



A consumer is the important visitor on our premises.
He is not dependent on us. We are dependent on him.
-Mahatma Gandhi

TAMIL NADU ELECTRICITY OMBUDSMAN

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Before The Tamil Nadu Electricity Ombudsman, Chennai

Present :Thiru. N.Kannan, Electricity Ombudsman

A.P.No. 18 of 2022

Thiru B. Ganesh,
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/O&M/Rural/Nilakottai
Dindigul Electricity Distribution Circle,
TANGEDCO,
Anand Nagar, Near K.C.M. Matriculation School,
Nilakottai, Dindigul – 624 208.

2. The Executive Engineer/O&M/Vathalagundu,
Dindigul Electricity Distribution Circle,
TANGEDCO,
110KV SS Complex, Kattakamanpatti,
Vathalagundu, Dindigul – 624 202.

. Respondents
(Thiru K.Palanivel, AE/O&M/Rural/Nilakottai
Thiru D. Murthy, EE/O&M/ Vathalagundu)

Petition Received on: 07-02-2022

Date of hearing: 13-07-2022

Date of order: 29-07-2022

The Appeal Petition received on 07.02.2022 filed by Thiru B. Ganesh, C/o. Oswin & Jacob Techno Legal Adviser, BRIO Hall, No.4/23E, Kamaraj Nagar, 4th Main Road, Thiruvanmiyur, Chennai – 600 041 was registered as Appeal Petition

No. 18 of 2022. The above appeal petition came up for hearing before the Electricity Ombudsman on 13.07.2022. 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. Prayer of the Appellant:

The Appellant has prayed to set aside the orders passed by the CGRF/Dindigul EDC in Petition No. 87/2021 dated 20.09.2021 and to direct the distribution licensee to refund the excess MD Penalty charges collected during the months of 08, 09, 10 & 12 / 2020 in LT SC No. 249-013-491 with interest and adjust the same in the ensuing bills.

2.0 Brief History of the case:

2.1 The Appellant has prayed to direct the TANGEDCO authorities to quash the MD Penalty Rs.1,85,575/- and Rs.5,10,365/- and to adjust the amount already paid in the ensuing electricity bills.

2.2 When the appellant apprised to the section officer about his abnormal billing for the month of 8/2020, he was compelled to pay the CC charges of Rs.4,20,770/- on 17.10.2020. Again in the month of 10/2020 the electricity bill charges had come to Rs.7,33,692/- inclusive of the MD penalty Rs.5,10,365/-, as though the Maximum demand recorded in the meter had shot up to 135.76 KW, which was really not possible without connecting any additional load.

2.3 Hence the appellant has filed a petition with the CGRF of Dindigul EDC on 12.11.2020 requesting to refund the excess amount collected. The CGRF of Dindigul EDC has issued an order dated 06.07.2021. 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 Dindigul Electricity Distribution Circle have issued its order on

06.07.2021. The relevant portion of the order is extracted below :-

"ஆணை:

திரு B. கணேஷ், 10/325, NH-7 மெயின் ரோடு, பள்ளப்பட்டி பிரிவு, நிலக்கோட்டை தாலுகா, அவர்களுக்கு அறிவிப்பது யாதெனில்,

தாங்கள் மின் இணைப்பு எண் 249-013-491/TF IIIB (Sanction Load 110.93 KW) மூன்று முறை அனுமதி அளிக்கப்பட்ட மின்பளுவை விட கூடுதலாக உபயோகப்படுத்தியுள்ளீர்கள். வாரிய விதிமுறைகளின்படி அதற்கான வைப்புத் தொகை மற்றும் மிகை மின்தேவைக்கட்டணம் தங்களிடம் தமிழ்நாடு ஒழுங்குமுறை ஆணையம் வழங்கல் விதித்தொகுப்பு 5(2)-ன் படி வசூலிக்கப்பட்டுள்ளது சரியானதே என்ற எதிர்மனுதாரரின் வாதத்தை ஏற்றுக்கொண்டு வசூலிக்கப்பட்ட மிகை மின்தேவைக் கட்டணத்தை ரத்து செய்ய இயலாது என்று முடிவு செய்யப்பட்டு ஆணை பிறப்பிக்கப்படுகிறது."

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondents to put forth their arguments, a hearing was conducted on 13.07.2022 through video conferencing.

