

**OFFICE OF
THE ELECTRICITY OMBUDSMAN
ASSAM ELECTRICITY REGULATORY COMMISSION**

FILE NO. EOM. 38/2019

Petition No.: 2/2019

Name of Petitioner: Shri Manoj Sureka,
S.M. Cement Industries,
11th Mile, Jorabat, Assam.

JUDGEMENT & ORDER

03.03.2020

This is an appeal against the judgment dated 21.08.2019 of the Consumer Grievance Redressal Forum, Guwahati Zone. The case of the appellant who carries on the business of manufacture and sale of cement is that on or about 10-11/02/2013 as the appellant was not receiving power from the distribution system of APDCL they lodged complaint with the concerned officer of APDCL. APDCL officials visited the premise of the appellant the same day and having found the CT-PT set damaged restored power supply directly from the distribution mains of the licensee by-passing the CT-PT set and the meter.

Thereafter, on 14.03.2013 the officials of MTI Division, Guwahati in response to the letter No. APDCL/2013-13/T-6/7 dated 11.02.2013 of SDE, Sonapur Electrical Sub-Division replaced the damaged CT-PT set and also the existing meter No. ASEG4180. The meter No. ASEG4180 was replaced by a DLMS compliant new meter No. AS897243. Thus the entire metering system in the appellant's premise was replaced by a new system.

On 25.04.2013, the above old Meter No ASEG4180 removed from the appellant's premise was tested in the laboratory of T&C Amingaon and it is found that the meter was 45% slow.

As per instructions of the General Manager (Com – Rev), APDCL, Bijulee Bhawan, Paltan Bazaar, conveyed vide his letter No. GM(Com-Rev)/HVCMS/2012-13/GEC-1/54 dated 26.04.2013, a supplementary bill amounting to Rs. 1,02,11,146.00 was raised by the Area Manager, IRCA-I, APDCL on the basis of the aforesaid lab test report to compensate the loss suffered due to the 45% slow running of the meter.

On receipt of the above bill, the appellant first approached the Area Manager, IRCA-I and then submitted two letters dated 20-05-2013 and 03-06-2013 to the Chairman-cum-Managing Director, LAEDCL, Bijulee Bhawan, Paltan Bazaar, Guwahati-1 requesting him to withdraw the bill mainly on the grounds that 1) the laboratory test of the meter was conducted in their absence 2) there was no adverse remark of any attempt of tempering the meter manufactured by a company of high reputation and that 3) the slow running of the meter was not attributable to the appellant.

The Deputy General Manager, GEC-I, APDCL, LAR was thereafter directed by the General Manager (Com-Rev.) vide letter No. ACE(Com.)/GEC-I/IRCA/2012/56 dated 31.07.2013 to assess the loss due to error in the earlier energy meter on the basis of 3 (three) months average consumption recorded by the new meter as per provision of the Electricity Supply Code and Related Matter Regulations under clause 5.4.4.5 (b) read with 4.2.2.4 and recover the amount by raising a

supplementary bill and also withdraw the earlier supplementary bill amounting to Rs. 1,02,11,146.00.

The new supplementary bill amounting to Rs. 79,60,603.00 was accordingly raised and served on the appellant on 30.08.2013 and the earlier bill withdrawn as instructed.

Briefly stated the sequence of events leading to the raising of the 1st supplementary bill amounting to Rs. 1,02,11,146.00 is as follows:

- 1) On or about 10-11/02/2013 complaint was lodged by the appellant with the concerned authority for not receiving power from the distribution mains.
- 2) Officials of APDCL restored power supply the same day directly from the distribution mains by-passing the metering system as they found the CT-PT set damaged.
- 3) On 14.03.2013 officials of MTI Division replaced the damaged CT-PT set and the existing meter No. ASEG4180 by new CT-PT set and a DLMS compliant new meter No. AS-897243.
- 4) On 25.04.2013 the old meter No. ASEG4180 when tested in the T&C Amingaon Laboratory was found (45% slow).

Based on the above lab test report, a supplementary bill amounting to Rs. 1,02,11,146.00 was raised as instructed to compensate the loss and served on the appellant.

