IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 8TH DAY OF JULY 2022 / 17TH ASHADHA, 1944

WP(C) NO. 22214 OF 2022

PETITIONER:

THAHIRA,
AGED 63 YEARS,
EVOOR (SOUTH), KEERIKKADU.P.O,
KAYAMKULAM, ALAPPUZHA DISTRICT, PIN-690508.

BY ADV K.P.RAJEEVAN

RESPONDENTS:

1 KERALA STATE ELECTRICITY BOARD LTD.,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM, PIN-695 004.

2 ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION,
KERALA STATE ELECTRICITY BOARD LTD,
KAYAMKULAM, ALAPPUZHA DISTRICT, PIN-690502.

3 ASSISTANT ENGINEER,
ELECTRICAL SECTION, KERALA STATE ELECTRICITY BOARD LTD,
CHEPPAD, ALAPPUZHA DISTRICT, PIN-690507.

4 THE STATE ELECTRICITY OMBUDSMAN,
CHARANGATTU BHAVAN, BUILDING NO.34/895, MAMANGALAM
ANCHUMANA ROAD, EDAPPALLY, KOCHI, PIN-683025.

5 CONSUMER GRIEVANCE REDRESSAL FORUM (CENTRAL),
220 KV SUBSTATION COMPOUND, HMT COLONY.P.O,
KALAMASERY, ERNAKULAM, PIN-683503.

BY ADV.
SRI B PREMOD, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner a consumer of electricity bearing consumer No.1155304022245 through instant writ petition has assailed the order dated 03.03.2022 Ext.P13 of the Consumer Grievance Redressal Forum and order dated 20.06.2022 whereby the appeal No.P/021/22 preferred before the State Electricity Ombudsman has been dismissed.

2. The facts in brief are that the petitioner is running an ice factory under the jurisdiction of electrical Section Kerala State Electricity Board Limited, Cheppadu (hereinafter referred to as 'KSEBL', for short). The consumer number aforementioned was provided a CT operated energy meter which was being regularly checked by the Engineers and bills were generated as per the actual consumption. On 14.09.2021 the Sub Engineer, Electrical Section along with the Assistant Executive Engineer, APTS Unit, Alappuzha inspected the

premises and prepared a draft Ext.P1 and found that the connection was given under LT IVA Tariff-3 Phase of 53000 Watts connected load for industrial purposes and prima facie it was found that there was -29.70 error (detected) and therefore the meter was recording by reduction of 29.7%. On the basis of the site mahazar a provisional assessment notice was issued to the petitioner which was challenged and ultimately final assessment raising a demand of Rs.96,147/- (Rupees ninety six thousand one hundred and forty seven only) was issued. Petitioner assailed the order before the Grievance Redressal Forum which was, as noticed above, dismissed and statutory appeal preferred before the State Electricity Ombudsman also entailed into dismissal.

3. Mr.K.P.Rajeevan, learned counsel appearing on behalf of the petitioner challenges the order aforementioned on the ground that there has been gross

violation of the provisions of the Regulations 113, 114, 115 and 125 of the Kerala Electricity Supply Code, 2014. The officers who inspected the premises were not competent to examine the meter in the absence of any equipment as it is a statutory and mandatory requirement. Meter should have been removed and tested in the laboratory by giving advance notice to the petitioners. Even as per the definition of the meter specified under Regulation 2(57) of Supply Code, 2014, 'meter' means the device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system which shall also include, other equipment such as current transformer (CT), voltage transformer (VT) or capacitance voltage transformer (CVT) necessary for such purpose. It is contended that the meter was installed as per the directive from the electricity department and has been regularly checked while taking the reading. There was no fault of the consumer of

tampering the meter. If at all there was an intrinsic defect it could have been rectified after having testing in the assigned laboratory to find out whether any mischief was attributed to the consumer or not. Only then a demand should have been raised. Otherwise, it was incumbent upon the electricity department to replace the meter. All these points have not been taken care of by both the authorities and thus there is an abdication, illegality and repugnance.

4. On the other hand, learned counsel appearing on behalf of the respondents submitted that the APTS team was competent to examine the running of the meter and with experience as well as qualification apparently it was found that there was a defect in current transformer i.e., CT and by noticing all these facts it was found that the meter was running slow by 29.7%. Accordingly demand was raised. Demand is justified which was accepted by the authorities, concurrent finding of fact

and law cannot be interfered with while exercising the power of judicial review under Article 226 of the Constitution of India.

