Sivakasi

... Appellant
(Rep by Nil)

Vs.

Superintending Engineer,
Virudhunagar EDC,
TANGEDCO (Formerly TNEB)
65/1, Ramamoorthy Road,
Virudhunagar-626001

... Respondent
(Rep.by Thiru P.Sivakumar, JE,
Distn./Sithurajapuram)

Date of hearing : 12-2-2013

Date of Order : 25.3.2013

The above appeal petition No.51 of 2012 came up for final hearing before the Electricity Ombudsman on 12-2-2013. Upon perusing the appeal petition, the counter affidavit, connected records and after hearing the respondent on 12-2-2013, the Electricity Ombudsman passes the following Order:-

ORDER

1. Prayer of the Appellant :-

The Appellant prayed to set aside the orders of the CGRF of Virudhunagar EDC which directed the Appellant to pay a sum of Rs.21,210/- towards the audit short fall. The Appellant also prayed to refund the sum of Rs.3925/- wrongly collected from him towards meter charges.

2. Brief history of the case :-

The Appellant Thiru. S. Jeganathan is the owner of service connection No.250-007-967 and is charged under tariff III B. The above service is coming under the jurisdiction of JE/D/Sithurajapuram. The Appellant was directed to pay Rs.58,139/- as short fall collection for the assessment period 10/2010, 4/2011 and 6/2011. The Appellant filed a petition before the CGRF of the Virudhunagar EDC, the CGRF of Virudhunagar, in its order dated 8.11.2012 has ordered that a sum of Rs.21,210/- has to be paid by the Appellant towards short fall collection. Aggrieved over the above, the Appellant filed an appeal before the Electricity Ombudsman. As the Appellant has not deposited the 25% of Rs.21,210/- with the licensee, he was requested to pay the 25% of above amount and he has paid Rs.5303/- vide receipt No.TIV250AR2S4341 dated 28-1-2013. Accordingly, the petition was admitted.

3. Contentions of the Appellant :-

The Appellant has contended the following in the appeal petition.

- (i) He has been directed to pay a sum of Rs.58,139/- as short levy based on BOAB audit report. He filed his objection on 15-3-2012, 8-6-2012 and 17-8-2012. Based on the above, the JE/Sithurajapuram has recommended for cancellation of the audit amount in letter dated 28-6-2012 and the AEE

has also recommended the same vide his letter dated 4-7-2012. But Executive Engineer has not accepted the above recommendation and accordingly, the Appellant was directed to pay the audit short fall of Rs.58,139/-.

- (ii) In the CGRF meeting held on 15-9-2012, the explanation of the appellant was not taken into account but based on the views of the Executive Engineer, the CGRF has ordered that a sum of Rs.21,210/- has to be paid by the appellant towards audit short fall.
- (iii) The consumption recorded from 28-8-2010 to 30-10-2010 is 6660 units. But, the average consumption was taken into consideration based on the doubt that the meter would have become defective during 10/2010 itself.
- (iv) It is to be noted that the reading on 28-8-2010 is 19,7180 and the reading recorded in the meter on 30-10-2010 is 20,3840 and the difference between the above two reading has been taken as consumption during 10/2010. Further the Assessment status has been recorded as normal and the meter was shown as defective while taking reading on 30-12-2010. As per the above records, the meter is not defective upto 30-10-2010 and payment has also been made for the consumption of 6660 units recorded for that period. Hence there is no need to pay the shortfall amount of Rs.13,204/-.
- (v) The sales details for the previous assessment period ending on 28-8-2010 is 17,11,866.79 and corresponding consumption is 9560 units. Similarly the sales details for the period ending 30-10-2010 is 12,69,240.22 and the corresponding consumption is 6660 units. Hence, it is well established

that when the production is more consumption is more and when the production is less the consumption is also less.