4.2 On behalf of the Appellant Thiru N. Senthil Viswarooban and Thiru Franklin Stephen, Advocates of M/s. Stephen & Stephen Advocates Associates have attended the hearing and put forth their arguments.

4.3 The Respondents Thiru K.Palanivel, AE/O&M/Rural/Nilakottai and Thiru D. Murthy, EE/O&M/ Vathalagundu of Dindigul EDC have 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 order. Further the prayer which requires 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 the agreement holder & owner of the service connection with LT S/C A/c. No: 249-013-491 under Tariff IIIB at door No. 10/325, NH -7 Main Road, Pallapatty, Nilakottai Taluk, Dindigul coming under the

jurisdiction of EE/O&M/Vathalakundu under Dindigul EDC.

5.2 The Appellant has stated that he is an entrepreneur running a MSME in the above said address from 10/2017 paying the electricity bills to TANGEDCO without any default. While it is so, the Appellant was shocked to receive an abnormal billing in the month of 08/2020, when the whole nation was under lockdown and the industries were allowed to run with minimum labour strength. On enquiry with the local officials, it was informed that the reason behind the same was wrong reading and will be adjusted in subsequent bills. Accordingly, the same was paid under protest. Again, in the month of 09/2020, the same issue had repeated and on enquiry it was informed that the industry has exceeded the sanctioned demand more than the limitation fixed for the LT load. Immediately the section officer was apprised that there was no chance of surge in demand, as no additional equipment had been connected, but the appellant was compelled to pay the CC charges of Rs. 4,20,770/- on 17.10.2020 under protest as any default of payment would lead to disconnection.

5.3 The Appellant has stated that again in the month of 10/2020 the electricity bill has come to the tune of Rs.7,33,692/- inclusive of MD penalty to the level of Rs.5,10,365/- as though the Maximum demand recorded in the meter shot up to 135.76 KW, which is not possible without connecting any additional load. Immediately the appellant made a written representation to the AE, AEE, EE & SE concerned to check the meter and withdraw the penalty vide letters dated 05.11.2020 & 09.11.2020. Though the above officials convinced the Appellant that the error is due to a meter problem and software issue, they compelled him to pay the charges to avoid disconnection. As the representation to the authorities yielded no results, the Appellant made an appeal to the CGRF/Dindigul for immediate intervention in this issue. Though his appeal was taken into a file, he was not allowed to pay the CC Charges without MD penalty, pending adjudication of appeal before CGRF.

5.4 The Appellant has stated that the petition before the CGRF was not taken for adjudication and instead his service connection was disconnected on 17.02.2021 compelling the appellant to pay all the charges inclusive of the

abnormal M.D penalty charges with belated payment surcharge on 18.02.2021 to get restoration of the electric power to the industry. Having paid all the charges inclusive of the MD penalty with surcharges, the electricity was restored and the officials concerned have taken action to replace the defective meter on 01.03.2021.

5.5 The Appellant has further submitted that consequent to the rectification of the defect in the meter by replacement, till date there is no issue and the billing is normal. However, regarding the refund, the officials concerned have not taken any action to refund the excess MD penalty charges paid by the Appellant under protest. Though several representations have been made up to the level of Chief Engineer/Madurai, still no action has been taken on his refund request.

5.6 The Appellant has stated that the officials concerned instead of understanding the factual circumstances of the meter being defective which is the categorical reason for the recording of abnormal demand, they simply replied that the software system has calculated the MD Penalty as per the procedures of the Tamilnadu Electricity supply Code.

5.7 The Appellant has stated that the Executive Engineer/O&M/Vathalagundu in his reply dated 30.03.2021 to his CGRF petition has stated that MD had shot up to 138.96 KW for the second time and the penalty of Rs.1,84,576/- was levied and paid by the Appellant. Further, he has stated that notice has been issued to Appellant to convert to HT service connection and again the MD had shot up for the fourth time on 31.10.2020 and therefore penalty of Rs.5,10,365/- was levied at the rate 10% as per Regulation 5(2)(ii).

5.8 The Appellant has stated that a meeting said to have been convened on 06.07.2021, after 8 months from the date of preferring complaint had concluded that, he had not appeared for the enquiry, and accepting the reply of the respondent official viz. Executive Engineer/O&M/Vathalakundu, rejected his request petition for a refund as if the billing done during the period in question is proper and needed no interference.

