



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 98 of 2016

Thiru. S.C.M. Jamaldeen,
Jamals Sonu Terrace,
No.42, Loganathan Nagar 1st Street,
Chollaimedu,
Chennai – 600 094.

..... Appellant
(Rep by Thiru.S. Hussain)

Vs

The Executive Engineer/O&M,
K.K. Nagar,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 600 078.

..... Respondent
(Thiru. K. Murthy, AEE/Saligramam)

Date of hearing : 23-2-2017

Date of order : 16-3-2017

The petition dated 30-11-2016 filed by Thiru S.C.M. Jamaldeen,, Choolaimedu, Chennai-94 was registered as Appeal petition No. 98 of 2016. The above appeal petition came up for hearing before the Electricity Ombudsman on 23-2-2017. Upon

perusing the appeal petition, Counter affidavit and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the Appellant: The Appellant prayed for waiver of Audit short fall amount for the period during which the shop was kept vacant.

2. Brief History of the Case:

2.1 Service connection No.285-002-39 was effected in the name of Thiru. S.C.M. Jamaldeen. The tariff adopted for the above service connection is tariff V and the sanctioned load is 7 kw.

2.2 The meter installed in the said service connection was defective from 3/2009 and the meter was replaced on 1.12.2009.

2.3 Audit short fall amount of Rs.2,89,028/- was levied for the period from 3/2009 to 1/2011.

2.4 The Appellant filed a petition before the CGRF of Chennai EDC/South-I for waiver of short fall amount for the period in which the premises was kept vacant.

2.5 CGRF of Chennai EDC/South-I dismissed the petition. Aggrieved over the order of the CGRF, the Appellant filed this appeal petition before the Electricity Ombudsman.

3. Orders of the Forum

The CGRF of Chennai EDC/South-I issued its order on 27.10.2016. The relevant paras of the order is extracted below :

“Conclusion:

On verifying all the fact, the petitioner’s claim for having the premises vacant during 01/07/2009 has not been proved and also petitioner not provided substantial records for vacancy of the site. Also the petitioner has given letter on 22.08.09 informing vacancy of the site from 01.07.2009 (Which was not authenticated), it would have been the later thought.

Though the lease agreement between Rahimunissa and M/s.Reginiz Drugs Ltd., was from 01.12.2010, the reading taken on 05.01.2011 and consecutive billing cycle shows notable difference though the premises was occupied on 01.12.2010, as per the agreement and it is noticed that less consumption was entered.

Hence it is concluded that the methodology to claim shortfall period is found to be in order and the petition is disposed off.”

4. Contentions of the Appellant furnished the CGRF Petition :

4.1 The office premises bearing SC No.285-002-39 was vacant from 1.7.2009 and the same was intimated to the then Assistant Engineer on 28.8.2009.

4.2 The above vacant office was occupied by M/s Regenix Durgs Ltd., on 1.12.2010 and it has started its full function from 27.12.2010. The same was also intimated to the Assistant Engineer vide letter dt.11.1.2011.

4.3 It is requested to waive the amount pertaining to the above period.

5. Contentions of the Respondent furnished in the petition :

5.1 During the audit inspection by Board office audit branch, they have arrived shortfall amount in this service for the defective period from 3/2009 to 01/2011 for non adoption of correct average bill amount and they arrived a short fall amount of Rs.2,89,028/- in audit slip no.43, dt.22.2.2016.

5.2 On detailed verification of consumer ledger view of this service and the lease agreement produced by the consumer, it is observed that the existing meter was found struck-up with the reading of 1680 in 3/2009. Hence, average bill was raised for the period from 3/2009 to 11/2009, during this period the meter status was reported as defective in the consumer ledger view.

5.3 This defective meter was replaced by a new meter on 3.12.2009.

5.4 The audit has calculated an average consumption of 3910 units by taking the healthy meter consumption recorded in the month of 3/2011 & 5/2011 (ie $3930+3890=7820/2=3910$ units per bi monthly). The same average consumption of 3910 units was also adopted for the back period from 3/2009 to 11/2009.

5.5 Further, it is stated that after fixing the new meter on 3.12.2009, the meter had recorded very low/nil consumption for the period from 1/2010 to 1/2011. Hence, the average bill was levied by the Board office audit branch, for the entire period from 3/2009 to 1/2011 which is in order.

5.6 From the documents furnished by the petitioner it was found that the petitioner has given letter on 28.8.2009 intimating that the site was vacant from 1.7.2009 (In the letter only seal provided but no acknowledgment signature found).

