



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No.3 of 2017

Thiru R. Devadass,
No.29, (Old No. 41), 3rd Main Road
Raja Annamalaipuram,
Chennai – 600 028.

..... Appellant
(Rep by Thiru Mohandass)

Vs

The Executive Engineer / O & M, T. Nagar,
Chennai Electricity Distribution Circle/Central,
TANGEDCO,
110/33/11 KV, Valluvarkottam SS Complex,
M.G.R Salai, Nungambakkam,
Chennai – 600 034.

..... Respondent
(Rep by Thiru. Asokan, AEE/Teynampet)

Date of hearing : 13-4-2017

Date of order : 23-6-2017

The petition dated 6.1.2017 filed by Thiru R. Devadass, Raja Annamalaipuram, Chennai was registered as Appeal Petition No.3 of 2017. The above appeal petition came up for hearing before the Electricity Ombudsman on 13-4-2017. 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 revoke the CGRF Order and claim of cc arrears of Rs.13,577/- for the assessment periods 11/2013 to 5/2014 claimed as non adoption of average.

2. Brief History of the case:

2.1 SC No. 209-016-302 was effected in the name of R. Devadass. The sanctioned load is 4 kw and is charged under tariff IA.

2.2 The meter of the service was changed on 10.04.2014 due to meter struck up.

2.3 The Appellant filed a petition before the CGRF to set aside the short fall amount of Rs.13,577/- claimed for the period from 11/2013 to 5/2014.

2.4 The CGRF of Chennai Electricity Distribution Circle / Central issued its order on 3.12.2016 and the same was received by the Appellant on 8.12.2016.

2.5 Aggrieved over the order of CGRF, the Appellant filed a petition before the Electricity Ombudsman.

3. Orders of the Forum:

The CGRF of the Chennai Electricity Distribution Circle / Central has issued its order on 3-12-2016. The relevant para of the order is extracted below:-

"Findings & Orders

Both the complainant and respondents arguments were heard and the records were analysed.

While reviewing all the records it is clear that the service connection 209-016-302/1a meter was changed on 10.04.2014 due to the reason "Stuck Up". After changing the meter the consumption increases. Though the defect was informed by the complainant via SMS to the licensee it is clear that the meter was defective and the consumption increases after meter change.

The complainant also stated that the 3rd floor portion for which the service connection 209-016-302/1a was utilized was vacant during the period for which average was

claimed. However, the complainant had not enclosed any supportive documents for his claim. Hence it could not be considered.

Also, the complainant objection was against the claim which was raised by the licensee after a period of two years while he accepts that the meter was defective during the period. In this connection, (i) the provisions contained in section 56(2) of the Electricity Act, 2003, (ii) Judgement dated 31.3.1987 in H.D. Shourie vs. Municipal Corporation of Delhi and LPA judgement dated 17.12.1993 in Municipal Corporation of Delhi vs. H.D. Shourie both rendered by the High Court of Delhi, (iii) Judgement dated 16.7.2009 in LPA 211/2009 in the case of NDMC Vs Abaskar construction (P) Ltd., rendered by the High Court of Delhi (iv) Judgement dated 20.8.2009 in W.P. No. 7015 of 2008 in the case of M/s. Rototex Polyster and another Vs. Administrator, Administration of Dadra & Nagar Havli (U.T) Electricity Department, Silvassa and others rendered by the High Court of Bombay and (v) judgment dated 19.04.2011 in W.P. (c) 8647 of 2007 in the case of jingle Bell Amusement park (P) Ltd. vs North Delhi Power Ltd. Rendered by the High Court of Delhi are considered by the Legal Cell.

D) In the judgement dated 31.3.1987 (H.D. Shourie Vs Municipal Corporation of Delhi) among other things, the word 'due' appearing in section 24 of the I.E. Act, 1910 had been considered by the Court and it was held that the word 'due' in the context (of section 24 of the I.E. Act, 1910) must mean due and payable after a valid bill has been sent to the consumer and that even though the liability to pay may arise when the electricity is consumed by the petitioner, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised.