- (vi) As the business is a seasonal one, he has given a letter on 4-1-2011 to the Assistant Executive Engineer to consider the consumption recorded during 12/2009 for arriving the average consumption for the meter defective period of 12/2010.
- (vii) The meter defectiveness shall be decided based on the MRT test results. But, the BOAB audit report is based on assumption. Hence, claiming shortfall amount based on assumption without any documentary evidence is contrary to Board rules.
- (viii) Without testing the meter in the MRT for no display, the meter cost of Rs.3800 + 125/- collected from him is to be returned.
- (ix) As the meter was defective, the average consumption for 60 days is arrived as 9175 units. Hence, the consumption from 25-2-2011 to 15-4-2011 for 48 days was calculated as 7650 units and the charges were paid. But, ordering to pay the 60 days average consumption for the 48 days is objected by him.
- (x) Readings were not taken in 60 days cycle as per Boards and Commissions order. No copy of order of the Board or Commission was furnished in support of the above claim.
- (xi) In the letter dated 22-1-2013, Appellant has contended the following:
 - (a) As per regulation 11(2) when the meter is defective or there is no meter, the previous four consecutive month's consumption has to be considered for arriving the average consumption for the meter defective period. As per the above, the average consumption is to be

worked out based on 8/2010 and 10/2010 consumption of 9560 units and 6660 units. The average consumption works out to 8110 units only. But amount collected for the extra units of 3292 as detailed below may be refunded.

- (i) 12/2010 – 1065 units
 - (ii) 2/2011- 1065 units and
 - (iii) upto 15-4-2011 (for 48 days) 1162 units.
- (b) The Assistant Engineer has recommended to drop the proposal of collection of short levy of Rs.8006/- stating that the amount collected for 48 days is correct.
- (c) The Appellant has requested for the following reliefs.
- (i) To waive the audit shortfall amount of Rs.13,204/- for the period from 28-8-2010 to 30-10-2010.
 - (ii) To waive the audit shortfall amount of Rs.8006/- for the period from 25-2-2011 to 15-4-2011.
 - (iii) To refund the amount of Rs.3925/- collected from the consumer towards changing the defective meter.
 - (iv) To refund the excess amount collected for 1065 units for the assessment period from 30-10-2010 to 30-12-2010 based on the wrongly calculated average consumption for the meter defective period.
 - (v) To refund the excess amount collected for 1162 units for the assessment period from 25-2-2011 to 15-4-2011 based on the wrongly arrived average consumption for the meter defective period.

4. Contention of the Respondent:-

- I. He respectfully submits that the appeal itself is not maintainable. The petitioner grievance has been considered, the actual amount to be paid is Rs.58,139/- and on consideration is reduced to Rs.21,200/-. The appellant is initiating another round of litigation in order to drag the payment of a meager amount to the Board and the reasons said in the appeal is artificial and unsustainable in law.
- II. For the period of 10/2010 the appellant has to pay Rs.46,654/- for the units 9175 but he has paid only the amount of Rs.33,450/- and balance amount of Rs.13,204/- was kept in the account of the appellant as per terms and conditions stipulated by the Board.
- III. For the period of 4/2011 the appellant has to pay Rs.46,654/- for the unit of 9175 but he has paid only the amount of Rs.38,648/- and the balance of Rs.8006/- was accurate as balance. He claimed that the period commenced from 25-2-2011 to 15-4-2011 consists of only 48 days. But original rules contemplated as per the Electricity Act "reading completed in the absence of meter reading the reading will be taken as bi-monthly average that means calculated for 60 days only. There is no provision to distinguish that the meter reading to be taken during the defective period day by day.
- IV. The Board itself has admitted that the Board itself has over sighted for the month of 6/2011 and it has been wrongly calculated. Therefore the appellant has to pay the actual meter reading amount. The same has been paid by the appellant. There is no dispute for the month of 6/2011. But the appellant claimed that the

oversight has been occurred during the above mentioned months as if it has occurred during the period 6/2011. But the facts are not being so. The Board fairly admitted that there was oversight during the month of 6/2011. After deducting the wrong entry totally the appellant has to pay a sum of Rs.21,200/-. Hence the appellant has preferred a petition before a CGRF dated 1-11-2011. But the forum has dismissed his grievances and strictly directed to collect the balance amount from the appellant.