5. I have heard learned counsel for the parties and appraised the paper books.

6. Before installation it is the responsibility of the licensee to satisfy regarding the accuracy of the meter which shall be tested by them or from the accredited laboratory or in approved laboratory. The said provisions had been prescribed as per Regulation 113 of Supply Code, 2014. Sub Regulation 2 of 113 does not preclude the licensee to conduct a periodical inspection or testing or both the calibration of the meter specified in the Central Electricity authority (installation of operation of meters) Regulations, 2006 as amended from time to time. The periodical testing of the consumer meter has to be done at the site. There is discretion to the licensee to test the meter at the site or remove the

meter to be tested and replaced with the correct meter and test the removed meter in an accredited laboratory. Thus there is a vide discretion given to the officers to notice as to whether the consumer was indulging into any mischief or actually it was having an inherent/intrinsic defect.

7. Definition of the meter as specified in Regulation 2(57) which reads as under:

> "meter" means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system; and shall include, wherever applicable, other equipment such as current transformer (CT), voltage transformer (VT), or capacitance voltage transformer (CVT) necessary for such purpose;

It clearly specifies that all these CT, CVT and other things are the part of the meter.

8. Report of the Site mahazar is extracted hereinbelow:

"On 14 September 2021 Tuesday at 12.15 PM after inspecting the Electric meter and premises of Consumer No.1155304022245 which is under Electric Section, Cheppad of Electrical circle Hrippad, Alappuzha District of KSEB Ltd, in the presence of APTS Assistant Executive Engineer and other witnesses this mahasar is prepared by Rathesh Kumar T R, Sub Engineer in charge of the above Section.

The above connection is given under LT-4A Tariff, 3 Phase of 53000 Watts connected load in the address of Mrs. Thahira, vallayil Enterprises, Evoor, Pathiyoor for industrial purpose in the Building No.III/27(2011-16) Ice Plant named as Thalavakkal Industries South to Ramapuram Temple, Easter side of national Highway in Pathiyoor Grama Panchayat of Karthikapally Taluk. The Electrical meter of the above connection is installed inside the Western wall of the building in the panel board, facing to the East. This is a CT(Current Transformer) operated meter. The details of the meter is as follows:

Make: Secure Model: Premier Type: E3T055
SL No: KSB 34112,3X 240 VoHs, -/5A
impulse:8000/KWh
During the time of reading inspection is given as follows:

Kwh C,38033,KwhC2: 5242, Kwh C3: 26385
CKVAH :74575, CKVArh lag: 24820
CKVArhLead :7.8

R1MD:1.75 KVA 01/09/2021 Time: 12.30

R2MD:1.66KVA 08/09/2021 Time: 19:00

R3MD:1.94KVA 05/09/201 Time: 22:30

The details of the attached CT of the Machine meter is given as follows:
Make: PGR Poertek Ratio: 100/5 Burden: 5VA
Class: 0.5, Serial Number R-1/3338,Y-1/3336,B-1/3335

On detailed examination of the above CY from R phase to the meter the wire which tap voltage to the meter is seen the formation of sludge. Then on examining each phase of the meter and voltage it is seen recorded the voltage as follows- R-phase-30.4V, Y-phase-234V, B phase-230V. But on examination of R phase by using the multi meter it is seen that actually there is 232 voltage. As such by recording low voltage in R phase the actual consumption will be recorded in a lower rate. In order to calculate this difference it is examined by using MT310(sl No 50043258) standardised and manufactured by Zera and calibrated in the Electrical Inspectorate. On such examination -29.70% error is detected. That is at present it is

> recorded in the meter by reducing 29.7%. At this time the authorised person conducting the establishment Sri. Abdul shukkur, Vellalil House, Kannampallybhagom, Kayamkulam, Mobile No.7560801956 was present and convinced him. No loss is caused to the Establishment due to the Inspection. Inspection ended at 2.53 PM today."

9. It reveals that there was a defect in one of the CT and showing less voltage. Prima facie a prudent person would understand that it was not a mischief act but an intrinsic defect. The consumers purchase the meters only from the recognized and approved manufacturers. If at all such type of faults over a period of time arises, prima facie this Court of the view that burden should not have been passed upon the consumer, equal responsibility of the manufacturer also is involved. But the officials of the Kerala State Electricity Board shy away in undertaking such exercise and put entire blame and fault on the consumers. Such exercise in my view is wholly fallacious and arbitrary. The procedure

prescribed in the Regulations 115 has totally been thrown away for the reason that if at all prima facie inspection team finds fault in the CT, to ascertain the suspicion ought not to have formed the opinion at the site but taken the meter to a laboratory (accredited laboratory) and only after giving advance notice of three days as specified under Regulation 115 which is extracted hereinbelow, form an opinion and thereafter assessment has to be done.