E) The aforesaid interpretation was upheld in the appeal and followed by in other cases referred to above. In the decision rendered in M/s. Jingle Bell Amusement Park (P) Ltd. Vs North Delhi Power Ltd. And M/s. Rotex Polyster and another Vs Administration of Dadra Nagar Havil (UT) Electricity Department, the scope of section 56(2) of the Electricity Act, 2003 has been considered and held that the bar of limitation cannot be raised by the consumer and further held that the revised bill amount would become due when the revised bill is raised and section 56(2) of the said Act would not come in the way of recovery of the amount under the revised bills. Also, as per supply code heading "Errors in Billing" Clause 12(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”. (in which there is no mention about the time limit). Thus, this Forum is of the opinion that the average levied by licensee’s is correct and the Forum directs the complainant to pay the short fall amount claimed by the licensee.

Regarding BPSC and DCRC fees the licensee already deleted the same from the 11th month bill which was confirmed via consumer ledger. No specific direction is required in this regard.

With the above direction, the petition is disposed off.

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

4.1 The contention given in appeal petition are furnished below :-

- (i) It is very clear that the entire facts / contentions / written arguments / copies of documents given during the CGRF hearing has not been considered as it is evident from the CGRF order itself which misses to answer many of my points / contentions / arguments.
- (ii) The CFC Revenue Letter Dated 11/10/2011 mentioned in the CGRF Order in S. No. 2 “Case of the Respondent”, as “enclosed the same for reference”; This CFC Revenue Letter was never disclosed in open during the 15 minutes of my presence there and moreover it was also not attached in the EE's email dated 02/11/2016 to me (EE's email to me was after filing complaint with CGRF online on 19/10/2016.), this EE's email only had the calculation of average with prevailing tariff rates. This fact was also mentioned in my written arguments in S.No.30 (iii).
- (iii) The CGRF Order in S.No.4 “Findings & Orders”, mentions, “Both the complainant and respondents arguments were heard and the records were analysed”; Here I would like to assert that all respondents were silent and did not present to me any oral arguments or documentary claims during the course of 15 minutes of CGRF hearing.
- (iv) The CGRF order in S. No. 4 “Findings & Orders”, mentions, “However, the complainant had not enclosed any supportive documents for his claim. Hence, it could not be considered”; Here as per my contentions / facts stated in my original online complaint S. No. 25 (also S. No. 25 in written arguments to CGRF Hearings; If any doubts or clarifications, it should have been sought immediately from me then and there while readings are recorded or shortly there-after within

few days. Also as per my contentions / facts stated in S. No. 28 of my original online complaint.

- (v) The CGRF Order in S. No. 4 “Findings & Orders”, mentions, “Also, the complainant objection, was against the claim which was raised by the licensee after a period of two years while he accepts that the meter was defective during the period”; Here, I assert that it was never mentioned by me that the meter was defective during the period; while it was mentioned in S. No. 16 of online complaint and S. No. 16 of CGRF Written arguments as, “It was I who had first noticed that the dial meter (S. No. 7048083) was not working from Feb’14 and immediately notified by SMS to the then Assistant Engineer and requested him to arrange for a replacement of meter with new static electronic meter.” This clearly stated the dial meter was not working from Feb’14 and it was notified by me in SMS, not as mentioned in the CGRF order stated above.
- (vi) There has been no written letter / written communication from TANGEDCO on this levy of CC arrears for a period which is more than 2.5 to 3 years now.
- (vii) There has been no calculation / tabulation with tariff rate showing the arrears amount of Rs.13,577/- for the said assessment period 11/2013 to 05/2014 (consumption period from 10/09/2013 to 08/05/2014) until my complaint with CGRF and it was there after the Executive Engineer has sent an email on 02.11.2016. with a letter in word document mentioning the calculation with tariff.
- (viii) There has been no show cause notice issued to me and there was no opportunity provided to me to be heard / to state facts prior to the levy of this arrears. Hence there has been a violation of principles of natural justice.
- (ix) Further, I would urge you to refer the following appeal case in Tamil Nadu Electricity Ombudsman (TNEO)

Refer the Appeal in the TNEO, A.P. No. 16 of 2013 dated 21/05/201,

(M. Paraman / Surfactants & Allied Chemicals Pvt. Ltd. Vs. E.E. / O & M T. Nagar / TANGEDCO) and its order dated July’13.