5. Hearing held by the Electricity Ombudsman :-

In order to enable the Appellant and the Respondents to put forth their arguments in person, a hearing was held on 12.2.2013 before the Electricity Ombudsman. The Appellant has not attended the hearing. He informed that due to his illhealth he was unable to attend the hearing and also informed that he is not in a position to attend the hearing on any other date. He also prayed to render justice based on his written statements dated 6-12-2012, 22-1-2013 and 6-2-2013. The respondent was represented by Thiru P.jayakumar, JE/D/Sithujapuram.

6. Arguments of the Respondent:-

6.1 The Respondent was represented by Thiru P.Jayakumar, JE/D/Sithurajapuram.

6.2 He argued that the meter has become defective during 10/2010 itself and hence the average claimed for 10/2010 is correct. He also informed that the local 4% tax sales statement furnished by the Appellant is not an authenticated statement and hence could not be considered for arriving any conclusion.

- 6.3 Regarding the average consumption for the period from 25-2-2011 to 15-4-2011, the average consumption for any bimonthly period is arrived based on the guidelines given in the Supply Code and the average consumption so arrived shall be adopted irrespective of the number of days.
- 6.4 He also argued that the average consumption for the meter defective period has been arrived as per the guidelines given in the supply code and hence, it is correct.
- 6.5 Regarding meter cost he argued that the Appellant has not raised the issue before the CGRF. Being an appeal, the appellant cannot raise any issue which is not raised before the CGRF and hence, argued that the above prayer may be rejected.

7. Issues before the Electricity Ombudsman:-

On perusal of the appeal petitions, and subsequent written statement furnished by the Appellant and the counter affidavit filed by the respondent and the arguments put forth by the respondent's representative on the hearing date, I fix the following as issues for consideration.

- i) When did the meter become defective?
- ii) whether the average consumption adopted for the meter defective period by the Respondent is correct?
- iii) Whether, average consumption considered for the period from 25-2-2011 to 15-4-2011 is correct?
- iv) Whether the meter cost collected from the Appellant could be returned as prayed by the Appellant?

8. Findings on the First Issue:-

8.1 The Appellant argued that in the monthly consumption charges collection details available in the computer, the assessment status has been shown as normal during 10/2010 and shown as defective in 12/2010 and 2/2011 and shown as without meter from 15-4-2011 to 4-5-2011. He also informed that the above is the position in the consumer ledger also. Hence, he argued that the meter is defective only from 12/2010 as per licensee's computer statement. He also argued that no test result of the MRT has been furnished to establish the meter is defective from 10/2010.

8.2 He also argued that there was less production during 10/2010 assessment period than the production during 8/2010 assessment period and that is the reason for reduction in consumption during 10/2010 and not due to meter defect. He furnished the local 4% tax sales statement for the respective period in support of the above argument. He argued that for the consumption of 9560 units during 8/2010 assessment period the production is 17,11,866.74 and for the reduced consumption of 6660 units during 10/2010 assessment period the production is Rs.12,69,240.22. Hence, citing the above, he argued that the functioning of meter is normal and the reduction in consumption is only due to less utilisation and not due to any defect in the meter.

8.3 The respondent argued that meter was declared defective from 12/2010 as there was no display. However, while reviewing the consumption it was observed that the meter might have become defective from 10/2010 as there was considerable reduction in consumption during 10/2010 when compared to 8/2010 consumption.

8.4 In this regard, on perusal of the relevant page of meter change register furnished by the Appellant, it is noted that the meter was changed due to no display. The licensee have also not checked the meter and furnished the test result to

establish the meter has become defective from 10/2010 onwards. Further, the downloaded details of the said meter has also been not made available to verify the version of the licensee that the meter has become defective during 10/2010. In this regard , I am to point out that as per the licensee's circular dt.13.6.2003, the defective static meter shall be sent to MRT for examination and downloading of the recorded consumption. But, this has not been done by the respondent. The respondent have also neither submitted the downloaded details nor intimated the non availability of those details in response to my letter dt.19.2.2013. As the defect in the meter is no display, I am unable to accept the argument of the Appellant that the meter would have become defective during the previous billing period itself. Had it been a struckup case, there may be a feasibility of accepting the above argument.