5.7 The consumer approached consumer grievance redressal forum and based on the hearing on 27.10.2016, the consumer grievance redressal forum has issued the conclusion as below :

(i) On verifying all the fact the petitioner's claim for having the premises vacant during 1.7.2009 has not been proved and also petitioner not provided substantial records for vacancy of the site. Also the petitioner has given letter on 22.8.2009 informing vacancy of the site from 1.7.2009 (which was not authenticated) it would have been the later thought.

(ii) Though the lease agreement between Rahimunissa and Regenix Drugs Ltd., was from 1.12.2010 the reading taken on 5.1.2011 and consecutive billing cycle shows notable difference though the premises was occupied on 1.12.2010 as per the agreement and it is noticed that less consumption was entered.

6. Hearing held by the Electricity Ombudsman:

6.1 To enable the Appellant and the Respondent to putforth their arguments in person, a hearing was conducted before the Electricity Ombudsman on 23.2.2017.

6.2 Thiru S. Hussain, has represented the Appellant and putforth his side arguments.

6.3 Thiru Murthy, Assistant Executive Engineer / Saligramam the Respondent herein has attended the hearing and putforth his arguments.

7. Arguments putforth by the Appellant's representative on the hearing date :

7.1 Thiru. S. Hussain, the Appellant's representative informed that he is praying to waive the audit shortfall amount fully.

7.2 The Appellant's representative's argued that the premises was vacant from 1.7.2009 to 1.12.2010. Therefore, the shortfall levied for the above period was wrong as there was no usage during the said period.

7.3 He also argued that he gave a representation to the Assistant Engineer/ Alagirinagar on 28.8.2009 informing the vacancy of the premises from 1.7.2009. He informed that the above representation was received in the office of Assistant Engineer/Alagirinagar on 28.8.2009 as per the seal affixed in the said petition and no signature was affixed by the licensee officials.

7.4 He has also cited the copy of three months notice dt.1.4.2009 issued by the M/s Health Share intimating their desire to vacate the premises in support of the arguments that the premises is vacant from 1.7.2009.

7.5 He also argued that though the date of occupation was on 1.12.2010 the full fledged activity of the new tenant started from 27.12.2010 and the same was informed to the licensee vide his letter dt.11.1.2011 addressed to the Assistant Engineer.

7.6 The Appellant's representative argued that for the meter defective period, the licensee has already levied average charges considering the average

consumption as 100 units. Therefore, revising the above average based on 3/2011 and 5/2011 consumption is not reasonable.

7.7 The Appellant's representative also argued that the service was utilized by M/s Health Share upto 30.6.2009 and the premises was vacant thereafter till 1.12.2010. The new tenant (viz) M/s Regenix Drugs Ltd., have utilized the service from 1.12.2010 onwards. Therefore, he argued that taking the average consumption of the said tenant (viz) M/s Regenix Drugs Ltd., for the period from 3/2011 & 5/2011 for arriving the average consumption for the meter defective period 3/2009 to 7/2009 when M/s Health Share utilized the service is not justiable.

8. Arguments of the Respondent's representative putforth on the hearing date :

8.1 Thiru. K. Murthy, Assistant Executive Engineer/Saligramam who has represented the Respondent has reiterated the contents of the counter.

8.2 The AEE argued that the lease documents and the notice for vacating the premises furnished by the Appellant in support of the vacant position of the premises is not acceptable as the lease deeds are not registered. Therefore, he argued that the contention of the Appellant that the premises was vacant from 1.7.2009 to 1.12.2010 is not established.

8.3 The AEE argued that as seen from the consumption recorded, the consumption recorded during 3/2011 and 5/2011 are reasonable for arriving the average consumption. Therefore, the same was taken for arriving the average consumption.

8.4 He also argued that the consumption recorded in the meter from 1/2010 to 1/2011 are very low when compared to the consumption recorded from 3/2011 onwards. Therefore, the average consumption for the assessment period from 3/2009 to 1/2011 was also levied.

8.5 Regarding the Appellant's letter dt.27.8.2009 intimating the vacancy position of the premises the AEE argued that only office seal with dt 28.8.2009 was found on the representation but there is no authentication for having received the representation. Hence, the above may not be taken as the intimation from the consumer.

9. Findings of the Electricity Ombudsman :

9.1 On a careful consideration of the rival submissions, the issues to be considered are as follows :

- (i) Whether the meter is defective ?
- (ii) Whether the shortfall claimed is correct?

10. Findings on the First issue :

10.1 The Respondent argued that the meter is defective from 3/2009 to 11/2009 and a new meter was installed on 3.12.2009. He also cited the consumer ledger and informed that the status of the meter was recorded as defective for the above period. The Appellant also not disputed the above version of the Respondent.

