



TAMIL NADU ELECTRICITY OMBUDSMAN

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Before The Tamil Nadu Electricity Ombudsman, Chennai
Present : Thiru. N. Kannan, Electricity Ombudsman

A.P.No. 101 of 2022

M/s. Evita Construction Pvt. Ltd.,
C/o. Oswin & Jacob Techno Legal Adviser,
BRIO Hall, No.4/23E, Kamaraj Nagar,
4th Main Road, Thiruvanmiyur,
Chennai – 600 041.

. . . . Appellant
(Rep. by Thiru N. Senthil Viswarooban, Advocate
& Thiru Franklin Stephen, Advocate)

Vs.

The Executive Engineer/O&M/ Sriperumpudur,
Chengalpet Electricity Distribution Circle,
TANGEDCO,
No.360/95, Gandhi Road,
Sriperumbudur-602105.

. . . . Respondent
(Thiru R.Balamurugan, EE/O&M/ Sriperumpudur)

Petition Received on: 02-12-2022

Date of hearing: 15-02-2023

Date of order: 01-03-2023

The Appeal Petition received on 02.12.2022 filed by M/s. Evita Construction Pvt. Ltd., C/o. Oswin & Jacob Techno Legal Adviser, BRIO Hall, No.4/23E, Kamaraj Nagar, 4th Main Road, Thiruvanmiyur, Chennai – 600 041 was registered as Appeal Petition No. 101 of 2022. The above appeal petition came up for hearing before the Electricity Ombudsman on 15.02.2023. Upon perusing the

Appeal Petition, Counter affidavit, written argument and the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the :

The Appellant has prayed to set aside the audit slip No.70, dt.08.10.2020 presumed to have been the shortfall amount worked out for the period right from 11/2019 to 01/2020, on non adoption of appropriate average in LT S/c A/c No.557-008-957.

2.0 Brief History of the case:

2.1 The Appellant has stated that he had received an audit slip for Rs.58,260/- shortfall amount for the period from 10/2019 to 12/2019. The said amount was paid on a promise that the amount will be revised after fixing a new meter.

2.2 The Respondent has stated that the meter was defective during the period 10/2019 to 12/2019 and defective meter was replaced by a new meter.

2.3 The Appellant has filed a petition with the CGRF of Chengalpet EDC on 05.07.2022. The CGRF of Chengalpet EDC has issued an order dated 11.11.2022. Aggrieved over the order, the Appellant has preferred this appeal petition before the Electricity Ombudsman.

3.0 Orders of the CGRF :

3.1 The CGRF of Chengalpet Electricity Distribution Circle issued its order on 11.11.2022. The relevant portion of the order is extracted below :-

“Order: (Operative portion)

As per the para in findings, it is concluded that

1. *The defective meter average worked out for the LT SC No. 557-006-957 as per the audit slip No.70/2020, dt 08.10.2020 is found in order.*
2. *Audit slip No.27/2020 dt.23.09.2019 towards LT SC No 557-008-1122 is not accepted and quashed the same and hence the petition closed.”*

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondents to put forth their arguments, a hearing was scheduled on 15.02.2023 at 11.30 AM through video conferencing. As per the Appellant’s counsel request, the hearing was rescheduled at 3.00 PM on the same day.

4.2 On behalf of the Appellant Thiru N. Senthil Viswarooban and Thiru Franklin Stephen, Advocates of C/o. Oswin & Jacob Techno Legal Adviser attended the hearing and put forth their arguments.

4.3 The Respondent Thiru R.Balamurugan, EE/O&M/ Sriperumpudur of Chengalpet EDC attended the hearing and put forth his arguments.

4.4 As the Electricity Ombudsman is the Appellate authority, only the prayers which were submitted before the CGRF are considered for issuing orders. Further, the prayers which require relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone are discussed hereunder.

