



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No.10 of 2017

Thiru C.R. Rajen,
Plot No. 37, Door No. 3,
Balaji Nagar,
Thirumullaivayal,
Chennai – 600 053.

..... Appellant
(Thiru. G. Kothandaraman, Advocate)

Vs

1) The Chairman,
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle / West,
110/33/11 KV Thirumangalam SS Complex,
Chennai– 600 040.

2) The Executive Engineer / O & M,
Avadi,
Chennai Electricity Distribution Circle / West,
TANGEDCO,
229, M.M. Road,
Avadi, Chennai – 600 054.

..... Respondents
(Rep by Thiru. P.Soundarajan, AEE/Avadi
&
Thiru. A. Premkumar, AE/Avadi)

Date of hearing : 11-4-2017 & 21-6-2017

Date of order : 4-8-2017

The Petition dated 27.1.2017 filed by Thiru C.R. Rajen, Balaji Nagar,
Thirumullaivayal, Chennai – 600 053 was registered as Appeal petition No. 10 of

2017. The above appeal petition came up for hearing before the Electricity Ombudsman on 11-4-2017 & 21-6-2017. 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:

- a) To set aside the arbitrary, unwarranted demand (viz.,) the supplementary bill for Rs.2,27,030/- raised for the second time for the same period ((i.e) 12/12, 2/13 & 4/13) beyond the statutory period of limitation of 2 years as per section 56 (2) of the Tamil nadu Electricity Code 2003.
- b) To direct the Respondents to refund the cost of the meter collected from the Appellant as per Regulation 7 (10) (1) of the Electricity Supply Code and
- c) To direct the Respondents to refund the excess amount collected from the Appellant towards cc charges and pass such further or any other orders as deemed fit in the circumstances of the case and thus render justice.

2. Brief History of the Case:

- 2.1 Service connection No.047-231-1775 under tariff III B for a sanctioned load of 55 kw was effected in the name of the Appellant on 29-9-2012.
- 2.2 As the meter was not working, the defective meter was changed on 14-5-2013 and average cc charges was collected for the period 12/12, 2/13 & 4/2013.
- 2.3 The BOAB Audit party reviewed the average billing done by the field for the above service and revised the same vide audit slip on 89 dt. 15.7.13. Accordingly, a sum of Rs.4,22,047/- was paid by the Appellant towards short

fall amount for the assessment period from 10/12 to 4/13.

- 2.4 Based on another audit slip 28 dt.19.12.2015 the AE /Avadi / North issued another demand for a shortfall amount of Rs.3,34,570/- for the same assessment period from 10/12 to 4/13 vide letter dt.15.3.2016. The Appellant filed a petition before the SE /CEDC/West on 26.3.16. As the above petition was not considered the Appellant filed a petition before the CGRF of Chennai Electricity Distribution Circle / West on 20.8.2016.
- 2.5 The CGRF of Chennai Electricity Distribution Circle/West has directed the respondent to adopt average consumption for the assessment periods from 12/12 to 4/13 only and issue a revised demand within 15 days. Accordingly, the Executive Engineer/Avadi has raised the short fall amount of Rs.2,27,030/- vide letter dated 18.1.2017.
- 2.6 Aggrieved by the order of the CGRF, the Appellant filed this appeal before the Electricity Ombudsman.

3. Orders of CGRF :

The CGRF of Chennai Electricity Distribution Circle / West has issued its order dated 22.12.2016. The relevant para of the Order is extracted below:-

“ ORDER

In lieu of the above, the respondent is directed to adopt average consumption for the bi-monthly assessment months 12/12, 2/13 & 4/13 in the LT service connection No. 047-231-1775 as per Clause 11 (4) of TNE Supply Code and to issue the revised demand notice to the petitioner within 15 days from the date of receipt of this order. The compliance report shall be submitted to the FORUM within 30 days from the date of receipt of this order.”

