

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 25TH DAY OF NOVEMBER 2019 / 4TH AGRAHAYANA, 1941

WP(C).No.29701 OF 2011(K)

PETITIONER:

ASSISTANT EXECUTIVE ENGINEER
ELECTRICAL SUB DIVISION, KERALA STATE ELECTRICITY,
BOARD, THENGANA, KOTTAYAM DISTRICT.

BY ADVS.

SRI.P.SANTHALINGAM (SR.)

SRI.T.R.RAJAN, SC, K.S.E.B.

SRI.P.A.AHAMED, SC, KERALA STATE ELECTRICITY BOARD
LIMITED

SRI.N.SATHEESH

RESPONDENTS:

JOSEPH MATHEW

REENA RUBBER WORKS,

INDUSTRIAL NAGAR.P.O,

CHANGANASSERY,, KOTTAYAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25.11.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition is filed challenging Exts.P5 and P6 orders rendered by the Consumer Grievance Redressal Forum (for short "CGRF") and the State Electricity Ombudsman respectively. This writ petition is filed by the Assistant Executive Engineer of the Kerala State Electricity Board.

2. Heard the learned Standing Counsel for the writ petitioner. Though notice was duly served on the respondent, there is no appearance for the respondent.

3. It is submitted by the learned counsel for the petitioner that respondent had obtained an electric connection with effect from 05.02.1999 with a connected load of 39.841 Kilo Watts. The Anti Power Theft Squad, Kottayam had inspected the premises on 06.11.2009 and Ext.P1 site mahazar was prepared. It was found that there was a fault in connecting the pressure coil connection and current connection to the Transformer Meter in two of the phases. The respondent was informed that he could approach the Electrical inspectorate if he had any complaint with regard to the correctness of the

meter. However, it is contended that there was no error in the meter and the meter was not a faulty meter. It was only on account of the connections having been given wrongly that the meter was not recording the consumption as was actually being consumed. It is stated that the meter was recording only 15.38% of the actual consumption and taking the said consumption seen in a test conducted as a standard reference, a bill was raised under Section 24(5) of the Electricity Supply Code, 2005.

4. The respondent filed an application before the CGRF with a prayer to declare the site mahazar as null and void and seeking the issue of a revised bill as also seeking directions to the Board to replace the meter and to proceed as per Clause 33(2) of the Terms and Conditions of Supply of KSEB, 2005. The Board filed Ext.P4 objection pointing out that the case in hand was not one of faulty meter and that the provisions of Regulation 42 of the Terms and Conditions of Supply of KSEB, 2005, would have no application. It was contended that Section 24 of the Supply Code, 2005, deals with complaints regarding the accuracy of the bill and Clause 37(1) of the Terms and

Conditions of Supply of KSEB, 2005, provided that any complaint with regard to the accuracy of the bill shall be made in writing to the officer who has issued the bill. It is stated that in a case where the meter is not faulty and a bill has been raised on the basis of the reading of the meter which recorded a low reading only on account of the fault in giving the connection, the Board could issue a revised bill in terms of Regulation 37 and that is all that has been done in the instant case.

5. After considering the contentions, the CGRF, by Ext.P5, held that there is no report of irregularity, theft or unauthorised use of electricity on the part of the consumer. However, it was found that the consumer was liable to pay the charges for the consumed energy, which was not recorded in the meter and that the KSEB has every right to realise the same. However, it was found that the consumption for the meter faulty period is to be assessed on the basis of three months average consumption subsequent to the rectification of the defect of the meter as provided in Regulation 33(2) of the Terms and Conditions of Supply of KSEB, 2005. It was found

that the quantification in the revised bill was not in accordance with the said provision and that the revised bill was, therefore, improper.

6. Not being satisfied with the findings of the CGRF, the Board took up the matter again before the State Electricity Ombudsman. The State Electricity Ombudsman, in Ext.P6, also found that there was short measurement of the actual consumption. It was found that the monthly average consumption prior to 25.01.2008 was around 1730 units per month. The monthly average consumption, after 25.01.2008, is around 650-700 units. It was found that the conclusion that the meter had recorded only 15.38% against the actual consumption by testing with single phase heater load of 5 Kilo Watts may be correct at the time of testing under given specific condition. However, it was found that it is not proper to apply this short fall for the whole period mechanically and that the licensee is not entitled to reassessment in terms of Regulation 33(2) of the Terms & Conditions of Supply of KSEB, 2005. However, it was found that the CGRF had erred in ordering that the average of subsequent three months to be taken for

reassessment and the average of previous six months, prior to the metering system becoming defective, ought to have been taken for raising a bill. It was found that average of the prior six months before the meter became defective would be around 1730 units, which should be taken and reassessment made in respect of the period when the fault was in existence.