5.0 Arguments of the Appellant:

5.1 The Appellant has stated that M/s. Evita Constructions was in receipt of the letter from AE/O&M/Oragadam vide letter No. AE/O&M/Oragadam/F.Audit/D.No.42/20, Dt 02.12.2020 wherein it was stated that the Audit inspection had reviewed the particulars with regard to common service LT S/c A/c No.557-008-957 under the Jurisdiction of Oragadam Section, Sriperumpudur Division of Chengalpet EDC and claimed shortfall of Rs.58,260/- for the period from 10/2019 to 12/2019. The shortfall for the said period was claimed based on the consumption recorded from 05/2019 to 08/2019.

5.2 The Appellant has stated that the meter for the above service connection was replaced on 10.01.2020 due to some display problem. The section officer while having observed this during 11/2019, billed this consumer under defectiveness taking maximum average of 12312 units for the months of 11/2019, 12/2019 & 01/2020.

5.3 The Appellant has stated that the said amounts were paid on a promise that the same will be revised after fixing a new meter and watching the consumption in the healthy meter. It could be well evident from the recorded consumption in the healthy meter that the consumption was low than the average billed during the period of suspicion of meter defectiveness. Indeed TANGEDCO has to revise the average billing and refund the excess amount collected during the months of 11/2019 to 01/2020. Instead of doing that TANGEDCO has issued a notice claiming a shortfall of Rs.58,260/- taking a maximum average recorded during the summer period which is totally improper. The domestic consumption under residential tariff may vary according to the temperature and the utilization.

5.4 The Appellant has stated that as per the TNERC Regulations, blind average should not be adopted when there are change of circumstances and this audit slip is in contra to the codes inscribed by the Tamilnadu Electricity Regulatory Commission. The audit shortfall amount claimed is not correct as the new healthy meter has recorded less consumption during the subsequent periods than that of the average billed. The average claimed by the section officer itself was basically wrong and he should have revised the bill based on the consumption recorded in the healthy meter. Or in the alternative he should have downloaded the data from the defective meter and revise the bill on actual which this consumer was ready to accept. It is needless to cite here that the MRT wing has downloaded the data from the old meter which was declared defective and the same was available with them and may be considered for billing revision.

5.5 The Appellant has stated that the audit department without arriving any of the facts from the above records or from the consumption recorded in the healthy

meter has preferred to claim shortfall based on consumption recorded during summer period which was improper. The authorities ought to have gone through the consumption recorded during the period from April to March every year which was a clinching evidence to prove that electricity consumption will not be even during the entire 365 days/year.

5.6 The Appellant has stated that Regulation 11 of Tamil Nadu Electricity Supply code under the heading assessment of billing in cases where there is no meter or meter is defective clearly envisages:

“Where the supply is given without a meter or where the meter fixed was found defective or 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 here under.

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 HT Scs & LT Scs provided that the conditions in regard to the use of electricity during the said four months were not different from those which prevailed during the period in question.”

5.7 The Appellant has stated that in case the consumer does not agree with the assessment made by the Engineer, the matter may be referred to the next higher level officer of the licensee. In case the consumer is not still satisfied, the consumer is at liberty to approach the respective CGRF of the licensee.

5.8 The Appellant has stated that in the foregoing circumstances, this consumer has preferred an appeal before the CGRF/ Chengelpet, but unfortunately the Hon'ble forum simply refused to accept our appeal without abiding by the instructions issued by Hon'ble TNERC in this regard. The order rejecting the prayer to set aside the audit slip No.70 is liable to be set aside on the following among other.

GROUND:

1. The order of the CGRF is not a speaking one.
2. The CGRF has not adhered to the stipulated regulations of Hon'ble TNERC in deciding this issue.

