



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No.101 of 2016

M/s Precision Machine and Auto Components Pvt Ltd.,
Rep by its Managing Director,
131, Industrial Estate,
Perungudi,
Chennai – 600 096.

..... Appellant
(Tmt. Suresika Parthasarathi,
Advocate)

Vs

The Superintending Engineer,
Chennai Electricity Distribution Circle/South-II,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 78.

..... Respondents
(Thiru. R. Kumaravel, AEE/Sholinganallur)

Date of hearing : 3.3.2017

Date of order : 04-07-2017

The petition dt. 1.12.2016 filed by M/s Precision Machine and Auto Components Pvt Ltd., Chennai 96 was registered as Appeal petition No. 101 of 2016. The above appeal petition came up for hearing before the Electricity Ombudsman on 3-3-2017. 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 to set aside the demand of Rs.11,36,017/- as shortfall from Oct 2010 until date of replacement of faulty meter

2. Brief History of the case:

2.1 LT CT service connection No.205-004-145 was effected in the name of M/s Precision Machine and Auto Components Pvt Ltd., The sanctioned load of the service connection is 112 kw and the service connection was charged under IIIB.

2.2 The appellant is manufacturing machined components of various types of industrial valves earth moving equipments and general engineering components.

2.3 The enforcement wing inspected the service on 12.3.2015 As it found that the R phase voltage was zero, the MRT wing of the license has tested the meter on 18.3.2015 and found that it was not recording R phase voltage. As one phase voltage was not recorded the MRT suggested to collect the short fall from 11/2010 to 3/2015. Accordingly, the AE/Perungudi has issued a demand for a short fall amount of Rs.11,36,017/-

2.4 The Appellant filed a writ petition No.W.P.No.9582 of 2010 before the Hon'ble High court and the Hon'ble Court has directed the respondent to consider the Appellant's representation dt.26.11.2015, 19.1.2016 & 17.2.2016 by way of affording an opportunity of personal hearing and thereafter passing orders on merits and in accordance with law.

2.5 The Respondent issued his order on 02.05.2016 and the Appellant again filed petition before the Hon'ble High Court vide W.P.No.20397/2016. The Hon'ble High Court has directed the Appellant to file an Appropriate petition before CGRF and pay Rs.3,00,000/- Accordingly, the Appellant filed a petition before the CGRF of Chennai EDC/South-II and the CGRF has issued its order on 3.11.2016. Aggrieved over the

order of the CGRF the Appellant filed his appeal petition before the Electricity Ombudsman.

3. Orders of the CGRF :

3.1 The CGRF of Chennai EDC/South-II issued its order on 3.11.2016. The relevant para of the order is extracted below :

Findings and order of the forum:

On hearing both sides, the respondents statement is found in order as the 1/3rd pattern of energy was not recorded due to R phase voltage is zero. Hence, the respondent is directed to act accordingly. The petition is disposed off.”

4. Contention of the Appellant furnished in the Appeal petition :

4.1 The Appellant challenged the order passed by the respondent in Lr.No.SE/CEDC/S-II/AEE/G1/CHD/F.WP.No.9582 to 2016/D.1544/2016 dated 02.05.2016 by way of Writ Petition No. 20397/2016 before the Hon'ble High Court of Madras. The Hon'ble High Court vide order dt.17.6.2016, directed the appellant to file an appropriate petition before the consumer grievance redressal forum within a period of four weeks from the date of receipt of the order.

4.2 It is stated that the MRT wing of the TANGEDCO carried out an inspection in the premises of the Appellant on 12.03.2015, and during the said inspection it was noticed that the meter was showing a reading of 0.0 Volt. Therefore, another inspection was carried out on 18.03.2015 and at this inspection the meter was declared to be defective. Subsequently, the meter was replaced and a power check was carried out by the Executive Engineer/MRT, TANGEDCO, KK Nagar, Chennai- 600 078.

4.3 It is stated that subsequent to this replacement, there appears to be a communication dated 07.04.2015 from the Executive Engineer/MRT, KK Nagar to the Assistant Engineer, O&M, Perungudi, directing the latter to revise the bill for the defective meter retrospectively, from the period from 11/2010 to 18.03.2015. Further, the bill revision has been directed to be done by adding 50% to the already recorded consumption for this entire period .

4.4 The Appellant states that, on the strength of this letter, it has been in receipt of the impugned letters from the Assistant Engineer, O&M, Perungudi, calling upon it to make a payment of an amount of Rs 11, 36, 017/- towards shortfall amount for the period from 10/2010 to 03/2015. In response to the impugned letter dated 07.04.2015, the Appellant has issued detailed representations dated 26.11.2015, 19.01.2016, and 17.02.2016 calling upon the Assistant Engineer, O&M, Perungudi to withdraw the impugned letter.