4. Contentions of the Appellant furnished in the Appeal Petition :

4.1 A new service connection to his small scale Ice Company at the aforesaid address for a sanctioned load of 55 KW under the SC No. 047-231-1775 (T.III B) was effected on 29.09.2012. The First reading in the said service connection in 10/2012 was 230 units the utilized consumption was 220 units and C.C. charges was paid for 220 units.

4.2 At the time of taking meter reading in 12/ 12, the meter reading was 3120 and the utilized consumption was 2890 units. Only at the time of taking meter reading in 2/13 it was noticed that the meter was not working. However, average billing was calculated for 12/12,2/13 and 4/2013 assessment periods and CC charges collected. The defective meter was changed on 14.5.2013.

4.3 THE BOAB AUDIT PARTY 2 / CNI / NORTH who reviewed the average billing made by the field staff in the said service connection for the meter defect periods had revised the same as per clause 11 (6) of electricity supply code to the tune of Rs. 4,22,047/- vide audit slip no. 89/dt.15.7.2013. Based on the audit slip No. 89/15.7.2013 a supplementary bill was raised for the assessment periods from 10/12, 12/12, 2/13 and 4/13 towards supplementary bill for Rs. 4,22,047/- and he was required to pay the said sum vide letter No.AE/O&M/CEDC/West/ Avadi/ North dt. Nil 2013. He has paid the said supplementary bill towards audit short fall (audit slip No.89 dt.15.7 .2013) which was raised for the first time.

4.4 After a lapse of two years, he received a letter No.244 dt. 15.3.2016 from AE/ Avadi/ North along with the another audit slip no.28, dt.19.12.2015 of the audit party-4/CNI/North/ for the said service connection No.047/231/1775 and he was required to pay a sum of Rs.3,34,570 / - by way of another supplement bill for the said period for the second time.

4.5 Aggrieved against the above said arbitrary demand of Rs. 3,34,570/- he preferred an appeal to the SE/CEDC/West on 26.3.2016. Since the said appeal was not considered, he filed another appeal to the Chairman / Consumer Grievance Redressal Forum / TANGEDCO / CEDC / West on 20.08.2016 to pass appropriate orders to withdraw the arbitrary supplementary bill raised in the audit slip no.28 dt. 19.12.2015 for the second time for the same period that too after the statutory limitation period of two years as contemplated in section 56 (2) of the electricity supply code 2003. He enclosed herewith a copy of his appeal dt. 26.3.2016 for kind perusal and he prays that the above appeal petition may be treated as part and parcel of this appeal to avoid repetition of facts and circumstances that led to file this appeal.

4.6 After hearing the petitioner and the respondents, by order, dt. 22.12.2016 (in Petition No.57 /2016 on the file of the Consumer Grievance Redressal Forum/ CEDC/West) without considering the legality with regard to raising the supplementary bill for the second time for the same period and also the regulation 11(6) of the electricity supply code, the Chairman / CGRF has directed the respondents (EE/O&M/ Avadi, AEE/O&M/ Avadi and AE/O&M/Avadi/North) to adopt average consumption for the bi-monthly assessment in LT Service connection No. 047-231-1775 as per clause 11 (4) of TNE Supply code and to issue revised demand notice to the petitioner (the appellant herein).

4.7 To arrive at a conclusion, the Chairman / CGRF has relied on some judgments of the Hon'ble High Court of Delhi in Page No.8 of the order dt. 22.12.2016. In Para IV, It is mentioned that "Further such demand seeking payment for a back period shall be properly / appropriately worded so as to indicate that it is a supplemental bill raised for the first time. However the

Chairman / CGRF has failed to consider the above judgment in a proper manner has passed the orders by overlooking the court judgment and the instructions issued by the TNEB. The above said judgments passed by the Hon'ble High Court of Delhi cannot be made applicable to his case. In view of the above legal position "No Supplementary Bill can be raised for the Second time for the same period by the TANGEDCO Officials". Therefore the supplementary bill for Rs. 3,34,570/- revised for the second time for the same period is null and void and the same is liable to be set aside.

