



TAMIL NADU ELECTRICITY OMBUDSMAN

4th Floor, SIDCO Corporate Office Building, Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.

Phone : ++91-044-2953 5806, 044-2953 5816 Fax : ++91-044-2953 5893
Email : tneochennai@gmail.com Web site : www.tnerc.gov.in

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

A.P.No. 89 of 2022

Thiru K.Seetharaman,
C/o. Oswin & Jacob Techno Legal Adviser,
BRIO Hall, No.4/23E, Kamaraj Nagar,
4th Main Road, Thiruvanmiyur,
Chennai – 600 041.

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

Vs.

1. The Assistant Engineer/Nadukuppam,
Villupuram Electricity Distribution Circle,
TANGEDCO,
110 KV SS Campus, Marakkanam Road,
Murukkery, Tindivanam – 604 301.

2. The Chief Internal Audit Officer,
TANGEDCO,
No.144, Anna Salai, Chennai-2.

. Respondents
(Thiru K. Sivakrishnan, AE/Nadukuppam
Thiru D.Senthilkumar, EE/Tindivanam
Thiru S.Saravanan, Chief Internal Audit Officer)

Petition Received on: 19-10-2022

Date of hearing: 11-01-2023 & 09-02-2023

Date of order: 24-02-2023

The Appeal Petition received on 19.10.2022 filed by Thiru K.Seetharaman, C/o. Oswin & Jacob, BRIO Hall, No.4/23E, Kamaraj Nagar, 4th Main Road, Thiruvanmiyur, Chennai – 600 041 was registered as Appeal Petition No. 89 of 2022. The above appeal petition came up for hearing before the Electricity Ombudsman on 11.01.2023. The Appellant requested to postpone the hearing and accordingly a revised hearing was held on 09-02-23. Upon perusing the Appeal Petition, Counter affidavit, written argument and the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order.

ORDER

1.0 Prayer of the Appellant:

The Appellant has prayed to direct the TANGEDCO to withdraw the audit slip no.111, dt. 28.9.2017.

2.0 Brief History of the case:

2.1 The Appellant Thiru.K.Seetharaman is running the unit of prawn culture in Pudupakkam, Tirukkanur. A notice has been received from TANGEDCO to pay an average shortfall amount which was worked out for the period from 09/2015 to 09/2016 taking the average consumption of 21825 units based on 05/2015 to 07/2015 consumed units.

2.2 But the Appellant is stating that consumption of energy depends only on the atmospheric temperature to maintain constant desired temperature inside the premises that too during the culture period for the prawns to grow to certain level. Hence, it is really unfortunate that average consumption of energy was worked out based on the consumption of energy recorded during 05/2015 & 07/2015.

2.3 Hence, the appellant has filed a petition with CGRF of Villupuram EDC on 11-05-2022 requesting to direct the TANGEDCO authorities to withdraw the audit slip No.111, dated 28-09-2017.

2.4 The CGRF of Villupuram EDC has issued an order dated 18.06.2022. Aggrieved over the order, the Appellant has preferred this appeal petition before the Electricity Ombudsman.

3.0 Orders of the CGRF :

3.1 The CGRF of Villupuram Electricity Distribution Circle issued its order on 18.06.2022. The relevant portion of the order is extracted below :-

“மன்றத்தின் தீர்வு:

மேற்கண்ட பத்தி 4ல் உள்ள தீர்வுகளின்படி மின் இணைப்பு எண் .481-008-441-ற்கு விதிக்கப்பட்ட சராசரி நிலுவைத் தொகை ரூ .4,47,267.00/- என கணக்கீடு செய்யப்பட்டு மனுதாரர் ஏற்கனவே செலுத்திய தொகை ரூ .86,772-போக மீதம் செலுத்த வேண்டியத் தொகை ரூ .3,60,490/- என தீர்மானித்து ரூ.3,60,490/-னை செலுத்த மனுதாரர்க்கு இம் மன்றத்திற்கு உத்திரவிட்டு தீர்ப்புரை வழங்கப்படுகிறது.”

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondent to put forth their arguments, a hearing was scheduled on 11.01.2023. As per the request of the Appellant, the hearing scheduled on 11.01.2023 was adjourned and the same was conducted on 09.02.2023 through video conference.

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

4.3 The Respondents Thiru K. Sivakrishnan, AE/Nadukuppam, Thiru D.Senthilkumar, EE/Tindivanam and Thiru S.Saravanan, Chief Internal Audit Officer Villupuram EDC attended the hearing and put forth their arguments.

