

Before the Electricity Ombudsman

(Appointed by the Joint Electricity Regulatory Commission
for the State of Goa and UTs, under Section 42 (6) of the Electricity Act, 2003)
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Representation No. 1/2011 before the Electricity Ombudsman for JERC for the State of Goa and UTs against the order dated 18.01.2011 of CGRF, Chandigarh by Col. Balwinder Singh of House No. 208, Sector 9C, Chandigarh, regarding wrong and inflated electricity bill – Consumer Account No. 202/0901/020803T (Domestic Supply Connection).

Col. Balwinder Singh Appellant

V/s

Electricity Wing of Engineering Department, UT Chandigarh Respondent

Present: Mr. V K Khanna, Electricity Ombudsman for JERC

On behalf of the Appellant Col. Balwinder Singh in the hearing on
13.04.2011 and on
12.05.2011 at
Chandigarh

On behalf of the Respondent Mr. Deepak Bansal, In-charge XEN OP Division No. 1
and Mr. Vijay Kumar SDO, Sub-Division No. 2 in
the hearing on 13.04.2011 at Chandigarh

Mr. Subhash Chand Saini, Executive Engineer,
Electricity, Operation Division No. 1 and Mr. Vijay
Kumar, SDO, Sub-division No. 2 in the hearing on
12.05.2011 at Chandigarh

Order

The above cited representation after condoning the delay was admitted on 18.03.2011. A copy of the said representation was forwarded to The Executive Engineer, Electricity OP Division No. 1, UT Chandigarh of the Respondent on the same day with the direction to submit their remarks/counterstatement on each of the points/issues relating to matter of this representation supported by copies of relevant documents, with a copy to the petitioner of this representation. It was also ordered that pending settlement of the dispute under this representation before the Ombudsman, no harassment is caused to the Appellant by way of disconnection of power supply or even otherwise.

The brief facts of the case are as follows:

The Appellant is a domestic consumer of the Electricity Wing of Engineering Department UT Chandigarh (The Respondent) with connected load of 61.36 KW. The existing meter of the Appellant was burnt through short circuiting on 11th August, 2008. The Respondent installed the new meter on 12.08.2008. Although, the burnt meter should have been replaced and sealed in the presence of the Complainant consumer (The Appellant herein), the

Respondent installed the meter in his absence. Thereafter, bio-monthly bills were being received by the Appellant from the Respondent and were being paid regularly. The grievance of the Appellant is that if as per the version of the Respondent the new meter installed was not recording any reading right from the date of its installation and was stuck then why did they not replace it immediately. Why it took a period of more than two years (about 27 months) to replace it as late as on 19.11.2010. Further as to why for no fault of his, he has been billed by the Respondent wrongfully and excessively after such a long gap based on average monthly consumption of one year preceding the date of replacement of burnt meter. The meter as claimed by the Respondent to be dead stop from the date of installation was not tested in his presence nor has any intimation given to him regarding non-recording of any consumption. The meter has been declared dead stop unilaterally in an illegal and arbitrary manner. The information that he first received from the Respondent about non-functioning of the meter was in July, 2010, when he received the bill dated 08.07.2010 for Rs. 2,30765 based on average consumption of one year preceding the date of replacement of the burnt meter. The Appellant took up the matter with the Respondent to ascertain as to how and on what basis he has been so billed for all these months when he has been regularly making the payment of all the bills as received from the Respondent Department. Having failed to have his grievance regarding wrong and arbitrary billing settled with the Respondent, he filed his complaint with CGRF, Chandigarh against the Respondent challenging the bill raised by them arbitrarily and excessively and for redressal of his grievance/complaint. The CGRF (Forum) concluded that the Appellant should be charged taking into consideration the average consumption of one year from the date of replacement of the burnt meter in the light of contention/instructions issued by UT Administration from time to time i.e., by taking the average consumption from August, 2007 to July, 2008 which works to 3120 units per month for the period of 21 months and 6 days approximately (12th August, 2008 to 18th May, 2010). The benefit of 6253 units excessively charged by the Electricity Wing of Engineering Department, UT Chandigarh (Respondent herein), was however allowed to the Appellant. The Forum also concluded that the basis of billing hereafter should be as per the Clause 8.16 of the JERC (Electricity Supply Code) Regulations, 2010 which came into force from 19th May, 2010. The Forum in its order also noted that the fact of non-functioning of the meter i.e. the meter found as dead stop was first detected by the meter reader of the Respondent on 10.06.2010 and the meter put on 'D' code. Even the Internal Audit Department of the Respondent noticed this irregularity only on 29.06.2010. The Appellant challenged the functioning of the meter by a complaint to the Respondent vide receipt no. 171/212 dated 26.07.2010 on receipt of the bill by him amounting to Rs. 2,30765/- dated 08.07.2010. The Respondent finally replaced this dead meter as late as on 19.11.2010 with an excuse of non-availability of meter in their stores.