4.8 Defect in the meter (Meter display failure) was noticed at the time of taking meter reading in 2/13. The AE/O&M/ Avadi North ought to have sent the defective meter to CEIG's lab or to the company who supplied the meter and get a report from the said agencies to confirm the nature of defects in the meter. However the AE/O&M/ Avadi North had failed to do the same In the absence of such reliable proof with regard to the meter under question, the Chairman/ CGRF ought to have insisted from his subordinate officers to submit a detailed report from them before he come to a conclusion. However no such report was produced by them at the time of hearing on 17.10.16. Under the circumstances the average consumption to be calculated under regulation 11(6) of electricity supply code instead of regulation 11(4) for the meter defective periods. Therefore, the calculation based on regulation 11(4) is not correct and accepted.

4.9 As per regulation 7(10) (1) of electricity supply code it is the responsibility of the licensee to replace all defective meters belonging to licensee at his cost. Therefore the cost of the meter collected from him against the said provision shall be refunded to him because the meter defect was not due to the consumers fault.

4.10 Following the order dt. 22.12.16, of the Chairman CGRF / CEDC/West, the Executive Engineer / O&M/ Avadi (the Second Respondent herein) has revised and issued a supplementary bill for the second time for the period relating to 12/2012,2/13 and 4/13 for Rs. 2,27,030/- vide Lr. No. EE/O&M/Avadi/AAO /RB/AS/F.CGRF/D.No. 455/ 2017 dt. 18.1.2017.

5. Contentions of the Respondent furnished in the Counter:

5.1 Electricity Service Connection No.047-231-1775 was effected in the name of Thiru.C.R.Rajen at S.F.No.144/2C1, West Gandhi Nagar (Nazer main road), Avadi, Chennai-54.

5.2 The BOAB has audited the LT Service Connection No.047-231-1775 and adopted the average consumption for the period from 10/2012 to 4/2013 due to meter defective. The average consumption was adopted based on sanctioned load and levied a sum of Rs.4,22,047/- for the period from 10/12 to 4/2013 due to meter defective. The above amount was collected from the consumer through three instalments.

5.3 BOAB during the Audit from 4/2013 to 3/2014 period has noticed that the shortfall already levied by the previous audit party based on the computed consumption was incorrect. Since the meter becomes defective immediately after the service connection is effected, the average consumption has to be chosen based on the succeeding four months period consumption after installation of a correct meter. Hence, the audit has adopted average consumption for the period from 10/12 to 4/13 based on the base average consumption for the period 8/2013 and 10/2013 assessments and levied the shortfall amount of Rs.8,19,343/-. The notice was issued to the consumer to pay the balance shortfall amount of Rs.3,34,570/- and the consumer had objected and represented to the Superintending Engineer/CEDC/

West for withdrawal of the audit shortfall amount.

5.4 The meter became defective immediately after effecting the service connection. Hence, the adoption of average consumption for the period 10/12 to 4/13 based on the base average consumption for the assessment months of 8/13 and 10/13 by BOAB on second time is as per Clause 11 (4) of TNE Supply code.

5.5 He denies the contention of the appellant to withdraw the arbitrary supplementary bill raised in the audit slip No 28 dt 19.12.2015 for the second time for the same period that too after the statutory limitation period of two years as contemplated in section 56(2) of supply code 2003. He submitted that shortfall beyond two years period should also be collected from the consumer as per section 56(2) of Electricity Act 2003. There is no bar in the said Act to raise a supplementary bill.

5.6 The order of CGRF is issued in accordance with rules only. The CGRF directed the respondent not to adopt average consumption for first assessment month 10/2012 and to adopt average consumption for the bi-monthly assessment months 12/12, 2/13 & 4/13 in the LT Service Connection No.047-231-1775 as per Clause 11 (4) of TNE Supply Code and to issue the revised demand notice to the petitioner within 15 days from the date of receipt of this order. Based on the order, the notice dt 18.1,2017 was issued to petitioner to pay the balance amount of Rs.2,27,030/- immediately.