4.4 As the Electricity Ombudsman is the Appellate authority, only the prayers which were submitted before the CGRF are considered for issuing orders. Further,

the prayers which require relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone are discussed hereunder.

5.0 Arguments of the Appellant :

5.1 The Appellant has stated that he is a law abiding citizen and a diligent consumer paying the electricity bill regularly without any default. The petitioner is running the unit of prawn culture in Pudupakkam, Thirukkanur.

5.2 The Appellant has stated that to the shock & surprise, a notice has been received to pay a hefty charges presuming to have been the average shortfall which was worked out for the period from 09/2015 to 09/2016 taking the average consumption of 21825 units based on of 05/2015 to 07/2015 consumed units. It is to be specifically stated here, the said service connection is being utilized for prawn culture. The consumption depends only on the usage of Oxygen concentrator & other units that too during certain monthly periods only but not the entire year. The consumption of energy depends only on the atmospheric temperature to maintain a constant desired temperature inside the premises that too during the culture period for the prawns to grow to a certain level. Therefore the consumption would not be same for all the days of the year. It is really unfortunate that average consumption of energy was worked out based on the consumption of energy recorded during 05/2015 & 07/2015.

5.3 The Appellant has submitted that the prawn culture depends on the climatic condition prevailing and the electricity will not be used during the entire year except for certain period of months. In this regard it is to be stated that the electricity will normally be utilized during the months of April to September every year and after that because of the unfavourable climatic conditions, culture could not be continued. The period would change depending upon natural conditions but the culture would be done only during the favourable climatic conditions prevailed and limited to 5 to 6 months. This would prevail every year which could be very well

understood from the energy billed and payment made by this consumer in TNEB records.

5.4 The Appellant has stated that suspecting defectiveness in energy meter due to display failure in the meter, the billing staff has done average billing for the month of 07/2016 on 18.08.2016 and in order to set right the things, the licensee officer has replaced the meter on 20.08.2016, though the meter was recording properly which could be well evident from the TANGEDCO records. The meter was recording properly and the electricity charges were paid as per the consumption recorded in the new meter upto 05/2016. Average billing was adopted for the month of 07/2016 and this petitioner has paid the amount without any objection as the average adopted for the particular month is more or less equal to the previous month consumption while the meter was healthy enough to record.

5.5 The Appellant has stated that it is pertinent to state here that consequent to the replacement of meter, average billing was done by audit department on mere suspicion without proper verification or inspection that the meter was suspected to be defective on sluggishness from 09/2015 itself and worked out this claim. Indeed the meter was healthier one not having any defectiveness but it was replaced on mere suspicion because of the lesser consumption recorded and intermittent display failure.

5.6 The Appellant has stated that as per the TNERC Regulations, blind average should not be adopted when there are change of circumstances and this audit slip is in contra to the codes inscribed by the Tamilnadu Electricity Regulatory Commission. Though proper objection was made before the authorities concerned no fruitful action was taken so far to withdraw the audit amount and hence we were forced to file an appeal before CGRF / Villupuram reposing much faith on this forum, that this forum will properly go through the appeal and the adduced evidences apart from TANGEDCO records. But this petitioner was shocked to receive an order from the CGRF/Villupram simply rejecting the appeal without going through the adduced evidences by passing a mechanical order.

5.7 Hence this appeal is preferred before the Hon'ble TNEO reposing much faith that our genuine appeal would be properly considered & redressed on the following among other.

GROUND

- i) The learned CGRF / Villupuram ought to have properly gone through the adduced evidences and ordered for withdrawal of slip.
- ii) The learned CGRF / Villupuram miserably failed to understand that the meter is neither defective nor burnt but was replaced in a mechanical manner due to intermittent supply failure.
- iii) The learned CGRF / Villupuram ought to have gone through the Consumer ledger wherein it is properly recorded by the section officer that the meter is "Normal" during the period suspected and defective was recorded in the month of July 2016 with no display.
- iv) The learned CGRF / Villupuram ought to have gone through the consumer ledger which is an additive evidence to prove that the meter was in good condition and recording properly till 05/2016, before raising this audit slip.
- v) The learned CGRF / Villupuram ought to have gone through the consumer ledger wherein the consumption recorded minimal every year during the period of non usage and repeated in every year which is an additive evidence to prove that the meter was in good condition and recording properly.
- vi) The learned CGRF / Villupuram ought to have gone through the consumption recorded during the period from April to March every year which was a clinching evidence to prove that electricity consumption will not be even during the entire 365 days / year.
- vii) The learned CGRF / Villupuram miserably failed to notice that the Audit authorities have suspected the healthy meter replaced by the department as defective due to intermittent display failure.