3. The CGRF miserably failed to note that the distribution licensee has not taken any action to download the data to ascertain the real facts.
4. The CGRF miserably failed to note that the distribution licensee has not adhered to their own instructions of the superiors or the regulations.
5. The CGRF failed to adhere to the regulation 11 of TNERC which stipulates that "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 HT Scs & LT Scs provided that the conditions in regard to the use of electricity during the said four months were not different from the those which prevailed during the period in question."
6. The CGRF failed to note that the objection was raised based on the consumption recorded in the month of May to August in the Summer period to arrive at an average for the winter months 11/2019 to 01/2020 for the service connection which is under domestic tariff which a prudent man would understand that it is absolutely wrong.
7. The CGRF failed to note that the distribution licensee has not given any technical reasons or scientific to sustain on the audit objection.
8. The CGRF failed to note that Engineer is the ultimate authority and not the audit people who does not prudent enough to understand the cause and nature of defectiveness and consequences
9. The CGRF miserably failed to note that the distributions utility has not given any valid reasons to sustain on the audit objection instead making a simple statement without any clinching evidence.

5.9 The Appellant has stated that in one way or other the order of the CGRF/ Chengelpet rejecting the prayer of this petitioner to withdraw the audit slip No.70 LT S/c A/C No.557-008-957 will in no way sustain in the eyes of the law and liable for rejection.

5.10 During the hearing the Appellant stated that the Respondent did not produce MRT report at the time of CGRF hearing time .

5.11 The Appellant has prayed to set aside the audit slip No.70 dt.08.10.2020 presumed to have been the shortfall amount worked out for the period right from 11/2019 to 01/2020 for non adoption of appropriate average in LT S/c A/c No.557-008-957 in contravention to the regulations and to pass just & further necessary or other orders as this Hon'ble forum deems fit & proper in the ends of justice.

6.0 Counter submitted by the Respondent:

6.1 The Respondent has submitted that M/s. Evita Constructions Pvt Ltd has filed the appeal petition to withdraw the audit slip no.70/2020 Dt:08.10.2020 quoting that "as per the Reg.11 and with reference to regulations/directions/instructions of the Hon'ble Tamilnadu Electricity Regulatory Commission in this regard and to set aside the audit slip No.70/2020 Dt:08.10.2020.

6.2 The Respondent has submitted that the LT Sc No 557-008-957 meter was defective from 10/2019 to 12/2019. And the defective meter was replaced by a new healthy meter on 10.01.2020. The BOAB Audit during inspection, the defective period in the above LT SC No.557-008-957 was reviewed and called the shortfall amount as per TNERC (SC) 11 (2) is reproduced herewith as follows;

Sl.No.	Period	Billed Units	Billed Amount
1	05/2019	14843.6	97208
2	06/2019	13680.0	89528
3	07/2019	12963.2	84797
4	08/2019	14515.6	95043
Total		56002.4	366576
Average Units		14000.6	

6.3 The Respondent has submitted that based on the average unit calculated, the average shortfall amount was arrived herewith as follows,

Sl.No.	Period	Average amount to be collected	Amount already collected	Balance Amount to be collected
1	10/2019	91640	55662	35978
2	11/2019	91640	80499	11141
3	12/2019	91640	80499	11141
Total		274920	216660	58260

6.4 The Respondent has submitted that shortfall amount was raised on 30.03.2021 and the consumer had paid the shortfall amount of Rs.58,260/- on 17.04.2021 Vide PRNO.CHG557AR2D541.

6.5 The Respondent has submitted that as per the MRT/Chengalpet report the data could not be downloaded for no display defective meter. Hence the defective meter average worked out for the LT SC No.557-008-957 as per audit slip no.70/2020 Dt:08.10.2020 is found in order.

7.0 Findings of the Electricity Ombudsman:

7.1 I have heard the arguments of both the Appellant and the Respondent. Based on their arguments and submitted documents, the following conclusion is arrived at: Whether to set aside the audit slip No.70 dt.08.10.2020 for non adoption of appropriate average in LT S/c A/c No.557-008-957?