8.5 The appellant also furnished copies of acknowledgement received for the monthly return filed under 'E' filing for the months of 6/2010, 7/12010,8/2010, 9/2010 & 10/2010 along with respective return in support of the above document. But, on verification of the above document, it is seen that the invoices pertains to subsequent months and previous months were also available in the annexure and are considered to arrive at the total value ((ie) in 7/2010 return invoice dt.7.8.2010, 7.9.2010, 7.10.2010 and 7.2.2010, 7.4.2010 are find place in the return). Hence, I am unable to consider the above returns. It is also noted that those details are all sales details which may not have linear relationship with consumption as sales during the month need not be the production during the month. Further, the appellant has also informed that he is not having any production details. Hence, it is construed that there is no production details to compare with the consumption of electricity to confirm the appellants argument of less consumption during 10/2010 due to low production.

8.6 Further, it is also observed that the consumption pattern during the subsequent year is also in the same pattern (ie) less during 10/2011 (6191 units) and more during 8/2011 (9090 units) . The consumption recorded in the previous year is 10/2009 – 7540 units and 8/2009 – 8200 units (ie) the 10/2009 consumption is lesser than 8/2009 consumption, but the difference is 660 units.

8.7 As the licensee has not established that the meter has become defective during 10/2010, either by producing test results or by producing downloaded details I am unable to accept the arguments of the respondent that the meter would have become defective during 10/2010 assessment period. Hence, the billing for 10/2010 assessment period already made and collected is correct.

9. Findings on the second issue:-

9.1 The Appellant argued that the average consumption is to be calculated based on the 8/2010 and 10/2010 bimonthly period consumption. The respondent have taken 8/2010 and 6/2010 consumptions for arriving the average consumption for the meter defective period.

9.2 In order to find whether the average calculated for the meter defective is conforming to the regulation, the regulation 11 (viz., Assessment of billing in case where there is no meter or meter is defective) of the Supply Code is to be analysed. The said regulation 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.”

9.2 On a plain reading of the above, regulation, it could be noted that regulations 11(2) and 11(5) are the related regulations for arriving the average consumption.

9.3 As per regulation 11.2, the electricity supplied during the period in question shall be determined by taking the average of the electricity supplied during preceding four months in respect of HT and LT service connection, 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.

9.4 As per regulation 11(5), if the condition, in regard to use of electricity during the periods as mentioned above were different, the assessment shall be made on

the basis of any consecutive four months period during the preceding 12 months when the conditions of working were similar to those in the period covered by billing.

9.5 In this case, the respondent has taken the bimonthly consumption of 8/2010 & 6/2010 for arriving the average consumption for the meter defective period. As the meter is defective from 12/2010 as per my findings on first issue in para 8.5 the above average calculation is conforming to regulation 11(5) wherein it has been stipulated to take any four consecutive months period during the preceding twelve months when the conditions of working were similar to those in the period covered by billing. As the appellant himself has stated that the consumption during 10/2010 is less due to less production, the working condition during the above period may not be similar to that of the meter defective period. Hence, adoption of any four consecutive months consumption during the preceding twelve months when the utilisation is similar for arriving the average consumption is as per regulation only.

9.6 As the licensee has arrived the average consumption as per regulation 11(5) of the Supply Code, I am of the view that the average consumption adopted by the licensee is conforming to the regulation.

10. Findings on third issue:-

10.1 The licensee has adopted the bimonthly average consumption of 9175 units for the meter defective period. The Appellant objected the adoption of 9175 units for the bimonthly period from 25-2-2011 to 15-4-2011 on the stand that the period from 25-2-2011 to 15-4-2011 is only 48 days and hence, proportionate levy of 7650 units done originally is correct and the difference in amount of Rs.8006/- levied subsequently based on audit remarks is wrong.