4.5 The Appellant states that the communication issued by the Executive Engineer/MRT, KK Nagar to the Assistant Engineer, O&M, Perungudi in Lr. No. EE/MRT/S/AEE/M/I.E./F.LTCT/D 557/15 dt 07.04.2015 and the consequential letters Lr No. AE/O & M/I.E Perungudi/CI/F.Shortfall/D 16/2015-16 dated 22.04.2015 and Lr No. AE/O & M/I.E Perungudi/CI/F. Shortfall/D 21/2015-16 dated 23.02.2016 issued by the Assistant Engineer were challenged before the Hon'ble Madras High court.

4.6 It is further submitted that the Hon'ble High Court of Madras vide order dated 15.03.2016 passed in W.P. No. 9582 of 2016 was pleased to direct the Respondent herein to consider the Appellant's representations dated 26.11.2015, 19.01.2016 and 17.02.2016 by way of affording an opportunity of personal hearing and thereafter passing orders on merits and in accordance with law.

4.7 Moreover, the meters installed at the premises of the Appellant have not been purchased by the Appellant but have been supplied by TANGEOCO which has an obligation under Clause 7(3) of the Supply Code to supply a meter of high quality, high precision and accuracy and therefore for any defect in the matter, no liability can be imposed upon the Appellant.

4.8 Without prejudice to its submissions on the very imposition of the demand on the Appellant it is submitted that the calculation of the penalty has not been done in accordance with the provisions of Regulation 11(2) of the Supply Code. Electricity supplied during the period in question shall be determined by taking average of the preceding 4 months consumption in respect of both HT and LT service connection provided that the condition in regard to use of electricity during the said four months was not different from those prevailed during the period in question.

4.9 In any case, without prejudice to its submissions above, it is stated that the demand made by the Respondent is time barred by virtue of the mandate contained in Sec 56(2) of the Electricity Act, 2003 which provides that no sum due from any consumer shall be recoverable by the EB from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. In any case and without prejudice to the earlier submissions, there is no liability to pay any amount for a period beyond 2 years from the date of the demand.

4.10 The demand for shortfall is liable to be set aside in as much as the respondents having failed to perform their statutory duties of periodic inspection and to supply qualitative meters, the respondents are seeking to unjustly enrich themselves by such arbitrary and illegal action for no fault of the Appellant.

4.11 Every quasi judicial order must be supported by reasons and this view is supported by several judgments of the Hon'ble Supreme Court. In the present case, the respondent and the Consumer Grievance Redressal Forum has failed to pass a reasoned speaking order, thereby violating the fundamental postulates of natural justice, and, as such, the impugned order is liable to be set aside on this ground alone.

5. Arguments furnished by the Respondents :

5.1 Originally the existing LTCT Service 205-004-145 .in the name of M/s. Precision Machine & Auto Components (p) Ltd the service was inspected by Enforcement on 12.03.15 and noticed that meter shows R-phase voltage is 0.0 volt.

5.2 On the request of Assistant Executive Engineer /O&M / Solinganallur MRT Wing /CEDC South / KK Nagar / Chennai inspected the service connection on 18.03.2015 and ensured by conducting power check that 0.0 Voltage in "R" Phase.

5.3 The meter was declared as only two phases are recording and replaced by healthy meter on 18.03.2015 by MRT / CEDC South /K.K Nagar / Chennai.

5.4 Based on the MRT Report 1/3 bill revision to be made from the month of 11/2010 (i.e) from 29.11.2010 to 18.03.2015. As per MRT report the total short fall units to be billed for short fall is 205861 units and the amount to be collected is Rs.1103617/-

5.5 In CFC/TANGEDCO's Lr.No.CFC/FC/R/D.No/Dt.11.10.2011 it is clearly instructed the field to take necessary action to collect the shortfall amount even beyond 2 years based on the judgment of Dt 31.03.1987 (H.D. Shourie Vs Municipal Corporation Delhi.

5.6 The consumer has also requested for installment to pay the shortfall amount vide their letter dt:02.09.15. Based on the request Installment were entered in system and communicated vide Assistant Engineer /IE / Perungudi's Letter .No. F.CC. Arrears/ 205-044-145 /Dt:27.02.16 also.

5.7 Again based on suit filed by the consumer vide W.P.No.20397 of 2016 , Order was passed by the Honourable Justice and directed the petitioner to deposit a sum of Rs.3,00,000/- out of the total demand and the disposal of the petition to be filed by the petitioner before the Consumer Grievance Redressal Forum.