Raising objection to the bill on the grounds as mentioned before the authority concerned was requested by the appellant for withdrawal of the bill.

Here, it needs to be noted that under clause 4.22.4 of the Electricity Supply Code and Related Matters Regulations the respondent authority can assess the quantity of energy consumed in the event of any meter found prima-facie incorrect (which includes a stopped, slow or fast meter) and where the actual errors of reading cannot be ascertained as per the procedure described. In the instant case, however, the action of the respondent authority in raising the supplementary bill is based on a departmental laboratory test report. Now the moot question here is whether the supplementary bill raised on the basis of the report dated 25.04.2013 of T&C Amingaon laboratory test of the meter No. ASEG4180 done in absence of the appellant is valid in as much as the raising of the supplementary bill is concerned.

Under clause 4.2.1.4.1 of the Electricity Supply Code and Related Matters Regulations, 2004 (First Amendment) 2007, the licensee has the right to test any meter and related apparatus if there is a reasonable doubt about the accuracy of the meter and under clause 4.2.1.4.2 a consumer may also request the licensee to test the meter (including the metering equipments) in his premises if he doubts its accuracy, by applying to the licensee. Under clause 4.2.1.4.3 in all cases of testing of a meter in the laboratory, the consumer has to be informed of the proposed date of testing at least 7 days in advance so that he may be present at the time of testing personally or through an authorized representative. The laboratory test of the meter No. ASEG4180 is, however, of a totally different nature. Here, the meter was removed permanently from the consumer's premise and it was sent long after installation of a new meter there to the departmental laboratory for routine checking before it is issued to some

other consumer. In the test report dated 25.04.2013 it is seen that two meters: 1) Meter No. ASEG4180 of the appellant and another meter No. ASE05913 were tested in the laboratory and whereas the meter No. ASE05913 passed the test the meter No. ASEG4180 failed the test and it was found to be 45% slow. There is a remark in the said report that attempt of tempering the meter by opening the meter cover of the meter No. ASEG4180 is observed. Despite this remark no case of malpractice was made against the appellant and the respondent authority simply raised the supplementary bill just to compensate the loss suffered due to the 45% slow running of the meter. Had the authority concerned proceeded on the premise of malpractice the option before them would have been either section 126 or section 135 of the Electricity Act. It needs to be appreciated here that there is distinction between 1) the lab test of a meter removed permanently from a consumer's premise and then sent to the lab for routine checking before it is issued to some other consumer and 2) the lab test of a meter that is removed for lab testing for the reason of doubt about its accuracy due to either technical fault or malpractice. The lab test of the meter No. ASEG4180 falling under the first category the action of the respondent authority a public utility in raising the supplementary bill does not suffer from any legal infirmity.

In the letter dated 20.05.2013 of the appellant against the bill amounting to Rs. 1,02,11,146.00 submitted before the respondent authority at point no.3 the question is asked "Is there any correspondence made with the meter manufacturer to ascertain the reason of performing an energy meter at 45% slow against the range of 0.5% accuracy level? The meter manufacturing company should find out how a meter of such low performance can sneak through the quality acceptance?" However, the analysis report sent in response to the letter No. SML/GHY/DGM/GEC-I/APDCL/2013-14/JUL09 dated 09.07.2013 of the Deputy General Manager, Guwahati Electrical Circle-I, APDCL, Ulubari, Guwahati by the meter manufacturer Secure Meters Ltd. whose reputation is acknowledged by the appellant it is mentioned in the concluding portion of the report that "Conclusion: All above observations indicate that the meter was opened; connected additional circuit at secondary side of both CT side the meter to by-pass the current measurement signals. Recording is approximately half of the actual load connected to the meter."

The record of energy consumption post installation of the new meter also lends support to the laboratory test result of the meter No. ASEG4180. The arguments that the hike in energy consumption post installation of the new meter may be due to a variety of factors as mentioned in the appellant's petition are, however, not tenable for the simple reason that these factors more or less must be in play though out the year.