5.7 CGRF has passed the order in accordance with rules only as per following grounds. In the LT Service Connection No.047-231-1775, the consumption recorded during the first assessment month 10/12 is 220 units and for the subsequent month 12/12 is 2890 units. The units recorded in the 12/12 assessment was found to be adopted for the subsequent assessment month of 2/13 & 4/13 due

to meter defective. On reviewing the consumption pattern from 10/12 to 12/12, the meter found functioning from the date of effecting the service connection as consumption has raised from 220 units to 2890 units i.e. 2890 units found recorded in the meter from 26.10.2012 to 26.12.2012, but the date on which the meter stop functioning could not be ascertained. The defectiveness of the meter could not be taken from the date of effecting the service connection to the first assessment as consumption has raised from 220 units to 2890 units after the first assessment. At this juncture, average consumption could not be adopted for first assessment month 10/2012. As the date on which the meter stop functioning from 26.10.2012 to 26.12.2012 could not known, hence the average consumption has to be adopted for 12/12 assessment and for 2/13 & 4/13 bi-monthly assessment month as per clause 11 (4) of TNE Supply Code.

5.8 Deny the contention of the appellant that the burnt meter charges shall be refunded to them. It is submitted that there was no fault occurred on TANGEDCO side. As per Clause 7 (10) of TNE Supply Code, the burnt meter charges shall be borne by the consumer only.

5.9 The average consumption adopted in the LT Service Connection No.047-231-1775 for the bi-monthly assessment months of 12/2012, 02/2013 & 04/2013 is as per Clause 11(4) of TNE Supply Code.

6. Hearing held by the Electricity Ombudsman :

6.1 To enable the Appellant and the Respondents to put forth their arguments in person, hearings were conducted on 11.4.2017 & 21.6.2017.

6.2 As the Appellant has not paid the 25 % of the amount as ordered by the Forum, the Appellant was directed to pay the 25% of the shortfall amount on 11.4.2017.

Accordingly, the Appellant has paid Rs.56,758/- vide Receipt No. PGNTNS 346616 dt.27.4.2017.

6.3 Thiru G. Kothandaraman, Advocate has represented the Appellant and put forth his side arguments on both the days.

6.4 Thiru P. Soundararajan, Assistant Executive Engineer / Avadi and A. Prem Kumar, Assistant Engineer / Avadi have attended the hearing on 11.4.2017 and 21.6.2017 and put forth their side arguments.

7. Arguments putforth by the Appellant's representative:

7.1 Thiru G. Kothandaraman, Advocate reiterated the contents of the Appeal Petition.

7.2 The learned Advocate argued that the licensee has collected short fall amount of Rs.4.22,047/- as per regulation 11(6) of Supply code based on audit slip stating that the average assessment amount collected for the period from 12/12 to 4/2013 was not correct. But again for the same period, another audit party has levied a short fall stating that the average consumption has to be collected based on regulation 11(4) instead of 11(6). The learned advocate argued that collecting short fall for the same period on second time is not legally sustainable.

7.3 The learned Advocate also argued that the short fall raised in audit slip No. 28 dt. 19.12.2015 for the second time is after the statutory limitation period of 2 years as contemplated in section 56 (2) of the Electricity Act 2003.

7.4 The learned Advocate also citing the TANGEDCO's circular referred the CGRF order and argued that the judgment of Delhi High Court referred by the Respondent is not applicable to this case.