I am quoting the reference of above appeal in the TNEO and without focussing on the merits or demerits of that chase, but only to represent points emphasised by TANGEDCO based on rules / act in various places and also “Findings and observation of Electricity Ombudsman which are binding on TANGEDCO.

(A) Refer Page – 07, contentions of the Respondent in 6 (vii) – Even though the meter has become defective since 2007 due to limitation period of two year revision of bill was done from 8/2008 to 2/2010.

(B) Refer Page -09, Argument of the Respondent in 9.3 – The Assistant Executive Engineer argued that the meter was defective in the service from 2007 onwards. However, due to limitation for claiming the arrears, the average was claimed from 8/2008.

(C) Refer Page – 14, Findings of the Electricity Ombudsman in 11.17 (ii) But the respondent has claimed average only from 8/2008 pointing out the limitation of 2 years for claiming arrears.

(D) Refer page – 18, observation of Ombudsman in 12.2 – As meter is the important equipment in raising the revenue, the licensee is directed to take suitable action to replace the defective meters then and there and to adopt average consumption as soon as the meter becomes defective.

4.2 The arguments furnished in CGRF petition dated 17.11.2016 are as below :-

- I. This levy of CC arrears is not in accordance (violation of) to Section – 56 of Electricity Act 2003 (Central Act No. 36 of 2003), which has limitation of 2 years for claiming any arrears.
- II. There has been no written letter / written communication from TANGEDCO on this levy of CC arrears for a period which is more than 2.5 to 3 years now.
- III. There has been no calculation / tabulation with tariff rate showing the arrears amount of Rs.13,577/- for the said assessment period 1/2013 to 05/2014 (consumption period from 10/09/2013 to 08/05/2014).
- IV. There has been no opportunity provided to me to be heard / to state facts, the then prevailing situation and my explanations on them. Hence there has been a violation of principles of natural justice.
- V. Electricity consumption is a very dynamic one based on the varying usage of electricity in the amount of area of occupation on each and every day / week / month, according to family members presence / absence, according to visitors and guests presence / absence.
- VI. Meter fixed at consumer place should be of high quality, high precision and accuracy, as per TNESC Regulation 7.3

It is the responsibility of TANGEDCO reading recorder staff / assessor to assess the status of meter, whether it is working or not.

- VII. It is the responsibility of TANGEDCO to replace such meter with high quality, high precision and accuracy meter when found to be defective.
- VIII. I would like to state that any internal circulars / letters shall not over rule / amend any of the provision and sections of Electricity Act 2003 (Central Act No. 36 of 2003) and it's Amendments of 2005 (the last amendment to the Act.
- IX. The Electricity Act 2003 (Central Act No. 36 of 2003) has been amended last in 2005 through the Electricity (Amendment) Bill 2005, Bill No.165 as introduced on 23/12/2005 in the Parliament (LS), where in the said Section -56(2) has not undergone any amendments, hence as on date till now the limitation period for claiming any arrears is 2 years as per Section 56 (2) of the Act, which is quoted below

“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 arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”

From the above stated Section – 56 (2) of ACT, it is evident and clear on the limitation of 2 years from the date of FIRST DUE of sum unless it has been shown continuously as recoverable as arrears.

5. Arguments of the Respondent furnished in the counter :

5.1 It is submitted that the petitioner in his SMS during February 2014, has sought for change of meter on the ground that it is not functioning. Accordingly, the meter was replaced on 10.04.2014. In as much as it is found that the meter was found struck-up from the month of November 2013, as could be evident from the reading recorded in the meter card and entered in data base of the TANGEDCO, which fact was also known to

the petitioner revision of past bills pertaining to the defective period from November 2013 to May 2014 was necessitated.

5.2 The consumption reading recorded in the meter in the recent past are stated below for better appreciation of this case on hand by this Hon'ble Ombudsman.