5.8 As per the court order, the consumer has remitted Rs. 3,00,000/- vide Chs325RS1D349 dt: 26.08.16.

5.9 As per Appellant statement the meter installed at the premises of the Appellant is supplied by the TANGEDCO only and hence the replacement of healthy meter was carried out by TANGEDCO's scope with free of cost after power check conducted by the TANGEDCO's MRT Wing.

5.10 After justification only the shortfall assessment made and communicated to the Appellant by taking the reference of their actual consumption in the LTCT service connection 205-004-145 whereas this short levy assessment is not on struckup totally erotic functioning as the Appellant's quote because in this case the actual reading on a phase was completely missed and hence the actual recorded readings in 2 phases of the same meter for the same period are taken for the shortfall assessment.

5.11 The Appellants repeated statement of "failed to perform their statutory duties of periodic inspection" is strongly refused since the Respondent's duty is in concentration of arresting the revenue leakage and also the same is followed up in this case. Suppose the appellant's difficulties in remitting the amount in one lump

sum, then based on their request the installments will be given by the competent authority.

6. Hearing held by the Electricity Ombudsman :

6.1 To enable the Appellant and the Respondents to putforth their arguments in person, a hearing was conducted before the Electricity Ombudsman on 3-3-2017.

6.2 Tmt. Suresika Parthasarathi, Advocate, represented the Appellant and putforth her side arguments.

6.3 Thiru. R. Kumaravel, AEE/Sholingallur, has attended the hearing on behalf of the Respondent and putforth his side arguments.

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

7.1 Tmt. Suresika Parthasarathi, Advocate reiterated the contents of the appeal petition.

7.2 The learned advocate argued that the meter was fixed by the licensee. As per regulation 7(3) of the Supply Code, licensee is under obligation to supply a meter of high quality, high precision and accuracy. Therefore, for any defect in the meter installed by the licensee, no liability can be imposed upon the Appellant.

7.3 The learned advocate citing regulation 7(8) of the Supply Code argued that the licensee has to periodically calibrate the meter to check its accuracy. But, the licensee has not done that. Having derelicted its duties, the Respondents cannot now seek to recover a huge amount as short fall for a back period.

7.4 The learned advocate citing regulation 11(2) of the Supply Code for defects in the meter only immediate four months consumption has to be considered for arriving the average. But, they have added 50% of the consumption recorded as short fall.

There is no provision for such calculation. She however, informed that the above is without prejudice to the argument that no short fall is to be paid by the Appellant.

7.5 The learned advocate argued that as per section 56(2) of the Electricity Act, 2003 the licensee can claim arrears for a back period of two years only. But, in the case on hand short fall was claimed for 5 years. Therefore, the claim is time bared.

7.6 The learned advocate also informed that the reduction noted in the consumption pattern is due to reduction in the production and not due to defect in the meter.

8. Arguments putforth by the Respondent's Representative on the hearing date :

8.1 Thiru. R. Kumaravel, AEE/Sholinganallur reiterated the contents of the counter.

8.2 The AEE/Sholinganallur informed that the R phase voltage failure was found out while inspection by Enforcement wing and it was confirmed by MRT wing after testing the meter on 18.3.2015.

8.3 The AEE argued that as the R phase voltage of the meter was not recorded in the meter, the consumption recorded in the above phase has also been not recorded. Therefore, only two phase consumption alone recorded in the meter. As the meter is a 3 phase meter, the left out units will be 50% of the recorded units and accordingly, the short fall was arrived.

8.4 The AEE argued that it is the responsibility of the licensee to install correct meter and replace it whenever it was found to be defective. Tested meter was installed in the service while effecting the service. The defect was confirmed on 18.3.15. Therefore, the meter was changed on 20.3.2015. Hence, he argued that the licensee has acted as per regulation only.

8.5 For defective meter period assessment, the regulation 11(2) has to be applied when the utilisation pattern is same. But, in the said industry, the consumption was reducing year by year, therefore, utilisation pattern differs. Hence, he argued that the regulation 11(2) could not be adopted.

8.6 He also argued that the meter is a 3 phase meter, when one phase is not recording, the consumption recorded is equal to 2 phase consumption or $2/3^{\text{rd}}$ of the actual consumption. Therefore, to find out the actual consumption we have to add $1/2$ consumption recorded in the meter which is equal to one phase consumption. The AEE argued that as the industrial loads are balanced one, adding 50% of already recorded consumption to arrive at the actual consumption is a scientific way only.

8.6 With regard to the claim of limitation, the AEE argued that as per the judgment dt.31.3.1987(H.D. Sharie Vs Municipal Corporation Delhi) the licensee can claim short fall from the eligible date and the limitation starts only after the issue of the demand notice.