10.2 As Appellant has not disputed the meter defective period indicated by the Respondent, there is no dispute between them with regard to meter defective period. Therefore, it is held that the meter is defective from 3/2009 to 11/2009.

11. Findings on the Second issue :

11.1 The Appellant argued that the shortfall claimed is not correct as the premises was vacant from 1.7.2009 to 1.12.2010. The Appellant has furnished a copy of lease deed executed by M/s Health Share and M/s Regenix Drugs Ltd., and notice issued by the tenant M/s Health Share to vacate the premises in the support of the above contention.

11.2 The Appellant also argued that for the meter defective period average consumption charges was already levied and paid. He further argued that levy of shortfall for a previous tenant based on the subsequent tenant's consumption during 3/2011 & 5/2011 is not correct.

11.3 The Respondent argued that the lease deeds furnished by the Appellant are not registered and therefore could not be considered as valid documents.

11.4 The Respondent also informed that the Appellant's letter dt. 27.8.2009 said to be received at the office of the AE on 28.8.2009 is not authenticated by the person who received it. Hence, it cannot be taken as a valid document.

11.5 On a careful examination of the arguments of the parties, it is noted that the shortfall claimed consists of two parts as below:-

3/2009 to 11/2009 – Meter defective period

1/2010 to 1/2011 – Consumption recorded is low.

11.6 The findings are discussed below on above period wise.

(A) Period from 3/2009 to 11/2009

The Appellant and the Respondent are in agreement that the defective meter was changed and a new meter was installed in the service during 12/2009

assessment period i.e. on 3.12.2009. (In consumer ledger it is 3.12.2009, in Account summary it is 1.12.2009 and in consumer meter card the date mentioned is 2.12.2009). As per the arguments of both parties that there is no dispute between them on the meter defective period.

(ii) The licensee has originally levied average charges for the period from 3/2009 to 11/2009 based on the consumption recorded during 5/2008 & 7/2008.

(iii) Now, the Respondent argued that the above is wrong and the average consumption shall be based on 3/11 & 5/11 assessment.

(iv) The Appellant argued that the consumption recorded during 3/11 & 5/11 assessment period is in respect of M/s. Regenix Drugs Ltd. who occupied the premises on 1.12.2010 and the meter defective period is in respect of the previous tenant M/s. Health Share. Therefore he argued that the above cannot be considered as average for the other tenant who utilized the service during the defective period. He has furnished the copy of lease documents executed by the respective tenant in support of the change of tenant.

(v) As per the lease documents, M/s Health Share has executed unregistered lease deeds for the following period.

(a) 1st November 2005 to 31st October 2008.

(b) 1st November 2008 to 31st October 2011.

However, as per M/s Health Share's 3 months notice dt.1.4.2009, M/s Health Share shall vacate the premises on 30.6.2009.

(vi) As per lease document M/s Regenix Drugs Ltd., has executed unregistered lease deed for the following period.

1st December 2010 to 30th November 2013.

(vii) In order to find out whether the average consumption worked out is as per regulation, we have to refer regulation 11 of the Supply Code which is extracted 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.”

(viii) On a careful reading of the said regulation, it is noted that regulation 11(2), 11(4) & 11(5) are the relevant regulations for arriving the average consumption for the meter defective period. The licensee has originally adopted regulation 11(5) and arrived average consumption for the meter defective period (i.e) any consecutive four months for the meter consumption recorded during the preceding 12 months period wherein the consumption pattern is similar to the defective period. They have adopted 5/2008 & 7/2008 assessment period for arriving the average consumption. The above is in confirmative with the regulation.

(ix) Now the Respondent argued that the above is wrong and the average shall be based on 3/11 & 5/11 assessment. The Appellant argued that the consumption recorded during 3/11 & 5/11 assessment period is in respect of M/s Regenix Drugs Ltd., who occupied the premises on 1.12.2010 and the meter defective period is in respect of the previous tenants M/s Health Share. Therefore, he argued that the above cannot be considered as average for the other tenant who utilized the service during the defective period. He has furnished the copy of lease documents in support of the change in tenants.

(x) The Respondent has taken the consumption recorded during 3/11 & 5/11 and arrived at the shortfall. The defective meter was changed on 3.12.2009. As per regulation 11.4 of the supply code, the consumption recorded during the succeeding four months period after installation of a correct meter could also be taken for arriving the average provided that the condition regard to use of

electricity is same. However, the Respondent has not taken the consumption recorded in the succeeding four months after installation of the new meter but considered the consumption recorded in the new meter in the 8th & 9th Bimonthly assessments after the installation of the new meter. The above procedure is not in line with the Regulation 11(4) of the Supply Code. Hence, I am not accepting the argument of the Respondent to consider the 3/2011 & 5/2011 consumption for arriving the average for the meter defective period.