The Forum passed an order on 18.01.2011 vide its file No. CGRF/comp-871/40 and forwarded the same to the Appellant on 25.01.2011.

Aggrieved by the order passed by the Forum, the Appellant filed this present representation with this authority (the Electricity Ombudsman for JERC) with the following prayer.

Prayer

1. As an interim measure the operation of impugned order dated 18.01.2011 of CGRF, Chandigarh, may be stayed.
2. The Electricity Department may be restrained from harassing the Appellant by way of disconnection of power supply till the dispute is settled.
3. The Appellant be allowed to deposit electricity charges as worked out on the basis of the reading of the new meter installed on 19.11.2010 from 19.11.2010 onward to avoid accumulation of arrears.

4. The judgement and the order dated 18.01.2011 passed by CGRF, Chandigarh be set aside and the complaint be accepted in terms prayed for.

Settlement by Agreement

Both the parties to the dispute were informed by this Office on 05.04.2011 to appear before the Ombudsman for preliminary hearing on 13.04.2011 in Chandigarh, indicating that the endeavour in this hearing would be to facilitate and explore the possibilities of settlement through conciliation and mediation. Both the parties appeared and were heard. During the hearing also efforts were made to reach agreement by conciliation and mediation. However, no accord and settlement agreeable to both parties could be reached. It was therefore decided to pass an award after hearing and providing reasonable opportunity to both the parties to argue and put forth their pleadings on the matter.

Accordingly, the next hearing was held in Chandigarh on 12.05.2011.

Pleadings by the parties to the dispute-Discussion and analysis

The Appellant reiterated his grievance as outlined in his representation/appeal and submitted that he had moved the CGRF, Chandigarh vide complaint dated 22.11.2010 against the Electricity Department (UT Chandigarh) challenging the bill amounting to Rs. 2,30765/- received by him alleged to be the consumption of electricity charges from August, 2008 onwards by calculating the amount by taking 6102 units on average basis for each billing cycle. This average had been charged based on previous consumption from 12.07.2007 to 08.08.2008. He stated that the existing meter was burnt through short-circuiting during the first week of August, 2008 and the Respondent had installed the new meter on 12.08.2008. Although, the meter should have been replaced and sealed in his presence the Respondent Department did it in his absence without any acknowledgment or his signature on any paper. Thereafter, bio-monthly bills were being received on regular basis from the Respondent and were being paid by him regularly. His grievance is that if as per the version of the Respondent the new meter installed was not recording any consumption right from the date of its installation why did they not replace the meter immediately and took more than 2 years (about 27 months) to replace it as late as on 19.11.2010. He submitted that for no fault of his why has he been billed wrongfully and excessively after such a long gap based on average monthly consumption of one year preceding the date of replacement of burnt meter. According to him there was hardly any consumption in the premises during this period as the premises remained unoccupied after burning of the meter. When enquired as to whether any intimation about his absence and non-occupation of the premises during this period was sent to the Electricity Department, the Appellant submitted that though the premises remained unoccupied but since the meter was accessible to the meter reader, he did not consider necessary to give any such intimation to the Electricity Department. Bills on the basis of reading being taken by the Electricity Department and received by him were paid regularly. With regard to the arbitrary and excessive billing, the Appellant referred to the bill dated 08.07.2010 for Rs. 230765/- issued by the Electricity Department based on average consumption of one year preceding the date of replacement of the burnt meter. The Appellant made a representation to the Electricity Department on 24.07.2010 seeking the details and basis of arriving at this figure of consumption and billed amount thereon. The Appellant met the Officials of the Electricity Department a number of time in person without any success. On 8.09.2010 another bill was received showing consumption of 6102 units based on average. The Electricity Department vide their order dated 07.10.2010 asked the Appellant to deposit the amount of the bill within a week. At this time the Appellant made another representation dated 13.10.2010 to the Electricity Department complaining against the method of charging an