- viii) The learned CGRF / Villupuram miserably failed to notice that the Audit authorities have suspected the healthy meter as sluggish as such word is not applicable for static meters.
- ix) The learned CGRF / Villupuram should have concluded that Engineer is the ultimate authority to decide on the issue and not the audit department. The Field Engineer being a Technocrat has recorded meter was functioning well which could not be suspected by the audit department as defective.
- x) The learned CGRF / Villupuram while declaring that the distribution licensee has not submitted any report from the MRT Wing ought to have allowed the appeal in full and not in partial.
- xi) The learned CGRF / Villupuram while declaring that the distribution licensee has not taken any action to refer the meter to the manufacturer nor submitted any report from the manufacturer on the defectiveness ought to have allowed the appeal.
- xii) The learned CGRF / Villupuram ought not to have recorded that the consumer has not produced any evidence to show that the meter was in good condition.
- xiii) The learned CGRF / Villupuram ought not to have accepted the contention that the reports are not available as the meter was replaced 6 years ago.
- xiv) The learned CGRF / Villupuram having accepted the contention that the reports are not available as the meter was replaced 6 years ago ought to have applied the law of limitation from the date of meter change and set aside the shortfall amount.

5.8 The Appellant has stated that in one way or other the decrease in consumption is due to non- usage of electricity & not because of defectiveness in meter. The order of the CGRF / Villupuram will in no way sustain in the lights, facts & circumstances of the issue and liable to be set aside.

5.9 The Appellant has stated that the records & correspondences, transactions of the petitioner at his prawn farm would certainly prove the departmental authorities, that the consumption of electricity is low due to non favourable condition and not because of defectiveness of meter. Further it is a well known fact that the entire state was affected by unnatural superficial rains leading to floods in sea shore areas and all the establishments were forced to closed down incurring heavy loss. This would be evident from the disconnection made by the TANGEDCO authorities through arial disconnection substantiating that the farm was under shutdown and closed on 10.12.2015.

5.10 Therefore the factual circumstances in conjunction with the regulation would substantially prove that the audit slip / objection raised in the LT. Service Connection A/c No. 481-008-441 (462/009/477), vide audit slip No.111 dt.28.09.2017, one way or other would not sustain, in the reality that the decrease in consumption is due to non-usage of electricity & not because of defectiveness in meter, the Appellant stated.

5.11 The Appellant has prayed to direct the TANGEDCO authorities to withdraw the audit slip No.111, dt.28.09.2017 presumed to have been the shortfall amount worked out for the period right from 09/2015 to 09/2016, on non- adoption of appropriate average and to pass just & further necessary or other orders as this Hon'ble forum deems fit & proper in the ends of justice.

6.0 Counter submitted by the Respondent:

6.1 தணிக்கை சீட்டின் வாயிலாக வாரிய தணிக்கை துறையினரால் தொழிற்சாலை மின் இணைப்பு எண் .481-008-441-ஐ தணிக்கை செய்து தணிக்கை சீட்டு எண் .111, நாள் 28.09.2017-ன்படி 09/2015 முதல் 09/2016 வரை சராசரி மின் பயன்பாடு கணக்கீடு செய்து சராசரி குறைவுத் தொகையாக ரூ .8,01,715/-ஐ வசூல் செய்யுமாறு தணிக்கை துறை அறிவுறுத்தியதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்.