Further, on examination of the so called Inspection Report dated 14.03.2013 which carries the heading "Inspection/ Testing/ Renovation/ New connection carried out at consumer's premise" of the MTI wing, LAEDCL it is seen that the main job of the MTI officials on that day in the premise of the appellant was to replace the damaged CT-PT set and the meter to resume power supply through the metering system replacing the ad-hoc arrangement of power supply from the distribution mains directly. There is nothing on record that suggests that the MTI officials were deputed to the site specifically for examination of the old metering system. Therefore, barring the details of the new energy meter No. AS897243 and other relevant details of the new metering system the comments on the old

meter No. ASEG4180 as they appear in the so called inspection report suffer from the deficiency of strict and meticulous scrutiny.

During hearing it is informed that the new meter installed in the appellant's premise was again found tampered on 24.07.2014. In the order dated 22.04.2019 of the Hon'ble Gauhati High Court in WP(C)5656/2013 M/s. S. M. Cement Industries V/s. Assam Power Distribution Company Ltd. and 5 ORS there is mention of the meter tempering on 24.07.2014 and it reads as follows: "the learned senior advocate for the petitioner has submitted that during the pendency of this writ petition, an inspection was carried out in the industrial unit of the petitioner on 24.07.2014, and once again the electricity meter was found tampered. On the basis of report of mal practice, a provisional assessment bill for Rs. 2,03,13,737.00 was raised. This Court had dismissed the writ petition filed by the petitioner. However, this Court had dismissed the writ petition by relegating the petitioner to prefer an appeal before the Appellate Authority in terms of the provisions contained in the Electricity Act, 2003. The said order was assailed in intra-Court appeal by filing writ appeal and the Division Bench of this Court had remanded the matter back to the learned Single Judge to consider the illegality, validity and correctness of the assessment. Aggrieved by the writ appellate order, the respondents herein had filed SLP before the Supreme Court of India. By referring to the copy of order dated 13.10.2015 passed by the Supreme Court of India in C.A. No. 8624/2015 (APDCL & Ors Vs. M/s. S.M. Cement Industries), it is submitted that the Supreme Court of India had restored the order passed by the learned Single Judge, upholding the order of relegating the petitioner to prefer statutory appeal, by providing that if an appeal is filed by the petitioner herein, the appellate authority shall condone the delay and hear the matter on merit."

In the letter dated 20.05.2013 submitted by the appellant before the respondent authority at point no.1 it is stated "the provisional bill is not prepared as per "Terms and conditions, Regulations notified by Assam Electricity Regulatory Commission" and hence it is to be quashed. At last the said bill is premature. The clause 5.A.4.5(iii) b states that in case it is found that metering system is not working properly and found to be incorrect (which includes stop, slow or fast) and the reason is not attributed to the consumer, the bill for the period of such defects should be raised for a period of 6(six) months preceding the date of detection at normal rate of the appropriate category. The procedure for assumption will be governed by the clause 4.2.2.4.

The instructions conveyed to the DGM, GEC-I, APDCL, Ulubari, Guwahati by the GM(Com-Rev.) vide his letter No. ACE(Com.)/GEC-I/IRCA/2012/56 dated 31.07.2013 already mentioned before were for raising supplementary bill by assessing the loss due to error in the earlier energy meter on the basis of 3(three) months average consumption recorded by the new meter as per provision of Electricity Supply Code and Related Matters Regulations under clause 5.A.4.5(b) read with clause 4.2.2.4 and to withdraw the earlier supplementary bill amounting to Rs. 1,02,11,146.00.

In view of the above discussion and having considered the materials available the raising of the supplementary bill although on the basis of consumption recorded by the new meter as per instructions of the GM(Rev-Com.) to compensate the loss suffered by the respondent authority, a public utility is held valid because of the nature of the case

except that the period of bill should be for 6(six) months as prescribed under clause 5.A.4.5 (iii)(b) of the Electricity Supply Code & Related Matters Regulations. The respondent authority will take action accordingly. The respondent authority will do well to arrange checking of the metering system of all industrial units and business enterprises falling under HT consumer category at regular interval to prevent loss of revenue by taking appropriate action.

The appeal petition is accordingly disposed of.

Sd/-
Electricity Ombudsman