inflated bill. The Electricity Department instead of rectifying the mistake and charging the bill for the correct consumption, sent another bill dated 08.11.2010 for Rs. 291222/-. The Electricity Department did admit that a new meter was installed in the premises of the Appellant after the earlier meter was destroyed by fire on 10.08.2008 but as per their version the new meter did not record any reading. This meter was replaced by the Electricity Department only on 19.11.2010. He said that it is the duty of the Respondent to keep the meter in proper working condition and ensure that the fault if any rectified by them immediately. For the lapse on the part of the Respondent having failed to notice the defect in the functioning of the meter for about two years which is their bounded duty, the Appellant should not be made to suffer for their negligence and particularly so when the premises remained unoccupied and hardly any electricity was consumed. Even after noticing the non-functioning of the meter, the Respondent could not replace the so called defective meter immediately and finally could replace it only on 19.11.2010. With regard to the arbitrary and excessive billing based on average consumption of one year preceding the date of replacement of burnt meter, the Appellant referred to Section 56 and Section 126 of the Electricity Act and even to the Section 26 (6) of the Indian Electricity Act, 1910. The Appellant also referred to the provisions under JERC (Electricity Supply Code) Regulations, 2010 and mentioned that the CGRF has not acted judicially and fairly in passing its order.

Responding to the above, the representative of the Respondent during the hearing submitted that the bills raised by them are completely in order and is as per the order and direction of the CGRF. It was submitted that the electricity meter no. CHEP-37001 (installed as replacement of the burnt meter) was dead stop for the period 12.08.2008 to 30.06.2010 and was replaced with the new electricity meter bearing no. CHPVT-12898MF40 (reported as installed on 19.11.2010). The account of the consumer was overhauled for the period 10.08.2008 to 29.06.2010 on the basis available previous consumption of meter for the period 4/07 to 4/08 at 3415 units per month due to non-functioning of the old meter showing nil consumption and is on the basis of the instruction number 115 of the Sales manual (shown during the hearing as also submitted along with their written para wise reply to the representation of the Appellant). The representative of the Respondent mentioned that the Appellant consumer has neither informed the department regarding non-occupation nor produced any sort of documentary proof relating to unoccupancy of the house and in this connection, during the hearing, referred to the judgement of the District Consumer Forum-2 of UT Chandigarh, stating that the onus of proving that the premises was unoccupied or lying vacant lies with the consumer. He however admitted that the meter in the premises of the Appellant was accessible and based on the reading taken by the meter readers bio-monthly bills were continued to be issued and were being paid by the Appellant regularly. He also admitted that the delay in replacing the dead stop meter which occurred due to non-availability with them as also in their Central store. He also referred to the shortage of staff and increasing work load in the Department which led to the delay in action on the part of the Department to replace the meter in time. He finally submitted that the CGRF after considering the relevant provision of the Act and Regulations and Rules has already disposed off the complaint/grievance of the Appellant in favour of the Electricity Department, UT Chandigarh and appealed that keeping in view the clarifications furnished by them during this hearing as also in the written reply of the Department, the representation of the Appellant may be dismissed with cost.