5.9 The Appellant has stated that the excess MD penalty levied and collected was due to the defect in the meter which was subsequently replaced. However, if it was assumed that the MD recorded was proper, then the officials concerned ought to have followed the guidelines stipulated in the regulations which mandates issuing of notice to the consumer in case of exceeding the limit of sanctioned load for the second time. The distribution licensee has followed neither the old guidelines nor the amended regulations which came into force on 01.07.2020, instead preferred to levy a penalty without analyzing the cause. Had the notice for regularization of load been issued to the consumer petitioner /appellant would have preferred to rack up the issue of defectiveness in the meter a little bit earlier which would have avoided the abnormal penalty and would have had the problem solved earlier.

5.10 The respected CGRF simply rejected the appellant request, accepting the reply of the distribution licensee which is not proper. Hence, this petitioner prefer to appeal against the said order of the CGRF/Dindigul and prayed to set aside the orders passed by the CGRF/Dindigul EDC in Petition No. 87/2021 dated 20.09.2021 and to direct the distribution licensee viz. the officials of Dindigul EDC to refund the excess MD Penalty charges collected during the months of 08/2020, 09/2020 10 & 12/2020 in LT SC No. 249-013-491 with interest based on the factual circumstances and adjust the same in the ensuing bills and thus render justice.

6.0 Counter submitted by the Respondent:

6.1 The Respondent has submitted that LTCT Industrial service connection No.249-013-491 was effected on 26.10.2017 for a sanctioned demand of 110.93 KW in the name of Thiru.B.Ganesh.

6.2 The Respondent has submitted that the first time on the month of 06/2020 the sanctioned demand exceeded from 110.93KW to 133.12 KW. The excess demand charges Rs. 67,540.61/- (1 % of energy charges) was levied and was paid by the consumer on 20.07.2020. The second time on the month of 08/2020,

the sanctioned demand exceeded 110.93KW to 135.68KW. The excess demand charges Rs.86,424/- (1.5% of energy charges) was levied and paid by the consumer on 16.09.2020 and third time in the succeeding month 09/2020 also, the sanctioned load exceeded to 138.96KW and excess demand charges of Rs.1,84,575/- (3% of energy charges) was paid on 17.10.2020.

6.3 The Respondent has submitted that since the sanctioned demand exceeded more than two times, the computer revised the MD load as 112KW which is the LTCT Service maximum load. The Hon'ble TNERC has made certain amendments to the TNE supply and distribution code in respect of enhancement of the load limit from 112 KW to 150 KW under LTCT connections.

6.4 The Respondent has submitted that on 29.08.2020 a notice was issued by the AE/Rural/Nilakkottai to the consumer for exceeding MD vide letter dated 29.08.2020 and the same was acknowledged on 10.09.2020 by the consumer representative who was at the company and informed to go for HT service since the service frequently exceeded LTCT SC limit.

6.5 The Respondent has submitted that consequently fourth time also the service exceeded the load limit to 135.76 KW on 10/2020 and excess demand charges for Rs.5,10,365/- levied at the rate of 10% as per TNERC regulation 5 in sub-regulation 2 in clause (ii)c. This time the consumer did not pay the said amount with cc charges on time, but filed petition before CGRF. He neither applied for HT service nor applied to enhance the LTCT load from 112KW to 150 KW under HT tariff as per new TNE supply code regulation.

6.6 The Respondent has submitted that on 21.8.2020 Rs.1,10,860/- was paid by the consumer as a CC deposit for excess consumption which is not for demand revision.

6.7 The Respondent has submitted that the excess demand charges(fourth time) with cc charges was paid by the appellant on 18.02.2021 after disconnection of the service on 17.02.2021.

6.8 The Respondent has submitted that during the period from 06/2020 to

02/2021, the meter was in healthy condition and recorded the actual consumption. Monthly reading on 24.02.2021 also taken and it was also entered and the reading was found in order. After that on 28.02.2021 the meter display failure was informed by the petitioner. Based on the intimation by the petitioner, the meter was inspected on the day itself by AE/Rural/ Nilakottai and AEE/Nilakottai, and was informed to the MRT wing for replacement of meter. The MRT replaced the defective meter with the healthy meter on 01.03.21. The meter defective period was only from 25.02.21 to 28.02.21 and there was no meter defect during the excess demand consumption period as the petitioner mentioned in the appeal petition.