9. Written submission of the Appellant :

9.1 It is submitted that the Hon'ble High Court of Madras vide order dated 15.03.2016 passed in W.P. No. 9582 of 2016 was pleased to direct the Respondent herein to consider the Appellant's representations dated 26.11.2015, 19.01.2016 and 17.02.2016 by way of affording an opportunity of personal hearing and thereafter passing orders on merits and in accordance with law. Pursuant to the directions of the Hon'ble High Court of Madras in W.P No, 9582 of 2016 dated 15.03.2016, the respondent conducted proceedings on 11.04.2016. The Respondent issued another order dated 02.05.2016 levying demand of Rs. 11,36,017/- as shortfall from October, 2010 until the date of replacement of faulty meter. The impugned letter was

challenged before Hon'ble High Court of Madras in WP No. 20397/2016. The Hon'ble High Court vide order dated 17.06.2016, directed the Appellant to file an appropriate petition before the Consumer Grievance Redressal Forum within a period of four weeks from the date of receipt of the order. A copy of the order Hon'ble High Court of Madras in W.P. Nos. 9582 of 2016 and 20397 of 2016 are attached herewith.

9.2 It is the Appellant's contention that the obligation is on the licensee, the TANGEDCO to periodically recalibrate and standardise the meters as has been provided in Clause 7(8) of the Tamil Nadu Electricity Supply Code, 2004. Therefore, the Appellant cannot be unduly penalised for a failure on the part of the TANGEDCO to perform its statutory duty of carrying out inspections at regular intervals, and be required to pay a huge amount, especially since the demand itself is based on an unfounded and unverified presumption. Furthermore, the meters installed at the premises of the Appellant have not been purchased by the Appellant but have been supplied by TANGEDCO which has an obligation under Clause 7(3) of the Supply Code to supply a meter of high quality, high precision and accuracy and therefore for any defect in the matter, no liability can be imposed upon the Appellant it is the duty of TANGEDCO to supply meters of high quality, and to carry on periodic inspection of the premises. Hence, the very imposition of liability is in violation of the method of assessment in case of a defective meter as set out in Regulation 11 (2) of the Supply Code.

9.3 It is further submitted that the demand raised as short fall is time barred by virtue of the mandate contained in Sec 56 (2) of the Electricity Act, 2003, which provides that no sum due from any consumer shall be recoverable by the EB from the date when such sum became first due unless such sum has been shown

continuously as recoverable as arrear of charges for electricity supplied. In any case and without prejudice to the earlier submissions, there is no liability to pay any amount for a period beyond 2 years from the date of demand.

9.4 However, the Consumer Grievance Redressal Forum in its order dated 03.11.2016 has erred in mechanically disposing of the objections raised by the Appellant and in fact not considered any of the submissions raised by the Appellant in the impugned order. In this regard, it is submitted that the Forum is bound to pass a speaking order and to give reasons as to why the objections raised by the Appellant are incorrect.

9.5 Appellant states that the Respondent's reliance on Lr. No. CFC/FC/RID. No. dated 11.10.2011 issued by the Chief Financial Controller, TANGEDCO is not applicable in the present case. As per this circular, any demand involving short levy or incorrect billing made after two years is a supplementary bill towards the energy unbilled and the limitation under section 56 (2) of the Act will not be attracted on expiry of the time mentioned in such demand notice, only if the amount due is shown continuously as recoverable' as arrear of charges for electricity supplied by the licensee and such demand seeking payment for a . back period shall be properly/appropriately worded so as to indicate that it is a supplementary bill raised for the first time. The relevant extract from the circular is set out below:

From the above, it is evident that any demand involving short levy, incorrect billing, wrong application of the multiplying factor audit objection etc. made after two years is a supplementary bill towards the energy unbilled. There is no bar in the said Act to raise a supplementary bill. In that case. the bar/limitation under section 56(2) of the said Act will be attracted on expiry of the time mentioned in such demand notice, since on such date the amount first became due unless the amount so demanded in such supplementary bill is shown continuously as recoverable as arrears of charges for electricity supplied by the licensee.

Further, such demand seeking payment for a back period shall be properly/appropriately worded so as to indicate that it is a supplementary bill raised for the first time.”

9.6 It is submitted that in the course of the hearing, the Respondent had submitted that down loaded data from the defective meter was not available with the Respondent. It is therefore, the contention of the Appellant that since the readings/down loaded data are not available with the Respondent, the working in the demand notice dated 02.05.2016 levying demand of Rs. 11, 36,017/- is incorrect and ought to be set aside, since the reading date from which the shortfall has to be collected is not available.