7.5 The learned Advocate, also citing the TANGEDCO's circular that, they can raise

supplementary bill only one time for the same period citing the recording “that it is a supplementary bill raised for the first time”. in the said circular. Citing the regulation that the condition in regard to usage in both the periods (ie) defective period and the period taken for arriving the average consumption shall be not different, the learned advocate argued that the Regulation 11(4) could not be adopted here as the consumption of an ice factory is not uniform but vary according to the season. The consumption pattern for the defective meter period (i.e) 12/12 to 4/2013 may not be same as that of 8/2013 and 10/13 which are considered for arriving the average. The advocate also informed that the above arguments is without prejudice to his argument that legally it is not correct to raise supplementary bill in second time for the same period.

7.6 The learned advocate informed that the licensee has collected the meter cost for replacing the burnt meter citing regulation 7(10) (11) of the Supply Code. He argued that it is the responsibility of the licensee to change the defective meter belonging to licensee. Therefore, he argued that the cost of meter collected has to be refunded to the Appellant. In response to Electricity Ombudsman’s question, about raising the said issue before the forum, he informed that the above issue was not raised before the Forum.

8. Arguments putforth by the Respondent’s Representative:

8.1 Thiru P. Soundararajan, Assistant Executive Engineer / Avadi, reiterated the contents of the Counter.

8.2 The Assistant Executive Engineer argued that the average for the meter defective period was computed as per regulation 11(6) in the first audit slip. However, as the meter has become defective immediately after effecting

service, the regulation 11(4) of Supply code has to be adopted for arriving the average. Accordingly, the audit has suggested to revise the short fall for the second time.

8.3 The Assistant Executive Engineer citing the CFC's Circular referred in the CGRF order argued that there is no bar in section 56 (2) of the Electricity Act 2003 to raise a supplementary bill as per the judgments cited in the circular.

8.4 The Assistant Executive Engineer argued that the burning of meter was not due to any fault on the licensee's system. As the meter has burnt due to consumer side fault, he argued that the cost of meter has to be borne by the consumer only.

9. Findings of the Electricity Ombudsman:

On a careful consideration of the rival submissions, the issues to be considered are

- (i) Whether, the contention of the Appellant that the short fall raised by the licensee in second time for the same period is not legally sustainable is correct?
- (ii) Whether any relief could be granted to the Appellant?
- (iii) Whether the cost of meter collected could be refunded?

10. Findings on the First Issue:

10.1 In SC No. 047-231-1775, the meter was found to be burnt without final reading while taking reading for 2/2013.

10.2 The Appellant argued that Assistant Engineer / O & M / Avadi North has issued a supplementary bill for a sum of Rs.4,22,047/- towards short fall in assessing the average consumption for the period from 10/12 to 4/13 during 2013 based on audit slip No. 89 dated 15.7.13 and he has paid the said amount. But again for the same period a short fall amount of Rs.3,34,570/- was claimed by the

Assistant Engineer / O & M / North vide letter dated 15.3.2016 based on another audit slip No. 28 dt. 19.12.2015. As the audit short fall for the same period is claimed for the second time, the Appellant argued that it is not legally valid.

10.3 The Appellant further informed that the notice for the audit short fall amount for the same period was raised for the second time after expiry of 2 years from the first notice (first notice issued during 2013 and second notice issued on 15.3.2016). Therefore, he argued that the second notice for audit short fall is raised after expiry of the limitation period of 2 years as contemplated in section 56 (2) of the Electricity Act 2003.

10.4 The learned Advocate citing the CFC Circular referred in the CGRF Order, argued that as per the said circular also, it is possible to raise a supplementary bill for the first time only. But in this case, the supplementary bill was raised for the second time for the same period. Therefore, he argued that as per the circular of the licensee also, the short fall raised for the second time is not correct.

10.5 The Respondent argued that in the first audit, the assessment for the meter defective period was made based on computed consumption considering the connected load and hours of usage as stipulated in regulation 11(6) to the Supply code. However, as there was 4 months consumption after providing a new meter was available, the average assessment for the defective period was calculated by the Audit as above and raised the short fall. As the above is conforming regulation 11(4) of the Supply Code, the Respondent argued that revision is correct only.