6.2 தணிக்கை தொகை செலுத்துவது தொடர்பாக நுகர்வோருக்கு கடிதம் அளிக்கப்பட்டும் தணிக்கை தொகை செலுத்துவதற்கு மறுப்பு தெரிவித்து கீழ்காணும் விளக்கங்களை அளித்துள்ளதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்

6.3 நுகர்வோர் தனது கடிதத்தில் இருபது வருடங்களாக மரக்காணம் புதுப்பாக்கம் கிராமத்தில் திருக்கனூரில் அமைந்துள்ள நிலத்தில் இறால் பண்ணை தொழில் செய்து வருவதாகவும் இறால் பண்ணை தொழில் பருவநிலைக்கேற்ற தொழில் என்றும் , இத்தொழிலானது ஐந்து அல்லது ஆறு மாதங்களுக்கு மட்டுமே நடைபெறும் என்றும் , மேலும், இரண்டு மூன்று மாதங்களுக்கு குறைந்தளவு மின் பளு மட்டுமே தேவைப்படும் என்றும், நான்கு ஐந்து மாதங்களுக்கு மின்சார ப ளு சற்று கூடுதலாக தேவைப்படும் என்று தெரிவித்துள்ளதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்

6.4 மேலும் இறால் பண்ணை தொழிலுக்கு நிலையான பளு தேவைப்படாது என்றும், அறுவடை செய்து பின் மூன்று மாதங்களுக்கு பராமரிப்பு வேலைகள் நடைபெறும் , அப்போது மின்சாரம் தேவைப்படாததால் குறைந்தபட்ச கட்டணம் செலுத்தி வருவதாகவும் குறிப்பிட்டுள்ளதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்

6.5 சராசரி குறைவுத் தொகை கணக்கிடப்பட்டுள்ள 09/2015 மற்றும் 11/2015 காலகட்டங்களில் மீட்டர் நன்றாக இயங்கிக் கொண்டிருந்து மின் அளவீடு செய்த தொகையை செலுத்தியுள்ளதாகவும் மற்றும் 11/2015 மாத மின் கட்டணம் செலுத்தாததால் 10.12.2015-ல் மின் இணைப்பு துண்டிக்கப்பட்டு பிறகு 16.12.2015 அன்று மீண்டும் மின் இணைப்பு பெற்று உபயோகப்படுத்தி வந்துள்ளதாகவும் , பின்னர் அதே மீட்டரே தொடர்ந்து நல்ல முறையில் இயங்கி வந்து 18.08.2016-ல் மீட்டர் பழுது என தெரிவிக்கப்பட்டதால் 3175 யூனிட்கள் சராசரியாக கணக்கிடப்பட்டு ரூ.24,866/- ஐ செலுத்தியதாகவும் எதிர்மனுதாரர் தெரிவித்துள்ளார்

6.6 தணிக்கையில் சராசரி குறைவுத் தொகை கணக்கீடு செய்யப்பட்ட 09/2015 முதல் 05/2016 வரை அதே மீட்டரே தொடர்ந்து நல்ல நிலையில் இயங்கி வந்துள்ளதாகவும், 20.07.2016-ல் மீட்டர் பழுது காரணமாக 07/2016 சராசரி 3175 யூனிட்கள் 20.08.2016-ல் புதிய மீட்டர் பொருத்தப்பட்டுள்ளது என உதவி

பொறியாளர்/இப/நடுக்குப்பம் தெரிவித்துள்ளதாகவும் , அதனை உதவி செயற்
பொறியாளர்/கிழக்கு/திண்டிவனம் பரிந்துரை செய்து தணிக்கை தொகையை தள்ளுபடி
செய்ய துணை தலைமை அகத்தணிக்கை அலுவலர் / விழுப்புரம் அவர்களுக்கு
கடிதத்தின் வாயிலாக அனுப்பப்பட்டது என்று எதிர்மனுதாரர் தெரிவித்துள்ளார்

6.7 கடிதத்தின் வாயிலாக துணை தலைமை அகத்தணிக்கை அலுவலர் / விழுப்புரம்
அவர்களிடமிருந்து பெறப்பட்ட பதி லுரையில் மீட்டர் பழுதடைந்த காரணத்தினால்
மட்டுமே சராசரி குறைவுத் தொகை கணக்கிடப்பட்டுள்ளதாகவும் , மீட்டர் பழுதடைந்த
காலத்திற்கு முன்பும் பின்பும் அதே காலங்களில் அதிக அளவில்
உபயோகப்படுத்தப்பட்டுள்ளதாவும் தெரிவித்து தணிக்கை தொகையினை
நுகர்வோரிடமிருந்து வசூல் செ ய்யுமாறு தெரிவிக்கப்பட்டுள்ளதாகவும் எதிர்மனுதாரர்
தெரிவித்துள்ளார்.