Month and Year	Consumption recorded in Units
September 2010	320
November 2010	28-
January 2011	80
March 2011	100
May 2011	190
July 2011	190
September 2011	160
November 2011	100
January 2012	20
March 2012	40
May 2012	70
July 2012	40
September 2012	100
November 2012	100
January 2013	20
March 2013	10
May 2013	10
July 2013	30
September 2013	30
November 2013	20
January 2014	0
March 2014	30 (Meter replaced on 10.04.2014)
May 2014	365
July 2014	930
September 2014	780

From the above records, it is evident that the meter was not running properly from the month of September 2010 and up to 10.04.2014.

5.3 In view of the above position and in accordance with regulation 11 (5) of the supply code, the amount of energy not, recorded during the defective period was assessed based on the reading recorded in the meter as follows.

The recorded consumption 10.04.2014 to 08.05.2014 is = 350 Units

12.03.2014 to 10.04.2014 Proportionate }

defective period } $\frac{350}{28} \times 29 = 363$ Units

28 = 713 Units

Basic for Average = $713 + 930 = \frac{1643}{2} = 822$ units (Average)

2

Accordingly, the revision was made for the defective period as follows:-

Month	To be billed		Already Billed		Short fall	Tariff rate bi-monthly	
	Unit	Amount	Unit	Amount		0.200	Rs.3
11/13	822	3692	20	40	3652	201-500	Rs.4
01/14	822	2692	0	20	3672	501-822	Rs.5.75
03/14	822	3692	30	50	3642	Fixed charges bi-monthly	Rs.40
05/14	713	3536	365	925	2611		

5.4 It is further submitted that the petitioner has made representations in this regard and the petitioner was duly explained and in fact he was apprised of the provisions of the Supply Code and that regulation 11(5) of the Supply Code will apply to his case.

5.5 The CFC Revenue letter is an internal circular / letter where in a clarification was sought for the time limit to claim the arrear. It is based on law.

5.6 The amount become due on 09/2016, that is date of raising the demand. The period of limitation starts from the said date. Hence, it is within section 56 (2) of the Electricity act 2003.

5.7 As per supply code heading "Errors in Billing" Clause 12(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 on additional amount in case of under charging and the consumer will have the right to get refund of the excess amount in the case of over charging" (in which there is no mention about the time limit).

5.8 The petitioner was informed through e-mail dated 02.11.2016 for non payment, the service was not disconnected as he has approached CGRF. The CGRF has considered the complaint and orders passed.

6. Hearing held by the Electricity Ombudsman :

6.1 To enable the Appellant and the Respondent to putforth their arguments in person, a hearing was proposed on 23.3.2017. However, as requested by the Respondent the hearing was postponed and conducted on 13.4.2017.

6.2 Thiru Mohandoss has represented the Appellant and putforth his arguments in person.

6.3 Thiru Asokan, Assistant Executive Engineer / Teynampet attended the hearing on behalf of the Respondent and put forth his arguments.

7. Arguments putforth by the Appellant on the hearing date:

7.1 The Appellant reiterated the contents of the Appeal petition. He has also submitted his written arguments on the hearing date. As he has presented the arguments given in the written arguments during the hearing the arguments furnished in the written arguments are detailed below:-

- (i) To claim or demand arrears as Non Adoption of Average for such period of very less usage or to demand documentary proof by the licensee after a period of over 2.5 years to 3 years is not normal and against the principles of Consumer Protection to seek proof after such a very long time while no such documentary proofs are maintained nor required in normal course of life for such periods as the multi floor residence is owner family occupied and not at all rented out to third parties to warrant maintenance of records / rental agreements / to notify the licensee of changes in occupancy status / usage status every now and then in writing. Hence levying average by mere assumption that the meter would have been turned defective during 11/2013 to 05/2014 is not at all correct.