9.7 The calculation of the penalty has not been done in accordance with the provisions of Regulation 11 (2) of the Supply Code. The said Regulation , provides that the electricity supplied during the period in question shall be determined by taking average of the preceding 4 months consumption in respect of both HT and LT service connection provided that the condition in regard to use of electricity during the said four months were not different from those prevailed during the period in question.

10. Findings of the Electricity Ombudsman :

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

- (i) Whether the meter is defective ?
- (ii) What is the defective period?
- (iii) Whether Short fall calculated is correct?
- (iv) Whether the argument of the Appellant that the short fall claimed is barred by limitation is acceptable ?

11. Findings on the First & Second issues :

11.1 The Respondent argued that the Enforcement wing of TANGEDCO inspected the service on 12.3.2015 and found that the R phase voltage is zero. Accordingly, MRT wing of Chennai EDC/South-II inspected the service on 18.3.2015 and conducted power check on the meter and confirmed the R phase voltage recording as zero and declared the meter as defective. A new meter was also installed on the same date.

11.2 As the Respondent has stated that the MRT has tested the meter and declared the meter as defective, the report of EE/MRT dt.7.4.15 is extracted below:

xxx xxxx xx

It is was reported orally by AEE/O&M/Sholinganallur that the LTCT service at Perungudi /I.E. section in the name of M/s Precision Machine Auto Components bearing Ac No.205-004-145, the service was inspected by Enforcement on 12.3.2015 and noticed that the meter shows R phase voltage as 0.0 volt. Hence, the service was inspected by MRT on 18.3.2015 to check the reason for the meter shows R phase voltage as 0.0 volt. At the time of inspection CT compartment having Enforcement seals. Power check was carried out and found not tallied since meter shows R phase voltage is 0.0 through the meter terminal voltage is 220 volt. Hence, the meter declared as defective.

AEE/O&M/Sholinganallur has arranged the healthy meter, the existing defective meter was released and replaced by healthy meter, supply was restored and found normal.

<u>Released Meter Details</u>		<u>Fixed Meter Details</u>		
Make :Omni Agate		Secure	Sanctioned load :112kw	
Sl.No.:M506096		TNB 76864	TF : IIIB	
P.O.No.167-1/2005		133/2012	CTR:200/5A, MF:40	
Reading as on 18.3.15	KWH	KVAH	Avg PF	MD in KW
Final Reading	: 26307.1	29852.7	0.8887	0.568
Initial Reading	: 0.0	0.0	0.0	0.00

Power check was carried out after replacing the meter and found to be in order.

Billing Recommendation :

At the time of inspection, consumer availed the load of 14.84KW, but meter shows the load of 9.8kw, it is evident that the meter recorded only 2/3rd consumption used by the consumer. Since, the existing defective meter data could not be downloaded, the consumer ledger was checked and it was noticed that the consumption was normal up to the assessment month of 10/2010 and further in the assessment month of 11/2010 the consumption was decreased 1/3rd of previous months consumption. Hence, the bill revision for the defective period may be taken from the bill month of 11/2010 (29.11.2010) to 18.3.2015 (date of meter replaced). The bill revision may be done by adding the 50% of already recorded consumption during the defective period. The statement showing the difference in units consumed to be billed is enclosed. The total units to be billed works out to 205861 units. The bill from 18.3.2015 may be done based on the actual recorded consumption.

*sd/xxx xxx xxx
Executive Engineer/MRT/
CEDC/South”*

11.3 On a careful reading of the EE/MRT , it is noted that power check was carried out by MRT and found not tallied. It is also noted that the R phase voltage is zero though the meter terminal voltage is 220 volts. Further, it was also reported by MRT, at the time of inspection, the load availed by the consumer is 14.84 kw but the meter shows the load of 9.8 kw only. It establishes that the meter is not recording the correct load but less than the actual load. Hence, the MRT has declared the meter as defective.

11.4 As MRT an expert wing of the licensee in testing the meter has declared the meter as defective after conducting power check on the meter, I am of the considered view that the meter is defective only.

11.5 The next issue is if the meter is defective then the date from which it has become defective.

11.6 The Respondent informed that the meter data could not be downloaded from the defective meter. Therefore, they have claimed the meter is defective from 11/2010, as recommended by EE/MRT. The reason given by MRT for taking the

meter as defective from 11/2010 is that the consumption has decreased by 1/3rd of previous month.

11.7 The Appellant argued that the reduction in consumption is due to reduction in their production. The Appellant also argued that they have permanently disconnected the service on 10.11.2016.

11.8 In this case, as there was no downloaded details, the date from which R phase voltage failure occurred could not be traced out. Therefore, in the absence of downloaded details, we have to analyse the consumption pattern only to arrive at the defective period.