7. The learned counsel for the petitioner would contend that the provisions with regard to taking the average reading for the prior periods would apply only in cases where the meter is found to be faulty and in a case where there is no error in the meter and where the short fall could be properly assessed by testing the meter and finding the deficiency, which occurred due to the faulty connection, the action of the petitioner in having raised a bill taking note of the deficiency as revealed from the test conducted was completely just and proper and in accordance with provisions of law. It is stated that in a case where the meter is not faulty and there was error only the connection, the issue would have to be considered in terms of Regulation 37(5) of the Terms and Conditions of Supply of KSEB 2005, which provides for raising a revised bill taking note of the

deficiency in the consumption for the entire period. The learned counsel places reliance on a decision of a Division Bench of this Court in ***Southern India Marine Products Co. v. K.S.E.B (1995 (2) KLT 167)***, where a similar question was considered by this Court. It was found that it was only in cases of incorrect measuring of consumption due to faulty meter that the provisions of Section 26(6) of the Indian Electricity Act, 1910, would apply. It was found that in cases where meters referred to were capable of registering the amount of energy supply and could not register such supply only due to the fact that the wiring was not properly given, there would be no question of dispute as to correctness of the meter and that the issue was not liable to be referred in terms of Section 26(6). Relying on the precedents on the point, this Court found that in cases where the short measurement was on account of a defect in the connection given, there would be no question of reference under Section 26 and that a bill could be raised on the basis of the correct consumption for the entire period, as estimated. It was further found that the statute of limitation would not apply to the raising of a bill in respect of such short consumption. A

Bench decision of this Court in *Assistant Executive Engineer v. John P. Stephen (2005 KHC 2112)* also held that there was no infirmity in the Board serving a consolidated bill after assessing the energy consumed by the consumer in a case where the meter was working, but there was error in the recording of the power consumed on account of the reasons other than a faulty meter.

8. In the instant case also, it is not in dispute that the error in recording the consumption was not on account of a faulty meter. There is no contention that the meter was not functioning or was dis-functional. The contention is that the consumption was not being correctly recorded on account of an error in the connection given.

9. In the above view of the matter, the contentions raised by the petitioner to the effect that the Regulation 33(2) of the Terms and Conditions of Supply of KSEB, 2005 did not have any application appears to be a sound proportion.

10. Regulation 24(5) of the Kerala Electricity Supply Code, 2005 reads as follows:-

"If the licensee establishes that it has undercharged the consumer

either by review or otherwise, the licensee may recover the amount undercharged from the consumer by issuing such a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the licensee shall specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account”.

It is a specific case of the petitioner that the bill which has been issued to the respondent contains only the amounts found to have been undercharged for the period in question and that no penal charges have been claimed.

11. In view of the specific contentions raised and in the light of the decisions of the Division Bench of this Court, I am of the opinion that the petitioner is entitled to succeed in the writ petition. Exts.P5 and P6 are set aside. However, the respondent shall be permitted to remit the amounts found due in instalments without charging penal interest on the same.

This writ petition is ordered accordingly.

sd/-

ANU SIVARAMAN
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE SITE MAHAZAR AND REPORT DATED 06.11.2009 PREPARED BY SUB ENGINEER ELE. SECTION, THENGANA
EXHIBIT P2	A TRUE COPY OF THE LETTER NO.BB3/APTS/09- 10 DTD.12.11.2009 ISSUED BY THE KERALA STATE ELECTRICITY BOARD TO THE RESPONDENT
EXHIBIT P3	A TRUE COPY OF THE APPLICATION DTD.25.01.2010 FOR FILING COMPLAINT WITH THE CONSUMER GRIEVANCE REDRESSAL FORUM
EXHIBIT P4	A TRUE COPY OF THE OBJECTION DATED 03.03.2010 FILED IN OP NO.497/2010 BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM, KOTTARAKKARA.
EXHIBIT P5	A TRUE COPY OF THE ORDER DTD.15.05.2010 IN OP NO.497/2009 OF THE CONSUMER GRIEVANCE REDRESSAL FORUM, KOTTARAKKARA
EXHIBIT P6	A TRUE COPY OF THE ORDER DATED 12.10.2010 IN REPRESENTATION NO.P 147/2010 OF THE STATE ELECTRICITY OMBUDSMAN, KOCHI.