> "115 (5) Before testing a meter of the consumer, the licensee shall give an advance notice of three days, intimating the date, time and place of testing so that the consumer or his authorized representative can, at his option, be present at the testing".

All these provisions of the Regulations and arguments on the behalf of the consumer has not been addressed ,there is a misdirection thus the orders are wholly erroneous and aberrative. Accordingly the orders Exts.P13, P15 and subsequent demand Ext.P16 bill are

quashed. At the best the respondent Electricity Board is liable to charge the amount of three past cycling bills, that too after have been obtained the report from the laboratory. Since much time has already passed the condition of the meter is not known thus the said procedure as prescribed in Regulation 125 can also not been adhered to at this point of time.

Sd/-

AMIT RAWAL
JUDGE

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APPENDIX OF WP(C) 22214/2022

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE MAHASAR DATED 14.9.2021.
Exhibit P1a	A TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P1.
Exhibit P2	A TRUE COPY OF THE BILL NO.5530210600115 DATED 1.6.2021.
Exhibit P3	A TRUE COPY OF THE BILL NO.5530210700644 DATED 1.7.2021.
Exhibit P4	A TRUE COPY OF THE BILL NO.5530210800583 DATED 2.8.2021.
Exhibit P5	A TRUE COPY OF THE BILL NO.5530210900385 DATED 1.9.2021.
Exhibit P6	A TRUE COPY OF NOTICE DATED NIL ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
Exhibit P7	A TRUE COPY OF THE NOTICE AND BILL DATED 1.10.2021.
Exhibit P7 a	A TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P7.
Exhibit P8	A TRUE COPY OF CALCULATION STATEMENT NO.INSP/202122/APTS DATED 14.9.2021.
Exhibit P9	A TRUE COPY OF FORWARDING LETTER I NO/.DB/APTS DATED 1.11.2021.
Exhibit P10	A TRUE COPY OF BILL DATED 1.11.2021 ISSUED TO THE PETITIONER.

Exhibit P10 a	A TRUE COPY OF ENGLISH TRANSLATION OF EXHIBIT P10.
Exhibit P11	A TRUE COPY OF CIRCULAR NO.D(D&S)/D2/GENL-08/2015 DATED 25.2.2016.
Exhibit P12	A TRUE COPY OF THE APPLICATION FOR FILING COMPLAINT WITH THE CONSUMER GRIEVANCE REDRESSAL FORUM (CENTRAL) DATED 22.9.2021.
Exhibit P13	A TRUE COPY OF ORDER NO.CGRF-CR/OP NO.53/2021-22 - 403 DATED 3.3.2022.
Exhibit P14	A TRUE COPY OF APPEAL NO.P/021/22 FILED BY THE PETITIONER DATED 21.03.2022 BEFORE THE STATE ELECTRICITY OMBUDSMAN
Exhibit P15	A TRUE COPY OF ORDER DATED 20.06.2022 IN APPEAL PETITION NO.P/021/2022 OF THE STATE ELECTRICITY OMBUDSMAN
Exhibit P16	A TRUE COPY OF LETTER NO.DEMAND CUM DISCONNECTION NOTICE/CONNO.22245/CHD/ 2022-23/50 DATED 25.6.2022 WITH REVISED BILL FOR PAYMENT OF RS.99,293/- ISSUED BY THE 3RD RESPONDNET
Exhibit P17	A TRUE COPY OF BILL NO.5530210400112 DATED 1.4.2021 ISSUED TO THE PETITIONER
Exhibit P18	A TRUE COPY OF BILL NO.5530210500113 DATED 1.5.2021 ISSUED TO THE PETITIONER
Exhibit P19	A TRUE COPY OF BILL NO.5530210600115 DATED 1.6.2021 ISSUED TO THE PETITIONER
Exhibit P20	A TRUE COPY OF BILL NO.5530210700644 DATED 1.7.2021 ISSUED TO THE PETITIONER

Exhibit P21	A TRUE COPY OF BILL NO.5530210800583 DATED 2.8.2021 ISSUED TO THE PETITIONER
Exhibit P22	A TRUE COPY OF BILL NO.5530210900385 DATED 1.9.2021 ISSUED TO THE PETITIONER