(xi) As the average consumption worked out as 100 units for the meter defective period is in line with regulation 11(5) of the Supply code, I am of the view that there is no short fall to be collected for the meter defective period from 3/2009 to 11/2009.

(B) Period from 1/2010 to 1/2011:

(i) The Appellant argued that the premises was vacant from 1.7.2009 to 1.12.2010. Therefore, the consumption is low. He has cited the 3 months notice dt. 1.4.2009 issued by the tenant M/s. Health Share in support of vacating the premises on 30.6.2009. He has also produced a copy of Vijaya Bank statement in support of Refund of Rs.20,000/- being the balance amount available with them after deducting 2 months rent out of the Deposit of Rs.27500/- paid by M/s. Health Share. The said Rs.20,000/- was debited on 10.7.2009 from the Account of the Appellant. He has cited his letter dt. 27.8.2009 received at the office of Assistant Engineer on 28.8.2009 intimating the vacancy position of the premises from 1.7.2009 in support of the vacant conditions. He has also cited the lease deed dt. 1.12.2010 in support of the occupation of the next tenant M/s. Regenix Drugs Ltd from 1.12.2010.

(ii) The Respondent argued that the lease deeds are not registered and hence cannot be considered as valid proof.

(iii) The Respondent argued that the consumption recorded during the above period is less. Therefore, average consumption as worked out based on 3/2011 and 5/2011 and the difference in amount actually collected and the average worked out was collected as short fall.

11.7 On a careful examination of the meter change details, it is noted that the defective meter was changed in the service on 3.12.2009. The same meter was in service till 5.6.2014. Further, the Respondent has also not argued that the meter is defective in the disputed period. He only argued that the consumption recorded is low.

The consumption recorded from 1/2010 to 1/2011 are furnished below:-

| | | |
|---------|---|----|
| 1/2010 | - | 18 |
| 3/2010 | - | 0 |
| 5/2010 | - | 0 |
| 7/2010 | - | 1 |
| 9/2010 | - | 0 |
| 11/2010 | - | 0 |
| 1/2011 | - | 78 |

(4.11.2010 to 5.1.2011)

11.8 On a careful examination of the above consumption recorded it is noted that consumption was 18 during 1/2010 assessment period and zero/1 from 3/2010 to 11/2010 assessment periods. The Appellant argued that the premises was vacant from 1.7.2009 to 1.12.2010 and the new tenant has started its activity fully from 27.12.2010. The above consumption pattern correlate with the above argument of the Appellant.

11.9 Further, from 3/2011 onwards the consumption recorded by the same meter is around 4000 units. The same meter was in service upto 5.6.2014 and on the same day, the meter was changed as defective. As the new meter installed in the said service on

3.12.2009 was in service and is said to be working alright even beyond the disputed period, the energy recorded during the disputed period has to be taken as the actual energy utilized in the service. As the same meter's consumption recorded after 3/2011 was taken as correct and not disputed by the licensee and in the absence of any record showing that the meter was repaired/set right during 3/2011 assessment period, I am of the view that the meter is in good working condition only from the date of installation. When the meter is in good working condition, the quantity of energy recorded by such meter shall be taken as the quantity actually supplied by the licensee. Therefore, the consumption recorded during the period from 1/2010 to 1/2011 has to be taken as the energy actually supplied by the licensee. As the consumer has already paid the energy charges for the period from 1/2010 to 1/2011 as per the energy recorded in the meter. I am of the view that the shortfall claimed by the licensee is not justifiable and is to be set aside.

12. Conclusion :

12.1 In view of my finding in first and second issue, the shortfall amount of Rs.2,89,028/- levied by the Respondent is set aside and the Respondent is directed to refund the above shortfall amount collected within 30 days from the date of receipt of this order. A compliance report on the above shall be furnished within 45 days from the date of receipt of the order.

12.2 With the above order, the AP No. 98 of 2016 is finally disposed of by the Electricity Ombudsman. No Cost.

(A. Dharmaraj)
Electricity Ombudsman

To

1) Thiru. S.C.M. Jamaldeen,
Jamals Sonu Terrace,
No.42, Loganathan Nagar 1st Street,
Chollaimedu,
Chennai – 600 094.

2) The Executive Engineer/O&M,
K.K. Nagar,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 600 078.

3) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 600 078.

4) The Chairman & Managing Director,
TANGEDCO,
NPKRR Maaligai,
144, Anna Salai,
Chennai -600 002.

5) The Secretary,
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmi pathy Salai,
Egmore,
Chennai – 600 008.

6) The Assistant Director (Computer) – **For Hosting in the TNEO Website.**
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmi pathy Salai,
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