6.8 மீண்டும் நுகர்வோர் தணிக்கை தொகையினை செலுத்தாமல் நுகர்வோர்
குறைதீர்க்கும் மன்றம் / விழுப்புரம் அவர்களிடம் 25.05.2022-ல் தணிக்கை தொகை
ரூ.8,01,715/-ஐ தள்ளுபடி செய்யக் கோரி மனு தாக்கல் செ ய்யப்பட்டதாக எதிர்மனுதாரர்
தெரிவித்துள்ளார்.

6.9 நுகர்வோர் குறைதீர்க்கும் மன்ற மனு தொடர்பாக ஆய்வு செய்ததில்
கீழ்க்கண்டவாறு பத்தி வாரியாக அறிக்கை சமர்ப்பிக்கப்பட்டதாக எதிர்மனுதாரர்
தெரிவித்துள்ளார்.

6.10 20.08.2016-ல் மீட்டர் பழுது காரணமாக மாற்றப்பட்டது என்றும் 09/2015 முதல்
05/2016 வரை மீட்டர் நல்ல நிலையில் இயங்கி வந்துள்ளதாகவும் அதனை
கண்ணியில் மின் அளவீடு பதிவு செய்யும் போது Normal என தான் பதிவேற்றம்
செய்யப்பட்டுள்ளது என்றும் 20.07.2016-ல் மீட்டர் பழுது என கண்டயறிப்பட்டு
20.08.2016-ல் மீட்டர் மாற்றப்பட்டதா கவும், மேலும் 07/2016-க்கான சராசரி மின்
கணக்கீட்டு தொகையாக ரூ .24,866/-ஐ வசூல் செய்யப்பட்டுள்ளது என இளமின்
பொறியாளர்/இப/நடுக்குப்பம் அவர்கள் தெரிவித்துள்ளதாக எதிர்மனுதாரர்
தெரிவித்துள்ளார்.

1. 20.07.2016 அன்று மீட்டர் Defective என்று கண்டறிந்து புதியதாக 20.08.2016-ல் மீட்டர் மாற்றப்பட்டதற்கான Data download செய்யப்பட்டவில்லை என்று எதிர்மனுதாரர் தெரிவித்துள்ளார்.
2. TNERC Supply code 11(2)-ன்படி முந்தைய ஓராண்டு காலத்தில் பயன்படுத்திய பயனீட்டு அளவில் 4 மாத சராசரியானது கணினியில் கணக்கிடப்பட்டு 07/2016 மாத மின் கட்டணம் கணக்கீடு செய்யப்பட்டு வசூல் செய்யப்பட்டுள்ளது என உதவி செயற் பொறியாளர்/கிழக்கு /திண்டிவனம் அவர்கள் நுகர்வோர் குறைதீர்க்கும் மன்ற மனுவிற்கு பத்தி வாரியாக விளக்கம் அளித்துள்ளதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்.

மேலும் நுகர்வோர் பேரேடு ஆய்வு செய்ததில்

Month	Assessed Units	Month	Assessed Units	Month	Assessed Units
05/2015	21710	07/2015	21940	09/2015	6630
05/2016	957	07/2016	3175	09/2016	7226
05/2017	19043	07/2017	30360	09/2017	10073
05/2018	28970	07/2018	28858	09/2018	671

6.11 தணிக்கையில் சராசரி குறைவுத் தொகை கணக்கிடப்பட்ட 09/2015 மற்றும் 11/2015 மாதங்களில் மீட்டர் நல்ல நிலையில் இயங்கி வந்துள்ளதாகவும் 03/2016 மாதத்தில் 2560 யூனிட்கள் பதிவாகி, 05/2016 மாதத்தில் 957 யூனிட்கள் மட்டுமே கணினியில் பதிவேற்றம் செய்யப்பட்டுள்ளதாகவும் , ஆனால் 05/2016 மாதத்திலேயே மீட்டர் பழுதாகிய காரணத்தினால் 07/2016-ல் 3175 சராசரி யூனிட்டாக பிரிவு அலுவலர் கணக்கீடு செய்து வசூல் செய்யப்பட்டுள்ளதாகவும் அதற்கான நுகர்வோர் பேரேட்டு நகல் சமர்ப்பிக்கப்பட்டுள்ளதாகவும் எதிர்மனுதாரர் தெரிவித்துள்ளார்

6.12 TNERC Supply code 11(2)-ன்படி முந்தைய ஓராண்டு காலத்தில் பயன்படுத்திய பயனீட்டு அளவில் 4 மாத சராசரி கணக்கிடும் போது 05/2015 -21710 யூனிட் மற்றும்

07/2015 - 21940 யூனிட் (21710+21940= 43650/ 2 = 21825 யூனிட்கள் சராசரி யூனிட்டாக தணிக்கையில் தெரிவிக்கப்பட்டது சரியானதே , இருப்பினும் 09/ 2015 மற்றும் 11/2015 மாதங்களில் மீட்டர் நல்ல நிலையில் இயங்கிய காலங்களுக்கு சராசரி மின் அளவீடு கணக்கிடப்பட்டதை தவிர்த்திருக்கலாம் என அறியப்படுவதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்.