11.9 The Respondent, citing the MRT report argued that the R phase voltage failure would have occurred from 11/2010 assessment period stating that there was 1/3rd reduction in consumption of 11/2010 assessment from the previous month consumption (ie) the consumption of 19520 units in 10/2010 has come down to 13800 units.

11.10 The Appellant argued that the reduction in consumption is due to reduction in the production. Appellant has also furnished the production in MT as detailed below:

period	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr	Total
2009-10	87	271	283	107	748
2010-11	103	239	289	281	912
2011-12	208	244	309	368	1127
2012-13	179	232	120	83	614
2013-14	219	168	228	0	615
2014-15	0	0	65	94	159

11.11 As the Appellant has argued that the reduction is due to reduction in production. I would like to compare the production details furnished by the Appellant with consumption. The same are tabulated below :

	2009-10		2010-11		2011-12		2012-13		2013-14		2014-15	
	consmprn. in units	production in MT	consmprn. in units	prod in MT								
4	10080	87	17400	103	13040	208	7440	179	7320	219	5240	0
5	13600		15680		14560		8400		6680		6120	
6	14600		19440		10160		7440		7040		6790	
7	17000	271	17480	239	10600	244	9560	232	7720	168	4906	0
8	21440		17840		11240		7640		6760		0	
9	18280		14000		10360		9080		5640		2860	
10	15040	283	19520	289	11000	309	8040	120	6120	228	4840	65
11	19040		13800		8880		5080		4720		2180	
12	15000		13360		9800		7280		4120		3660	
1	15360	107	9800	281	7440	368	6240	83	5080	0	2400	94
2	16400		10880		9320		6640		4040		1400	
3	17600		12480		7960		6280		6360		4240	
Total	1,93,440	748	181680	912	124300	1127	89120	614	71600	615	44636	159

11.12 On a careful study of the above table it is noted that the total consumption during the year 2009-2010 is 1,93,440 units and the production is 748 MT. Therefore, the consumption per metric ton of production works out to 258.6 units. For the year 2010-11 the consumption recorded is 1,81,680 units and the production is 912 MT. Therefore, the average consumption per metric ton works out to 199.2 units. Similarly, for the year 2011-12 and 2012-13 & 2013-14 the consumption per metric ton of production works out 110.4 units, 145.1 units and 116.4 units. For 2014-15, the same is worked out as 280 units per MT.

11.13 The Respondent argued that the consumption has reduced about 1/3rd from 11/2010 onwards and therefore, the R phase voltage failure would have occurred from 11/2010. It is noted that the average consumption per MT has reduced to 199 units for the year 2010-11 when compared to 258.6 in 2009-10. As the meter was argued to be defective from 11/2010. I would like to calculate the average consumption per metric for 1st & 2nd Quarter with 3rd & 4th Quarter of the year 2010-11. The figures are as detailed below :

	Consumption	Production in M.T.	Consumption per M.T.	Remarks
I st & II nd Quarters	1,01840 units	342	297.7	In the III rd & IV th the Quarter out of six months one month the meter is said to be O.K.
III rd & IV th Quarters	79840 units	570	140	

11.14 It could be noted from the details furnished in previous para 11.12 & 11.13 above, the consumption per metric ton has reduced considerably after 11/2010 assessment period (ie) the assessment period from which the meter is said to be defective by the Respondent.

11.15 It is also noted that the consumption for the year 2010-11, is less than the consumption of the year 2009-10, though the production is higher. Similarly, the consumption in 2011-12 is also less than 2009-10 consumption though the production is about 60% more than the production of 2009-10.

11.16 In view of the discussion in para 11.11 to 11.15 above, I am of the view that the contention of the Respondent that the meter could be defective from 11/2010 is acceptable to me.

12. Findings on Third Issue :

12.1 The Respondent argued that as one phase (R phase) voltage is missing the consumption in one phase has not been recorded in the meter. The recorded consumption is equal to the consumption of 2 phases (ie) 2/3rd of the consumption has been recorded in the meter and 1/3rd is not recorded. As the consumption recorded is for two phases, the consumption not recorded due to one phase voltage missing is half of the recorded consumption. Hence, the licensee argued that 50% of the consumption recorded for the meter defective period may be added to arrive at the consumption as suggested by the MRT wing.

12.2 The Appellant argued that the calculation of the missed units was not done as per regulation 11(2) of Supply Code.

12.3 If all the loads connected are three phase or the loads connected in each phase is equal, then only the consumption will be equal in all the phases. Further, there is no provision in the Code, to assess the consumption by adding 50% of the consumption recorded as suggested by the licensee. Hence, I am not considering the above.

12.4 The assessment of billing in case where there is no meter or meter is defective, has been given in 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.”