- (ii) The table shown in the counter of EE has readings data and it has been consistently varying from assessment Sep'10 to Nov'13. It is only in assessment of Jan'14 that the reading is ZERO as the meter had abruptly stopped during some time then only. Till then 20 assessments (covering a period of more than 3 years) were recorded by the licensee's staff and there are no comments / enquiry with me on the low usage then and there, attributes to the confirmation that the meter was working and recording readings very well for such periods until Feb'14 when I had noticed the dial meter has abruptly stopped (did not mention it is defective) and also informed by SMS and Phone to then AE.
- (iii) The counter of EE mentions that the meter (old) was not running properly from Sep'10 upto 10.04.2014, where as the fact of meter stopping is sometime in Jan'14 only and there after the change of static electronic meter (SEM) was done twice in succession within short time period as the first GENUS SEM replacement failed within 10 days. As per TNESC 2004,7. Installation of Meter - (7.3) Unless the consumer elects to purchase his own meter, the Licensee shall provide meter of high quality, high precision and accuracy and may require the consumer to give adequate security for the price of the meter and pay the hire charges there for". and (7.5). The quantity of electricity recorded by such meter shall be taken as the quantity actually supplied by the Licensee. (7.8) At periodical intervals, the meters shall be recalibrated and standardized by means of standard instruments by the Licensee. From above TNESC the meter is the property of licensee unless otherwise the consumer opts to purchase their own meter. The onus of providing a good quality meter after proper testing and also to perform regular calibration to every meter supplied and fixed in consumer premises is with licensee. The quantity of electricity recorded by such meter shall be taken as quantity supplied by licensee. To conclude that the meter was NOT running properly from Sep'10 is devoid of basic" principles of performing a proper laboratory test of the meter, Why no such

accredited lab test was performed in the meter to confirm its defectiveness / normalcy status? It can't be said / argued that the consumer has sent an SMS to then AE seeking change of meter as it had abruptly stopped (I did not mention it is defective) and hence the meter was confirmed to be defective during previous months on assumption by licensee that too after more than 2.5 to 3 years. Only a lab test from accredited laboratory would have proved its real status of working. Again, the replacement GENUS SEM worked only for 10 days or so and why no good quality meter was fixed as replacement in the first instance with a proper test report after due calibration.

- (iv) The CFC Revenue Letter dated 11.10.2011 is not in public domain anywhere in the licensee's website or TNERC website. The counter of EE mentions it as an internal circular / letter. This CFC Revenue Letter Dated 11.10.2011 was not disclosed in detail in the EE's email to me on 02.11.2016 after the CGRF online complaint, it was not disclosed in detail / brief in the postponed CGRF Hearing on 17.11.2016. but the CGRF Order in S.No:02 "Case of Respondent", as enclosed the same for reference, while the fact was it was never disclosed till now !! I. It only goes to prove that this internal circular / letter is NOT-APPROVED by the TNERC (Commission) till date as there is no such circulars in the public domain in TNERC website or TANGEDCO website or in Supply Code TNESC 2004 / its amendments till now. Hence to cite that CFC Revenue Letter Dated 11.10.2011. is unlawful and not in consonance with the EA 2003 (Act) or TNERC's regulations on licensee.
- (v) It was never mentioned by me that the meter was defective during the period or accepted by me as stated in CGRF Order; while it was mentioned In S.No:16 of Online Complaint and S.No:16 of CGRF Written Arguments as, "It was I who had first noticed that the dial meter (S.No:7048083) has abruptly stopped (i did not mention it is defective) from Feb'14 and immediately notified by SMS to the then A.E. and requested him to arrange for a replacement of meter with

new static electronic meter as ESM's were installed during that time onwards." This clearly stated the dial meter was not working from Feb'14 and it was notified by me in sms, not as mentioned (i did not mention it is defective) in the CGRF order stated above. And also not as stated in the counter of EE.

7.2 The Appellant also informed that though he has raised the issue as non issuance of show cause notice, he informed that he is not insisting the above, and the case may be decided on merit.

7.3 The Appellant argued that there was no test result to show the meter as defective. Hence, claiming shortfall stating the meter as defective is not reasonable.

7.4 The Appellant also citing the condition of the meter as normal in all the period in the Account summary and noting as defective during March 2014, assessment period claiming the meter as defective from 11/13 is not correct. He further pointed out that he only informed the stopping of meter during February 2014 and has never stated that the meter is defective.