10.6 In the case before me, there is no dispute on the defectiveness of the meter and on the defective period. The only issue is whether, short fall amount could be claimed for more than one time for the same period stating that the previous one is wrong.

10.7 As it is an issue on raising a supplementary bill on average assessment for two times, I would like to refer regulation 12 of supply code billing error and Regulation 11, assessment of billing in case where there is no meter or meter is defective.

10.8 The relevant regulation 12 & 11 of Supply code are extracted below:-

12. Errors in billing

(1) *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 undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging.*

(2) *Where it is found that the consumer has been over-charged, the excess amount paid by such consumer shall be refunded along with interest at the rate applicable for security deposit. The interest shall be computed from the date on which the excess amount was paid. Such excess amount with interest may be paid by cheque in the month subsequent to the detection of excess recovery or may be adjusted in the future current consumption bills upto two assessments at the option of the consumer. The sum which remains to be recovered after two assessments may be paid by cheque. Interest shall be upto the date of last payment.*

(3) *Wherever the Licensees receive complaints from consumers that there is error in billing, etc. the Licensee shall resolve such disputes regarding quantum of commercial transaction involved within the due date for payment, provided the complaint is lodged three days prior to the due date for payment. Such of those complaints received during the last three days period shall be resolved before the next billing along with refunds / adjustments if any. However, the consumer shall not, on the plea of incorrectness of the charges, withhold any portion of the charges.*

10.9 On a careful reading of the above regulation, it is noted that there is a provision to raise an additional amount by the licensee in case of under charging and the consumer is having also right to claim refund in case overcharging.

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.

- 10.10 On a careful reading of the said regulation, 11, it is noted that in case of defect in the meter the assessment for the defective period could be done by adopting regulation 11(2), 11(4), 11(5) & 11(6).
- 10.11 In the case on hand, the licensee's audit party has reviewed the charges claimed by the licensee for the defective period and observed that the meter was defective from the date of service connection and recommended to collect computed consumption based on the sanctioned load and hours of usage. They have calculated the average consumption for each assessment period as 23,760 units and accordingly suggested to collect Rs.4,22,047/- as short fall for 10/12 to 4/13 assessment period vide audit slip dated 15.7.13. The above assessment confirms to regulation 11(6) of Supply Code. The amount was also collected by the licensee.
- 10.12 Another audit party has again reviewed the charges claimed in respect of the said service at a later date and remarked that the average consumption for the defective period has to be calculated by taking the consumption of succeeding four months period after installation of correct meter as per regulation 11(4) of the Supply Code in case of meter become defective initially vide audit slip dt.19.12.2015 and raised a demand of Rs.3,34,570/- as shortfall for the assessment period from 10/2012 to 4/2013.
- 10.13 It is noted from both the audit slips, that the defective period is same (ie) 10/2012 to 4/2013 assessment period. One audit party levied the charges for the meter defective period based on regulation 11(6) of the Supply Code, and another audit party levied the charges for the meter defective period based on regulation 11(4) of the Supply Code.

10.14 As per Regulation 12 of the Supply Code, the licensee is having every right to levy an additional amount in case of under charging. But, whether the licensee can claim revision additional amount for the same billing period citing the previous claim is also under charging is the issue to be decided in this case.

10.15 In the case on hand, it is noted that the error in the average assessment done by the field was revised by the audit party based on regulation 11(6) of the Supply Code and then again the average assessment for the defective period was revised by another audit party based on regulation 11(4) of the Supply Code. In this regard, it is to be taken note of that in both the audit remarks, the consumption arrived for the meter defective period is only an assessed value (ie) an approximate value only and not actual value.