Issues

Issues arising from the above are as under:

1. Why there was an inordinate delay in detecting that the meter is dead stop/stuck/non-functional/not recording, particularly when the billing after due reading of the meter

- by the meter reader of the Department showing nil consumption continued for about 22 months i.e. from August, 2008 to May, 2010?
2. Was there any testing done to conclude and detect on 10.06.2010 that the meter is non-functional or dead stop?
 3. Why was the meter under dispute alleged as dead stop right from the date of its installation not reflected in the CPL of the Appellant?
 4. Why was there a lapse of 5 months to replace the meter even after detecting on 10.06.2010 that the meter is dead stop or non-functional?
 5. JERC (Electricity Supply Code) Regulations, 2010 are in force w.e.f. 19.05.2010. Dispute regarding the non-functional meter and billing arose on 08.07.2010. Why then the testing of defective meter and billing thereon not in accordance with the relevant provision of JERC Regulations?

Findings

The dispute regarding non-functional meter and billing which is the subject matter of this representation actually arose on 08.07.2010. JERC (Electricity supply code) Regulations, 2010 were in force with effect from 19.05.2010. The Respondent is fully aware of the provision of the Electricity Act, 2003 and various provisions of JERC Supply Code cited. The Respondent is also aware of the JERC (Standard of Performance) Regulations, 2009 which are enforceable within six months from the date of publication (18.12.2009) of these regulations. All the actions of the Respondent to the dispute shall, therefore have to be guided and governed based on these provisions.

Section 55 of the Electricity Act, 2003 provides that no licensee shall supply electricity except through installation of a correct meter in accordance with the CEA Regulations. Para 7.1 (1) (c) on the subject matter of Installation of Meters of the JERC (Electricity Supply Code) Regulations, 2010 provides that

“The Licensee shall not supply electricity to any person, except through installation of a correct meter in accordance with the operation and installation of meters regulations issued by the Central Electricity Authority under Electricity Act, 2003”

After replacement of burnt meter, the Respondent failed to install the correct meter at the premises of the Appellant

Further, Para 7.3 (1) of these regulations also provides that

“..... The Licensee shall keep the meter in proper working condition”

The Respondent failed to do so.

Para 7.3 (7) of these regulations provides that

“Whenever a new meter installed (as a replacement or for a new connection) it shall be sealed in the presence of the consumer and a Meter History Card shall be prepared in two copies”

This was not complied with by the Respondent

Para 7.4 (1) on Testing of Meters, of these regulations provides that

“The Licensee shall ensure tested meters are installed at the consumer premises. Meter purchased by the consumer shall be tested, installed and sealed by the Licensee.....”

The Respondent failed to ensure this

Para 7.5 (1) on Defective Meters, of these regulations provides that

“The Licensee shall have the right to test any meter and related apparatus if there is a reasonable doubt about the accuracy of the meter, The consumer shall also be present during the testing”.

There is an inordinate delay of about 22 months to detect that the meter installed at the premises of the Appellant was defective and non-functional

Para 7.5 (2) (ii) of these regulations on the same subject matter provides that

“In case the meter is found fast/slow, by the Licensee, and the consumer agrees to the report, the meter shall be replaced by a new meter within 15 days, and bills of three months prior to the month in which the dispute has arisen shall be revised in the subsequent bill as per the test result.....”

Para 7.6 (2) On the subject matter of Meter (including Maximum Demand Indicator) Not Recording, of these regulations also provides that

“If during periodic or other inspection by the Licensee, any meter is found to be not recording or a consumer makes a complaint in this regard, the Licensee shall arrange to test the meter within the time specified in the Standard of Performance of Distribution Licensee Regulations. The meter should be repaired/replaced within the time specified in the Standard of Performance of Distribution Licensee Regulations”.

(According to Para 7.3 of the Standard of Performance of Distribution Licensee Regulations, the Licensee shall test the meter within the 30 days and if needed replace the meter within 15 days thereafter.)

It is only after a period of about 22 months that the Respondent realised and detected that meter installed was defective or non-functional and not recording. No meter testing was done even at this stage and the meter was declared defective on account of the meter readings showing nil consumption right from the day of its installation. Even after this inordinate delay in detecting the meter as defective, the Respondent took as many as five months to replace the meter on 19.11.2010 as against the mandated period of 15 days.

Since, the responsibility to install the correct meter and ensure that it is in proper working condition is that of the Respondent, the onus of this cannot be shifted to the Appellant. On detecting the meter as defective by the respondent on its own and the dispute having arisen with the Appellant in July, 2010, billing the consumer for 22 months based on average monthly consumption of past one year prior to the date of replacement of meter, is blatantly arbitrary and in violation of the provision of the Supply Code Regulations.