7.5 The Appellant also argued that this cannot be treated as billing error as the short fall claimed is not due to any arithmetic error.

7.6 The Appellant also argued that the meter would have ceased to function only as the same reading was recorded during 1/2014 assessment period also.

7.6 The Appellant also citing the TNEO annual reports and various order argued that the observation of the TNEO on the performance of the meters have not been taken note off by the licensee.

8. Arguments putforth by the Respondent on the hearing date:

8.1 The Assistant Executive Engineer / Teynampet reiterated the contents of the counter of the Respondent.

8.2 The Assistant Executive Engineer argued that the reading of 27640 was recorded during 1/2014 & 11/2013 assessment period. Therefore he argued that the meter has stopped functioning after reacting a reading of 27640 : The 27640 would have arrived on any day after taking reading for the 9/2013 assessment period and thereafter the meter has not recorded the consumption. Therefore, he argued that the meter is defective from 11/2013 onwards till a good meter was installed in the service.

8.3 The Assistant Executive Engineer argued that as per the CFC's circular dated 11.10.2011 for the supplementary bill, the limitation of 2 years starts only on the date of issue of demand notice issued as per the judgements referred in the circular. Therefore, he argued that the short fall claim is not time bared.

9. **Findings of the Electricity Ombudsman :**

9.1 On a careful consideration of the rival submission, I find the following as issues for consideration

(i) Whether the meter is defective ? If so, the assessment period from which it becomes defective ?

(ii) What is code provision for assessment in case of meter is defective ?

(iii) Whether the contention of the Appellant that the claim is barred by limitation is acceptable?

10. **Findings on the First issue:**

10.1 The Appellant argued that as per the account summary, the status of assessment was noted as defective during 3/2014 assessment period and therefore the meter is defective from 3/2014 only.

10.2 He only informed the non working of the dial meter from February 2014 to the Assistant Engineer concerned through SMS. Hence, argued that the meter is defective from 3/2014 assessment period only.

10.3 A Genus make meter was installed in the service on 25.3.2014 and as the same was defective a HPL Static Electronic meter was installed on 10.4.2014. Therefore, the Appellant argued that the short fall could be claimed from 3/14 assessment period to 10.4.2014 only.

10.4 The Respondent argued that a reading recorded on 11/2013 & 1/2014 are 27640. As the reading was stuck up at 27640, the Respondent argued that the meter is defective from 11/2013 onwards.

10.5 On hearing the above argument the Appellant argued that the meter could be struck up during 1/2014 assessment period as there was no change in the reading. But, as there was a consumption of 20 units recorded during 11/2013 assessment period, he argued that the meter was alright upto 11/2013 assessment period.

10.6 In the case on hand, there is no test result to prove that the meter is defective. Further the meter in dispute is also a dial type meter (i.e) Electro Mechanical meter, therefore, the reading could not be downloaded and analysed to confirm the defectiveness. In the absence of the test results and downloaded details, we have to rely on the reading / consumption recorded only to confirm the defectiveness or otherwise of the meter.

10.7 As the Respondent has argued that there was no change in the meter reading between the reading noted 11/2013 assessment and 1/2014 assessment periods, the readings noted from 3/2013 to 3/14 are furnished below:-

Assessment period	Reading Date	Reading	consumption
3/2013	7.3.13	27550	10
5/2013	8.5.13	27560	10
7/2013	9.7.13	27590	30
9/2013	10.9.13	27620	30
11/2013	7.11.13	27640	20
1/2014	8.1.14	27640	20
3/2014	12.3.14	27646	Defective

10.8 As per the above details it is noted that the meter reading noted on 7.11.2013 for 11/2013 assessment period is 27640 and the meter reading noted on 8.1.2014 for 1/2014 assessment period also as 27640. As the same reading was noted for both the assessment period, it is construed the meter is struck up only.

10.9 As the same reading of 27640 recorded on 11/2013 assessment period was the reading recorded for 1/2014 assessment period, it is construed that the meter is struck up and meter is defective during 1/2014 assessment period.