10.16 As the regulation provision of 11(4) of Supply Code quoted by the audit for the second time revision was also existing at the time of first audit revision, I am of the opinion, that revising the average assessment done as per one provision of the regulation based on another provision of the Regulation after a lapse of certain period (2 years in the case) is not correct. If the licensee feels that the adoption of regulation 11(4) of the Supply Code is correct, then the licensee would have adopted the said regulation at the first instance itself. Even if we assume that the regulation adopted in the subsequent revision is more appropriate in a given situation, the licensee cannot penalise the consumer for the mistake of their, own employee and levy a shortfall again. In this case, the second revision was also an assessed value (Approximate value only) and not an actual value.

10.17 Further, for considering the consecutive four months consumption for arriving the average consumption for the defective period, the main criteria to be taken into account as per regulation is the condition in regard to use of electricity in respect of the said period and the meter defective shall be same. Hence, the argument of the Appellant that consumption pattern of an Ice Factory for 12/2012 to 4/2013 may not be same as that of 8/2013 & 10/2013 cannot be ignored.

10.18 In view of the discussion in para 10.15 to 10.17, I am in agreement with the argument of the Appellant that revising the average assessment for the same meter defective period in second time after making one revision based on a provision of a regulation is not sustainable.

11. Findings on the second issue :

11.1 As per my findings on the first issue, the second revision done by the licensee is not sustainable. Therefore, the shortfall amount of Rs.2,27,030/- raised for the period from 12/2012 to 4/2013 in EE/Avadi notice dt. 18.1.2017 is set aside.

12. Findings on the Third issue :

12.1 The Appellant prayed for refund of the cost of meter collected . The said prayer was not raised before the CGRF of Chennai EDC/West.

12.2 In this regard, I would like to refer regulation 17(1) of the Regulations for CGRF & Electricity Ombudsman which is extracted below :

17 (1) Any consumer, who is aggrieved on the order on the grievance or non-redressal of his grievances by Forum constituted under section 42(5) of the Electricity Act 2003 (Central Act 36 of 2003) by licensees relating to providing of electricity supply, may himself or through his representative make a complaint to the Electricity Ombudsman in the form as in Annexure III. Complaints of common nature (which may be considered applicable to more than one Forum) can be directly brought upto

Electricity Ombudsman by any of the consumer or by a State Level Consumer Association in the form as prescribed in Annexure III.

12.3 On a careful reading of the said regulation, it is noted that any consumer who is aggrieved on the order of CGRF or non redressal of his grievance by forum can file a complaint before the Electricity Ombudsman. Further, complaints of common nature can directly be filed before the Electricity Ombudsman.

12.4 As the above complaint pertains to a particular service connection it is not a common issue. Therefore, the said issue has to be raised before the forum first and if the order of the forum is not acceptable then only appeal could be filed.

12.5 As the issue was not filed before the forum, I am not considering the said issue for issue of an order in the appeal.

13. Conclusion :

13.1 In view of my findings on the issue 1 & 2, furnished in para 10 & 11, the shortfall amount of Rs.2,27,030/- levied for the period from 12/2012 to 4/2013 in EE/O&M/Avadi demand dt. 18.1.2017 is set aside. The sum of Rs.56,758/- paid by the Appellant towards 25% of the amount as ordered by CGRF shall also be refunded or adjusted in future CC bills of the said service connection.

13.2 As the issue of refund of meter cost was not raised before the CGRF of Chennai EDC/West by the Appellant the said issue was not considered by me for issue of any order.

13.3 With the above findings, the A.P.No.10 of 2017 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1) Thiru C.R. Rajen,
Plot No. 37, Door No. 3,
Balaji Nagar,
Thirumullaivayal,
Chennai – 600 053.

2) The Chairman,
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle / West,
110/33/11 KV Thirumangalam SS Complex,
Chennai– 600 040.

3) The Executive Engineer / O & M,
Avadi,
Chennai Electricity Distribution Circle / West,
TANGEDCO,
229, M.M. Road,
Avadi, Chennai – 600 054.

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,
Egmore,
Chennai – 600 008.