As for Meter Reading and Billing, Paras 8.1 (15) to (17) of the JERC (Supply Code) Regulations, 2010 provide as under

8.1 (15) *“It shall be the responsibility of the meter reader to note down the details of every stopped/defective meter, conditions of meter/seal and condition of LCD/LED of electronic meter and in case of any abnormality shall file a report to the concerned officer who shall be responsible to take immediate steps to replace or repair the stopped/defective meter or action taken, if required, in accordance with provisions of the Act”.*

There was a serious lapse and inaction on the part of the Respondent on this account.

8.1 (16) *“In order to recover the energy charges for the duration when the meter remains non-functional, average monthly consumption of previous three meter reading cycles subject to minimum monthly charges or as otherwise provided in the tariff order of the Commission in force shall be the basis of billing.....”*

Basis of billing by the Respondent was not in accordance with the provision of this regulation.

8.1 (17) *“The meter reader shall furnish a list of connections where the meter reading could not be recorded or the meter has not recorded any consumption of electricity, to the officer in charge of the Distribution Centre who shall prepare a list of such consumers where meter reading could not be taken and list of the defective meters to be replaced and report the same to the concerned designated officers of licensee for taking action as specified in the Standards of Performance of Distribution Licensee Regulations”.*

Here again, there was a serious lapse on the part of Respondent. It appears, proper systems with regard to metering, reading and billing are either not in place or not being adhered to by the staff and officers of the Respondent Department. Even monitoring mechanism to oversee functioning of the officers and the staff appear to be non-existent.

Following from the above, it is concluded that the Respondent has miserably failed and defaulted awfully in discharging its responsibility. I fail to understand as to why it took the Respondent a long period of about 22 months to realise, detect and conclude that the meter installed by them at the premises of the Appellant was defective, non-functional or not recording even when the meter readings were being taken regularly showing nil consumption and bio-monthly bills were also being issued, billed as for fixed charges only. Further, even after having come to the notice of the Respondent on 10.06.2010 that the meter was non-functional and not recording any consumption, it did not wake up to test the meter and replace it for such a long period. Whereas, ordinarily the meter should have been replaced within 15 days, the Respondent took a period of 5 months and could replace the allegedly the dead stop meter only on 19.11.2010. This reflects very poorly about the functioning of the Respondent and its callous attitude towards its revenue generating function of metering, reading and billing. The Respondent though admitted it lapse but that does not absolve them of the responsibility under the law. The explanation given by the Respondent during the pleading of their case is not at all convincing and satisfactory. The careless manner, in which the Respondent has handled its affairs firstly, in detecting after an inordinate delay of 22 months that the meter is non-functional and not recording any consumption and secondly, taking a period of five months to replace the defective meter, is deplorable. I have therefore, no hesitation in holding that the Respondent has no right to raise the bills after a lapse of about 2 years based on average monthly consumption of one year prior to replacement of the burnt meter with the new meter. I am therefore, of the considered view that the impugned action of the Respondent is arbitrary, unwarranted and unjust.

Order

Based on the above, the representation of the Appellant is disposed off with the following orders:

1. The impugned order of the CGRF, Chandigarh is set aside.
2. Bills of the consumer (the Appellant) only for three months prior to 19.11.2010 i.e. when the defective meter was finally replaced by the Respondent, shall be revised based on average monthly consumption of three meter reading cycles prior to the period during which the meter remained defective. In case the recorded consumption of three billing cycles prior to the date meter became defective or non-functional is either not available or partially available, the consumption pattern in next three billing cycles after the installation of the new meter (on 19.11.2010) shall be used for billing purposes. The amount already paid by the Appellant shall be adjusted in this bill.
3. The staff and officers of the Respondent Department responsible for contravening the relevant provisions of the Electricity Act, 2003 and regulations of JERC thereon shall be identified, responsibility fixed. Departmental action shall be taken against them for the losses, if any, caused to the Respondent on account of their serious lapses and inaction.
4. Appropriate systems with regard to metering, reading and billing shall be put in place on time bound basis within a period of 6 months of this order. Adequate monitoring mechanism shall also be established by the Respondent to oversee their implementation by the Head of the Respondent Department.
5. No order on costs