10.10 In respect of 11/2013 assessment period, the Respondent argued that the meter could have stopped its function after reaching the reading of 27640 during 11/2013 itself and hence argued the meter could be defective from 11/2013 assessment period onwards. The Appellant argued that it could be struck up from 1/2014 only.

10.11 In this regard, it is observed that it is a fact that the meter struck up at a reading of 27640. The date of reaching the said reading 27640 is not known. The meter could have stopped function on any day between 10.9.13 [(ie) the date of taking reading for 9/2013 assessment period] and 7.11.2013 [(i.e) the date of taking reading for 11/2013 assessment] on reaching the reading 27640 after taking the reading on 10.9.2013. The date of non function may be either from 7.11.2013 or earlier than 7.11.2013. If it has stopped earlier than 7.11.2013, then it has to be

taken that the meter is defective from 11/2013 assessment period and if not the meter is defective from 1/2014 only.

10.12 After changing the meter on 10.4.2014, by a static meter the consumption recorded from 10.4.2014 to 8.5.2014 is 350 units. (ie) for about 28 days, the consumption is 350 units. The consumption per day works out to 12.5 units. Further after changing the meter, the lowest consumption recorded in the said service is only 484 units per assessment period recorded during 1/2016. But, the consumption recorded is only 20 units for 11/2013 assessment period. Considering the above consumption pattern, I am of the considered view that the meter would have stopped its function after reaching the reading of 27640 but before taking reading on 7.11.2013 for 11/2013 assessment period (ie) the meter is defective from 11/2013 assessment period.

11. Findings on the second issue :

11.1 In order to find whether the average calculated for the meter defective period is conforming to the regulation, the regulation 11 (viz.,) Assessment of billing in case where there is no meter or meter is defective of the Supply Code is to be analysed. The said regulation is reproduced 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.”

11.2 On a plain reading of the above regulation, it could be noted that regulations 11(2),11(4) and 11(5) are the related regulations for arriving the average consumption.

11.3 The Respondent has stated that they have adopted the subsequent 4 months consumption after changing the defective meter as per regulation 11(4) of the Supply Code for arriving at the average consumption for the defective period. The Appellant also not disputed the average claimed but only disputed the defective period.

12. Findings on the third issue :

12.1 The Appellant argued that the levy of cc arrears is not in accordance to section 56(2) of Electricity Act 2003 which has limitation of 2 years for claiming arrear. The Appellant argued that any amount could not be levied and collected 2 years from the first due unless it has been shown continuously as arrears. The first

due date for respective assessment periods claimed in September 2016 are given below:-

Assessment period	Due date
5/2014	27.5.14
3/2014	1.4.2014
1/2014	27.1.2014
11/2013	26.11.2013

12.2 The Appellant argued that the short fall for 11/2013 which was first due on 26.11.2013 was claimed on 9/2016 after a lapse of 2 years and 10 months. Therefore, he argued that the claim is barred by limitation.

12.3 The Appellant also argued that quoting a CFC's Circular dated 11.10.2011 to justify the claim is not correct as any internal circulars or letter shall not over rule / amend any provisions of Act and Codes.

12.4 The Respondent argued that as per CFC's circular dated 11.10.2011, there is no bar to raise supplementary bill and the limitation of 2 years starts only from the date of the issue of bill for the supplementary bill.

12.5 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:"

12.6 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.

12.7 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. 4,28,0341- 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".

12.8 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.

12.9 In the case on hand, the short fall amount was intimated on 9/2016. Hence, the 2 years period starts only from 9/2016 Therefore, this issue is decided against the Appellant.

13. Conclusion :

13.1 In view of my findings first, Second & Third issue furnished in para 10,11&12 above, I am unable to interfere with the orders of CGRF of Chennai EDC/Central.

13.2 With the above findings the A.P.No.3 of 2017 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

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2) The Executive Engineer / O & M
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TANGEDCO,
110/33/11 KV, Valluvarkottam SS Complex,
M.G.R Salai, Nungambakkam,
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3) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/Central,
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4) The Chairman & Managing Director,
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5) The Secretary,
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmiipathy Salai,
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6) The Assistant Director (Computer) – **For Hosting in the TNEO Website.**
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