7.2 To determine the facts of the issue, I will first discuss what the Respondent raised on the issue of the Audit slip. According to the Respondent's document, the Appellant was informed to pay the shortfall amount of Rs 58,260/-. The above slip was raised by the Respondent with the claim by their Audit that CC charges had been levied shortly subsequent to the meter defective. Hence the Respondent claimed a short levy amount for the period 10/2019 to 12/2019 for an amount of Rs.58,260/- by taking average from 05/2019 to 08/2019, the Appellant approached the CGRF, which passed an order confirming that the average worked out for the defective meter for the LT SC.NO 557-008-957 was found in order.

7.3 Aggrieved over the above, the Appellant has stated that as per the TNERC Regulations, blind average should not be adopted when there are change of circumstances and this audit slip is in contra to the codes inscribed by the Tamilnadu Electricity Regulatory Commission. Hence prayed before this E.O. that the Audit Slip be withdrawn. The Appellant reiterated that the licensee failed to download the meter data by MRT to ascertain the real facts. The Respondent

however reported in the counter that due to meter display failure, data could not be down loaded.

7.4 In this context, I would like to refer Regulation 7(9) Installations of Meter

(9) If the consumer consider that the meter is defective ,he may apply to licensee to have a special test carried out on the meters at any time and the cost of such a test shall be borne by the Licensee or the consumer according as the meter is found defective or correct as a result of such a test.”

7.5 From a plain reading, it is understood that if any consumer suspect that his meter was defective, he has the privilege to challenge the meter whether it was defective or in good condition. In this case, the MRT declared that the meter was defective and unable to download the data.

7.6 In this context the Appellant was asked whether he had challenged the licensee on the declaration of the status of the meter. They had not submitted any documents. Further the Respondent also stated that no request was received from the Appellant. The claim now made by the Appellant on seeking the MRT Report at this juncture, as an afterthought idea to sustain their claim that the healthy meter was declared as a faulty meter. Here the fact of the defective was accepted by the Respondent which was taken into consideration. Hence the other issues of deciding is the Assessment of billing in cases where there is no meter or meter is defective.

7.7 In this context I would like to refer to TNERC Supply code Regulation 11 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.”

On a careful reading of the above regulation, it is noted that regulation 11(2), 11(4), 11(5) and 11(6) are the regulations dealing with the method to arrive at the average consumption for the meter defective / no meter period.

7.8 It is seen from the given documents that the average was calculated for the meter defective period from 10/2019 to 12/2019 for an amount of Rs.58,260/- by taking average from 05/2019 to 08/2019. The Respondent has adopted regulation 11(5) of TNE Supply code in arriving average units. Further, it is noticed from the consumer ledger card, the meter defective was entered for the month of 11/2019 & 12/2019 only. However, the Respondent has arrived average shortfall for the period from 10/2019 to 12/2019. In the absence of MRT downloaded report, it is appropriate to rely on consumer ledger as per Evidence Act. As per consumer

ledger, the assessment for 10/2019 was recorded as 'Normal' and assessment for 11/2019 & 12/2019 were entered as 'defective'. Thereafter, the defective meter was replaced on 10.01.2020. The meter might have become defective on or after 31.10.2019. Therefore, I am of the view that the meter defective period should be restricted for the period from 01.11.2019 to 09.01.2020. Hence the Respondent is directed to revise average short fall accordingly.

8.0 Conclusion:

8.1 From the findings of the forgoing paras, the Appellant's claim to withdraw the claim of the entire amount vide audit Slip No.70, dt 08.10.2020 is not considered. However the Respondent is directed to revise the meter defective period as 01.11.2019 to 09.01.2020 and revise the shortfall amount. Since, the Appellant had already paid the shortfall amount of Rs.58,260/- on 17.04.2021, any excess amount if any, on account of revised calculation shall be done as per regulation 13(2) of TNE Supply Code.

8.2 With the above findings the AP No. 101 of 2022 is finally disposed of by the Electricity Ombudsman. No costs.

(N.Kannan)
Electricity Ombudsman

“நுகர்வோர் இல்லையேல், நிறுவனம் இல்லை”
“No Consumer, No Utility”

To

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