10.2 The respondent argued that in the absence of meter reading, the bimonthly average arrived will be taken for arriving the consumption charges for that period irrespective of the number of days in that particular bimonthly cycle. He also cited that though the bimonthly reading is taken once in 60 days in practice, there may be some difference in days between the two consecutive readings due to administrative convenience. Hence, argued that average for any bimonthly period is same irrespective of the number of days. The JE who represented the respondent also informed that during the above billing cycle all the services in that area were assessed for less than 60 days only.

10.3 In respect of the services, where the meters are in working condition, the consumption noted is actual hence, if there is early reading the consumers consumption will be less due to reduction in the assessment period and if the consumption is taken after 60 days, the consumption will be more due to increase in the utilisation period. However, those consumers will pay the charges only for the actual consumption as per the tariff applicable.

10.4 But, when average is being levied, the consumer may have to pay the same average charges of the bimonthly period say 60 days whether the bimonthly reading is taken with in 60 days or more than 60 days. Normally, the variation in number of days between any bimonthly periods will be very minimum. But here in this case, the bimonthly reading is taken in 49 days instead of 60 days and the licensee has adopted only proportionate day's consumption while preparing the bill and was paid by the consumer. But only on the basis of audit remarks, the difference in amount was now raised by the respondent.

10.5 As the Appellant is requesting proportionate charges based on the bimonthly average of 9175 units for the period from 25-2-2011 to 15-4-2011, I am of the view,

that the appellants request is reasonable and hence the balance claim of Rs.8006/- for the above period is set aside.

11. Findings on the Fourth issue:-

11.1 The Appellant has requested for refund of the meter cost of Rs.3925/- collected from him as it is against rules and regulations.

11.2 The respondent argued that the Appellant has not raised the issue before the CGRF and the amount was paid by him without any protest.

11.3 The appellant's petition filed before the CGRF was verified and found that the Appellant has not raised the above issue before the CGRF. Hence, I am of the view that the Appellant may agitate the above issue in CGRF first and if he is not satisfied with the orders of CGRF then he may file an appeal petition before the Electricity Ombudsman.

11.4 Hence the above prayer of the Appellant is not taken up in the present appeal.

12. Conclusion:-

12.1 In view of my findings in para 8, the meter has become defective during 12/2010 assessment period only. Hence, the respondent's audit short fall claim of Rs.13,204/- for the bimonthly period from 28-8-2010 to 30-10-2010 is set aside.

12.2 In view of my findings in para 9, the average consumption arrived for the meter defective period is correct.

12.3 In view of my findings in para 10, the audit short fall amount of Rs.8006/- claimed by the respondent is set aside.

12.4 In view of my findings in para 11, the prayer for refund of the meter cost paid for replacing the defective meter is not taken up in the present appeal.

12.5 In view of the conclusions given in previous paras, the orders of CGRF directing the appellant to pay a sum of Rs.21,210/- towards audit short fall amount is set aside. A sum of Rs.5303/- deposited by the appellant for filing this appeal petition may also be adjusted in the next bill and the balance if any may be refunded. A compliance report shall be sent to this office within 30 days from the date of the order.

12.6 With the above findings, the Appeal Petition No. 51 of 2012 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1. Thiru S.Jeganathan,
Proprietor,
T.V.S.Packaging Industries,
Pernaickenpatti,
2/1742, Sankarnagar,
Sivakasi

2. Superintending Engineer,
Virudhunagar EDC,
TANGEDCO (Formerly TNEB)
65/1, Ramamoorthy Road,
Virudhunagar-626001

3. The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Virudhunagar EDC,
TANGEDCO (Formerly TNEB)
65/1, Ramamoorthy Road,
Virudhunagar-626001

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,
No.19A, Rukmini Lakshmipathy Salai,
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