12.5 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 period.

12.6 The Production details furnished by the Appellant is detailed below :

period	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr	Total
2009-10	87	271	283	107	748
2010-11	103	239	289	281	912
2011-12	208	244	309	368	1127
2012-13	179	232	120	83	614
2013-14	219	168	228	0	615
2014-15	0	0	65	94	159

12.7 On a careful analysis of the production in metric ton given by the Appellant each year is varying and is reduced considerably in the year 2014-2015. Further, the consumption pattern is also having vast variation as furnished in para 11.11.

12.8 The consumption recorded before the meter become defective during 10/2010 assessment period is 19520 units. The per day consumption is 650.6 units. The consumption recorded after changing the defective meter on 3/2015, for the month of 4/2015 is 6800 units. The consumption per day works out to 226.6 units. As there was vast variation of consumption noted in the initial & final period of the defective

meter period, the assessment based on previous consumption or the consumption recorded after changing the meter could not be applied (ie) there is no four months period wherein the consumption pattern is similar to the defective period is available. Under the above circumstances I am of the view that regulation 11(6) (ie) when there is not possible to select a set a four months, the quantity of electricity supplied shall be assessed in case of LT by concerned Engineer incharge of the Distribution based on the connected load & hours of usage has to be adopted for arriving the average consumption of the defective period.

13. Findings on Fourth Issue :

13.1 The Appellant argued that the short fall amount is to be set aside stating the following :

(i) The appellant citing regulation 7(8) of the Supply Code argued that it is the Responsibility of TANGEDCO to periodically calibrate and standardise the meter. Therefore, the appellant argued that the Appellant could not be penalised for the failure on the part of TANGEDCO to perform its statutory duty of carrying out inspection at regular intervals by claiming a large sum as short fall.

(ii) As per regulation 7(3) of the Supply Code, to supply a meter of high quality, high precision and accuracy is the responsibility of the licensee therefore for any defect in the meter, no liability can be imposed upon the Appellant.

(iii) The demand raised as short fall is time barred by virtue of the mandate contained in section 56(2) of the Electricity Act 2003 which provides that no sum due from any consumer shall be recoverable by the Electricity Board from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied . The Appellant argued that

without prejudice to earlier submission, there is no liability to pay any amount for a period beyond 2 years from the date of demand.

(iv) The circular No.CFC/FC/R/D.No/dt.11.10.2011 issued by the Chief Financial Controller, TANGEDCO is not applicable in the present case.

13.2 The Respondent putforth the following arguments.

(i) The actual consumption on one phase is completely missed and hence the actual recorded reading in phase of the same meter by the same period are taken for the short fall. The short fall was assessed because it was actually due to the Board.

(ii) The meter installed at the premises of the Appellant is supplied by TANGEDCO only and hence the replacement of a healthy meter was carried out by TANGEDCO with free of cost after power check by TANGEDCO MRT wing. The Appellant statement of failed to perform the statutory duty is refused since the Respondents duty is in concentration of arresting of the revenue leakages and the same is followed up in this case.

(iii) In CFC's circular Lr.No.CFC/FC/R/D.No./dt. 11.10.2011 it is clearly instructed the filed to take necessary action to collect the short fall amount even beyond 2 years based on the judgment dt.31.3.1987 (H.D. Shourie Vs Municipal Corporation Delhi).

13.3 As the Appellant has cited regulation 7(8) of the Supply Code, the said regulation 7(8) of the supply Code is extracted below :

“7. Installation of Meter

(8) At periodical intervals, the meters shall be recalibrated and standardized by means of standard instruments by the Licensee. In respect of High Tension service connections, however, such recalibration will be done in the presence of the Consumer's Electrical Engineer or his representative if the consumer so desires. If the meter is found defective/incorrect, the adjustments in bills shall be made for error beyond permissible limits as laid down in the relevant

rules made under the Act. The instrument transformers shall be tested for accuracy periodically as specified in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 and its amendment regulations.”

13.4 On a careful reading of the said regulation, it is noted that at periodical intervals, the meter shall be recalibrated and Standardised by means of Standard Instruments by the licensee. As per the regulation, if the meter is found defective/incorrect, the adjustments in bills shall be made for the error beyond permissible limits as laid down in the relevant rules made under the act.

13.5 Though the regulation specify inspection at periodical intervals, it has not specified the periodicity. To know about the periodicity for recalibration I would like to refer Regulation 18(2) of CEA (Installation and operation of meters) Regulations 2006.