6.13 எனவே 05/2016 முதல் 09/2016 வரை 21825 யூனிட்க்கான சராசரி குறைவுத் தொகையாக (149089x3=447267/-) ரூ.4,47,267-ல் ஏற்கனவே நுகர்வோர் செலுத்தியது ரூ .86,772/- போக மீதம் செலுத்தவேண்டிய தொகை ரூ .3,60,495/-ஐ நுகர்வோரிடமிருந்து வசூலிக்கப்படலாம் என தெரி வித்துக் கொள்ளப்படுவதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்.

6.14 நுகர்வோர் குறைதீர்க்கும் மன்றத்தின் தீர்ப்பில் மின் இணைப்பு எண் .481-008-441-ற்கு விதிக்கப்பட்ட சராசரி நிலுவைத் தொகை ரூ.4,47,267/- என கணக்கீடு செய்து நுகர்வோர் ஏற்கனவே செலுத்திய தொகை ரூ.86,772/- போக மீதம் செலுத்த வேண்டிய தொகை ரூ.3,60,495/-என தீர்மானித்து உத்திரவு வழங்கப்பட்டுள்ளதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்.

6.15 தணிக்கை சீட்டில் 09/2015 முதல் 09/2016 வரை 7 இருமாத கணக்கெடுப்பு (Bi-monthly) சராசரி குறைவுத் தொகை போடப்பட்டியிருப்பினும் நுகர்வோர் தணிக்கை தொகையினை ரத்து செய்ய கோரிய தனது கடிதத்தில் ஒரு ஆண்டில் மூன்று மாதங்களுக்கு மட்டுமே குறைந்தளவு மின் உபயோகம் இருக்கும் என தெரிவித்துள்ளதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்.

6.16 நுகர்வோர் தனது கடிதத்தில் தெரிவித்துள்ளதையும் , நுகர்வோர் பேரேட்டை ஆராய்ந்து பார்க்கும் போது ஒரு ஆண்டில் இரண்டு இரு மாதங்கள் (Bi-monthly) மட்டுமே மின் உபயோகம் குறைவாக பயன்படுத்தியுள்ளது தெரிய வருகிறது என்றும் எனவே நுகர்வோர் குறைதீர்க்கும் மன்றம் 7 இருமாத கணக்கெடுப்பு சராசரியில் 09/2015 முதல் 03/2016 வரை 4 மாத கணக்கெடுப்பு விலக் கு அளித்து , மூன்று மாதங்களுக்கு அதாவது 05/2016 முதல் 09/2016 வரை தீர்மானித்து உத்திரவு வழங்கப்பட்ட தொகை

ரூ.3,60,495 /- சரியானதே என தெரிவித்து கொள்ளப்படுவதாக எதிர்மனுதாரர் தெரிவித்துள்ளார்.

7.0 Findings of the Electricity Ombudsman:

7.1 I have heard the arguments of both the Appellant and the Respondent. Based on their arguments and submitted documents, the following conclusion is arrived at: Whether the claim of the Appellant to withdraw the Audit slip no.111, dt. 28-09-2017 for an amount of Rs.8,01,175/- is tenable?

7.2 To determine the facts of the issue, I will first discuss what the Respondent raised on the issue of the Audit slip. According to the Respondent's document, the Appellant was informed during 2017 vide letter dated 02-11-2017 to pay the shortfall amount of Rs.8,01,175/-. The above slip was raised by the Respondent based on Audit report that CC charges had been levied shortly subsequent to the meter defectiveness on 18-06-2016. Hence the Respondent claimed a short levy amount for the period 9/2015 to 9/2016 for an amount of Rs 8,01,175/- on 02-11-2017. In turn, the Appellant replied with a request to drop the shortfall amount by 9-11-2019, which was turned down by the Respondent. It was observed from the Respondent's statement that the amount was not paid by the Appellant and reminded again on 25-1-2022 to pay the same. The Appellant again sought re-examination for dropping the shortfall amount on 15-02-2022, which was not considered by the Respondent. Meanwhile, the Appellant approached the CGRF, which passed a revised order to pay Rs.4,47,260/- against Rs.8,01,175/- and to pay a final amount of Rs.3,60,490/- after deducting already paid amount of Rs.86,772/-. Aggrieved over the revision made by the CGRF, the Appellant prayed before this E.O. that the Audit Slip be withdrawn, presumed on the contention that non-adoption of the appropriate average was made.