Dated: 16th day of June, 2011

Sd/-

(V K Khanna)

Electricity Ombudsman for JERC for Goa and UTs

File No. 1/2/2011-EO

Forwarded to:

1. Col. Balwinder Singh, House No. 208, Sector 9C, Chandigarh
He shall furnish to the Electricity Wing of Engineering Department, UT Chandigarh, within a period of one month from the date of this order, a letter of acceptance that the award is in full and final settlement of his claim/representation. If, he does not intimate the acceptance, the order shall not be implemented by the Respondent Department.
2. Sh. M P Singh, Superintending Engineer, Electricity Wing of Engineering Department, UT Chandigarh

3. Sh. Subhash Chand Saini, Executive Engineer, Electricity Operation Division No. 1, UT Chandigarh.

The Respondent Department shall comply with the award/order within 15 days of the receipt of the intimation letter of acceptance from the Appellant and intimate the compliance to the Ombudsman. Non-compliance shall constitute violation of JERC regulations and may attract remedial action under Sections 142 and 146 read with Section 149 of the Electricity Act, 2003.

Copy to:

1. The Secretary, Joint Electricity Regulatory Commission for Goa and UTs
2. To the Secretary (Finance), UT Chandigarh
3. The Chairman, CGRF, UT Chandigarh

Before the Electricity Ombudsman

(Appointed by the Joint Electricity Regulatory Commission
for the State of Goa and UTs, under Section 42 (6) of the Electricity Act, 2003)
Second Floor, HSIIDC Office Complex, Vanijya Nikunj, Udyog Vihar, Phase-V, Gurgaon (Haryana)
Ph: 0124-2340954, Telefax: 0124-2342853, E-mail: vkkhanna2002@gmail.com

Respondent's Application dated Oct. 20, 2011, seeking clarification/ rectification of order dated June 16, 2011.

Col. Balwinder Singh

Appellant

V/s

**Electricity Wing of Engineering Department
UT Chandigarh.**

Respondent

ORDER

Date: 02.11.2011

Whereas the Respondent shall have complied with the Award/ Order dated 16th June 2011 within 15 days of the receipt of the intimation letter from the Appellant and intimated the compliance to the Ombudsman, it is very unfortunate to note that the Respondent has taken unduly more than three months and still struck and groping in dark, seeking clarification/ rectification of the Order. Implicitly, clarification, if any, should have been sought within the compliance period of 15 days. Nonetheless, the Respondent's application cited is being admitted as a special case and the stand of the Order is as follows:

Had the Respondent gone through carefully the contents of the paragraph(s) preceding the Order paragraph on page 8 of the Order dated 16 June, 2011, the need for seeking clarification/ rectification on the part of the Respondent would not have arisen.

It is hereby clarified that the consumer shall be billed only for three months (definitely not three billing cycles) maximum prior to 19.11.2010 (i.e., the date when the defective meter was finally replaced by the Respondent) based on average monthly consumption of three meter reading cycles prior to the period during which the meter remained defective/ stuck/ stopped. It is reiterated that the amount already paid by the Appellant during the entire period meter remained defective/ stuck/ stopped shall be adjusted in this bill. (The word 'revised' appeared in the Order dated 16th June, 2011 because the Respondent had been billing the Appellant for the stuck/ defective / stopped meter.)

Clarified as above, the compliance shall be reported within 15 days of this Order.

No further application on the matter shall be entertained hereafter.

Sd/-
(V.K.Khanna)
Electricity Ombudsman for JERC
For Goa & UTS

Date: 02.11.2011

File No: 1/2/2011-EO

Forwarded to:

1. Shri M.P. Singh, Superintending Engineer,
Electricity Wing of Engineering Department,
UT Chandigarh.
2. The Executive Engineer,
Electricity Operation Division No. 1,
UT Chandigarh
3. Col. Balwinder Singh,
House No. 208, Sector 9C,
Chandigarh