“18. Calibration and periodical testing of meters. –

XXXX XXXX XXXX

(2) Consumer meters

The testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a tested meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of the previous years or if there is consumer’s complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of consumer meters up to 650 volts. The testing for consumers meters above 650 volts should cover the entire metering system including CTs, VTs. Testing may be carried out through NABL accredited mobile laboratory using secondary injection kit, measuring unit and phantom loading or at any accredited test laboratory and recalibrated if required at manufacturer’s works.”

13.6 As per the above regulation testing of meter at site has to be done at least once in five years or the meter has to be replaced by a tested meter. As per the

above regulation, the periodicity of testing of meter is five years. The disputed meter was installed in the said service on 6.1.2007 (ie) the meter was in service without periodical testing from 6.1.2007 to 18.5.2015. Hence, had the licensee conducted the periodical testing, the defect in the meter would have been noted at the time of testing itself (ie) before 5.1.2012 and this type of grievance would not have arisen at all.

13.7 The Appellant has cited the regulation 7(3) and argued that it is the licensee's responsibility to install a high quality, high precision accuracy meter and hence argued for the defect of meter, the consumer could not be held responsible & claim short fall.

13.8 The Respondent argued that as it is the licensee's responsibility they have changed the meter when it is found defective.

13.9 It is established that one phase consumption was not recorded in the meter. Therefore, the consumption recorded in the meter is less than the actual consumption of the said service. In such circumstances the consumer has paid CC charges less than what he was ought to pay. If the shortfall amount is not claimed, then it amounts to unjust enrichment to the consumer. Therefore I am unable to accept the arguments of the Appellant.

13.10 As the Appellant has cited section 56(2) and argued that the licensee is barred from collecting arrears for more than a period of 2 years, the relevant section 56(2) of Electricity Act 2003 is extracted below :

"(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity: "

13.11 As per the above clause, no sum due from any consumer under the said section 56(2) shall be recoverable after the period of 2 years from the date when such sum become first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied.

13.12 With reference to the applicability of section 56(2) of the Electricity Act 2003, for limitation, the judgment dt.14.11.2006 of Appellate Tribunal for Electricity in appeal Nos 202 and 203 of 2006 is relevant and is reproduced below:

"Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. In the instant case, the meter was tested on 03.03.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27. 63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003. The revised notice of demand was raised for a sum of Rs. 4,28,034/- on 19.03.2005. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected, the amount become payable only on 19.03.2005, the day when the notice of demand was raised. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired".

13.13 It is clear from above judgment that, even though the liability to pay energy charges is created. on the day the electricity is consumed, the charge would become first due only after a bill or a demand notice is served. Therefore, the limitation in the present case also shall run from the date of demand notice.

13.14 In the case on hand, the short fall amount was intimated on 22.4.2015. Hence, the 2 years period starts only from 22.4.2015.

13.15 In view of the judgment of Appellate Tribunal for Electricity rendered in appeal nos. 202 & 203 of 2006 on 14.11.2006, I am unable to accept the argument put forth by the Appellant that as per the provision of section 56(2) of the Electricity Act 2003,

the licensee is barred by limitation to recover the dues beyond the limit of 2 years.

14. Observation

It is noted that the R phase voltage was recorded as zero (when the terminal voltage is 220 volts) in the meter installed in the disputed service connection which resulted in non recording of the consumption in R phase even though loads were utilised in the said phase. Being a LTCT service, the meter reading of the said service was taken by the section officer concerned. Had the officer checked the voltage in all phases while taking monthly reading the defect would have been noted on the respective assessment month itself. Further, had the meter been calibrated or changed by a tested meter once in 5 years as per regulation, the defect would have also known to the licensee before 1/2012 and claiming of arrears for such a lengthy period of about 4 ½ years (from 11/2010 & 3/2015) would not have arisen at all. In view of the above, the licensee is directed to issue suitable instructions to the section officers to check all the parameters that are displayed in the static meter to avoid such happening in future.

15. Conclusion :

15.1 In view of my findings on third issue in para 12, the licensee is directed to rework the shortfall amount as per regulation 11(6) of the Supply Code and issue a demand notice duly accounting the amount already paid by the Appellant within 30 days from the date of receipt of this order.

15.2 A compliance report shall be furnished within 45 days from the date of receipt of this order.

15.3 With the above findings, A.P.No.101 of 2016 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1) M/s Precision Machine and Auto Components Pvt Ltd.,
Rep by its Managing Director,
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2) The Superintending Engineer,
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3) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/South-II,
TANGEDCO,
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K.K. Nagar, Chennai – 78.

4) The Chairman & Managing Director,
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5) The Secretary,
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Egmore,
Chennai – 600 008.

6) The Assistant Director (Computer) – **For Hosting in the TNEO Website.**
Tamil Nadu Electricity Regulatory Commission,
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