7.3 Before, I would like to find whether Adoption of average on defective period was correct or not, I would like to discuss on my finding on the appellant prayer on the issue of meter defectiveness. The appellant claimed that the distribution licensee did not submit any report from the MRT wing when declaring the meter

defective. However, the respondent replied that the meter had been declared defective on 20-07-2016 and replaced on 20-08-2016, and the appellant paid the average amount of Rs.24,866/-. The Appellant never challenged the meter defectiveness even when making a request on 9-11-2019, sought to drop the Audit slip i.e. after lapse of almost two years.

7.4 The claim now made by the Appellant on seeking MRT Report at this juncture of prayer was an afterthought effect. The Licensee cannot be blamed for producing such a report after a lapse of almost six years i.e. during 2022, unless the Appellant had made a valid document proof that he challenged the defectiveness of the meter at the time of the cause of action i.e. on 20-07-2016. Hence the Prayer of the Appellant seeking MRT report has no merit.

7.5 The next prayer of the Appellant is to apply the law of limitation from the date of the Meter change and set aside the shortfall amount. It is seen from the respondent document that the Appellant had been informed during 2017 vide letter dated 02-11-2017 to pay the shortfall amount of Rs.8,01,175/-, dated 19-08-2016 and subsequent raise of shortfall amount of Rs.8,01,175/- on 02-11-2017. The Appellant never challenged the respondent on how the meter was declared defective. Even making a request on 9-11-2019 sought only to drop the Audit slip i.e. after the lapse of almost two years not considered by the respondent and again the Appellant reminded vide letter dated 25-1-2022. The Appellant again sought re-examination for dropping of shortfall amount on 15-02-2022 was not considered by the respondent.

7.6 In this context, I would like to refer to the following

Regarding 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 are relevant and are 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".

7.7 It is clear from the 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 the demand notice. From the given documents, based on audit slip No.111 dt.28.09.2017, the respondent has issued demand notice on 02.11.2017. In turn, the Appellant replied with a request to drop the shortfall amount by 9-11-2019, which was turned down by the Respondent. Again, the respondent sent a reminder notice on 04.03.2020. It was observed from the Respondent's statement that the amount was not paid by the Appellant and reminded again on 25-1-2022 to pay the same. The Appellant again sought re-examination for dropping the shortfall amount on 15-02-2022 and thereafter approached CGRF. Hence the slip amount was continuously pending for making payment since 2-11-2017. Hence the claim of limitation by the Appellant has no Merit.

7.8 Finally, I would like to find out whether the Adoption of the average on effective period was correct or not. As per the respondent demand notice dt. 02-11-2017 the Appellant was asked to pay an amount of Rs.8,01,175/- for the average shortfall which was worked out for the period from 09/2015 to 09/2016 taking the average consumption of 21825 units based on 05/2015 and 07/2015 assessment.

7.9 Based on the respondent's revised submission to GCRF, the above average amount was revised to three billing periods of 5/2017, 7/2017 & 9/2017 waiving of the already claimed four billing periods of 9/2015, 11/2015, 1/2016 and 3/2016. The revised average amount works out to Rs 4,47,267/-

7.10 The final amount to be paid by the appellant now is Rs.3,60,495/- ie after deducting the already paid amount of Rs.86,772/- (ie Rs.51842/- during 9/2016 & Rs.24866/- during 7/2016 & Rs.10064/- during 5/2016).

7.11 In this context I would like to refer to TNERC Supply code Regulation 11 which is extracted below:

"11. Assessment of billing in cases where there is no meter or meter is defective :

(1) Where supply to the consumer is given without a meter or where the meter fixed is found defective or to have ceased to function and no theft of energy or violation is suspected, the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective, shall be assessed as mentioned hereunder.

(2) The quantity of electricity, supplied during the period in question shall be determined by taking the average of the electricity supplied during the preceding four months in respect of both High Tension service connections and Low Tension service connections provided that the conditions in regard to use of electricity during the said four months were not different from those which prevailed during the period in question.

(3) In respect of High Tension service connections, where the meter fixed for measuring the maximum Demand becomes defective, the Maximum Demand shall be assessed by computation on the basis of the average of the recorded demand during the previous four months.

(4) Where the meter becomes defective immediately after the service connection is effected, the quantum of electricity supplied during the period in question is to be determined by taking the average of the electricity supplied during the succeeding four months periods after installation of a correct meter, provided the conditions in regard to the use of electricity in respect of such Low Tension service connections are not different. The consumer shall be charged monthly minimum provisionally for defective period and after assessment the actual charges will be recovered after adjusting the amount collected provisionally.

(5) If the conditions in regard to use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any consecutive four months period during the preceding twelve months when the conditions of working were similar to those in the period covered by the billing.

(6) Where it is not possible to select a set of four months, the quantity of electricity supplied will be assessed in the case of Low Tension service connections by the Engineer in charge of the distribution and in the case of High Tension service connections by the next higher level officer on the basis of the connected load and the hours of usage of electricity by the consumer.”

On a careful reading of the above regulation, it is noted that regulation 11(2), 11(4), 11(5) and 11(6) are the regulations dealing with the method to arrive at the average consumption for the meter defective / no meter period. Under these circumstances, the Appellant acknowledged the utilization of electricity will happen from April to September of every year which was reaffirmed below;

“The prawn culture depends on the climatic condition prevailing and the electricity will not be used during the entire year except for a certain period of months. In this regard it is to be stated that the electricity will normally be utilized from April to September every year”

Hence the period of defective current consumption can be compared with the same season of the previous year. In the present case, the respondent arrived the average shortfall units of 21825 units duly taking into account the consumption recorded for 5/2015 & 7/2015 assessment period which is in line with regulation 11(5) of TNE Supply code and found to be correct.

7.12 In the absence of MRT downloaded report, it is appropriate to rely on consumer ledger as per Evidence Act. When making assessment for 05/2016 on 20.05.2016, the assessment status was recorded as 'Normal'. Only during the next assessment on 20.07.2016, the status of assessment was recorded as 'Defective'. Therefore, the meter might have been become defective in between the period from 20.05.2016 to 20.07.2016. Hence, the revision of average billing for the meter defective period should be limited to meter defective period from 20.05.2016 to 19.08.2016 as the defective meter was replaced on 20-08-2016. Therefore, the respondent is directed to issue revised demand notice to the Appellant after deducting the amount already collected from the Appellant.

8.0 Conclusion:

8.1 From the findings of the forgoing paras, the appellant's claim to withdraw the claim of the entire amount vide Audit slip no.111, dt 28-09-2017 is not considered. However the revision of average billing for the meter defective period should be limited to meter defective period from 20.05.2016 to 19.08.2016 as the defective meter was replaced on 20-08-2016. Accordingly, the respondent is instructed to issue the revised demand notice after adjusting the amount already collected from the appellant.

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

8.3 With the above findings the A.P. No. 89 of 2022 is finally disposed of by the Electricity Ombudsman. No Costs.

(N. Kannan)
Electricity Ombudsman

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

To

1. Thiru K.Seetharaman,
C/o. Oswin & Jacob Techno Legal Adviser,
BRIO Hall, No.4/23E, Kamaraj Nagar,
4th Main Road, Thiruvanmiyur,
Chennai – 600 041.

- BY RPAD

2. The Assistant Engineer/Nadukuppam,
Villupuram Electricity Distribution Circle,
TANGEDCO,
110 KV SS Campus, Marakkanam Road,
Murukkery, Tindivanam – 604 301.

3. The Chief Internal Audit Officer,
TANGEDCO,
No.144, Anna Salai,
Chennai-2.

4. The Superintending Engineer, - By Email
Villupuram Electricity Distribution Circle,
TANGEDCO,
No.10, Old power house Road,
Viluppuram-605 602.
5. The Chairman & Managing Director, – By Email
TANGEDCO,
NPKRR Maaligai,
144, Anna Salai, Chennai -600 002.
6. The Secretary, – By Email
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.
7. The Assistant Director (Computer) **–For Hosting in the TNERC Website**
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.