6.9 In the meantime a new LTCT service connection application was registered online on 21.07.2020 by the petitioner's wife in the name of ELCON Company for a load of 112 KW adjacent to the petitioner company for the same business. The ownership record (Property Tax) of the premises is in the name of Thiru. Ganesh (petitioner) and the premises physically segregated and was given to his wife as a Tenant to obtain another service. The new SC No 249-013-545 was effected on 10.10.2020. The excess load used in existing service 249-013-491 had reduced and the same was utilized by the petitioner in the new service connection. So the load consumption was within the limit (i.e. below 110 kW). The consumption pattern are submitted herewith for perusal.

SC No.	11/2020	12/2020	01/2021
249-013-491	95.40 KW	114.32 KW	90.96 KW
249-013-545	37.04 KW	34.92 KW	34.88 KW
Total	132.44 KW	149.24 KW	125.84 KW

The above details of the sum of 2 nos. SCs load indicate that the S.C. No. 249-013-491 already consumed load in the range of 130 KW to 150 KW. Hence, it is submitted as follows:

- (i) The CGRF considered the records in the consumer ledger which could also be viewed by the consumer and records submitted by the TANGEDCO officials before passing the order.
- (ii) Any miscellaneous billing PF penalty MD penalty etc., is

automatically generated in the consumer ledger view. The previous excess billing was paid by the petitioner by seeing this consumer view record and a notice dated 29.08.2020 by AE/Rural/Nilakottai was issued to the consumer by mentioning 2nd-time demand exceeding.

(iii) The excess demand charges are automatically generated in the system and included with regular CC charges. The due notice was not separately issued since every consumer knows the due date of paying CC charges.

(iv) As per the consumer ledger the consumer violated the load excess on 06/2020, 08/2020, 09/2020 and 10/2020 (4 times) and levied 10% as per the TNE regulation 5(2).

(v) The excess MD penalty is generated in the consumer ledger of the respective service connection. The excess MD notice was issued to the consumer representative on 29.08.20 by AE /Rural /Nilakottai.

(vi) The consumer consumed a lesser load only after obtaining a new service connection and not after the meter replacement.

6.10 The respondent has submitted that the excess amount paid by the petitioner for the MD exceeding sanctioned load in his service is genuine and as per the regulation of TNERC and not to be adjusted or refunded. Since there are no valid reasons for considering the petitioner's request, the appeal petition may kindly be rejected and thus render justice.

7.0 Arguments put forth by the Appellant during the hearing:

7.1 The appellant has challenged the excess demand issued to his SC no. 249-013-491 and further stated that he has paid the excess demand charge under protest for the month of 08/20, 9/20 & 10/20.

7.2 The appellant has agreed to the usage of Energy recorded on the meter for the above periods is correct i.e., during 08/20 to 10/20 but not agreeable for the (MD recorded and) penalty claimed for MD.

7.3 The appellant further argued that the CGRF which ought to have been conducted within fifty days as per regulations was heard only on 6-07-2021 and passed the order on 20-09-2021 and served the order on 24-01-2022. During the intervention period the respondent agreed to correct the mistakes and pending disposal of his petition with CGRF, his service connection was disconnected on 17-02-21 and reconnected on 18-02-21 after payment on protest.

7.4 The appellant prayed that the dispute is only on the excess Maximum Demand recorded on the meter not on the energy recorded for the usage in the existing Meter of SC Connection number 249-013-491.

7.5 The appellant has argued that his prayer on the CGRF petition clearly mentions the software issues, wherein he has claimed that the software issues are to be addressed by the licensee either with the manufacturer or with the MRT. During his 8th month billing, though his consumption was 36102.80 units, the MD recorded was 135.68 KW and in the 9th month billing the energy recorded was 34805 units, however the MD recorded was 138.96. It seems that for higher energy consumption lesser MD recorded, lesser energy consumption higher MD recorded. Hence there was a doubt in the recording of the MD, which is an error and he claimed that there was software problem.

7.6 The appellant further argued that the issue raised by him in CGRF should have got verified through downloading the meter by the licensee but the same was not done. Due to the software problem, there was a display failure. Since he raised the software issue with the CGRF, which was still pending for disposal, he further adds that his prayer was confirmed by the subsequent failure of the Meter on 28.2.21. This proves that the software issue exists in the meter from his prayer period i.e. my earlier representation period. This software issue which was mentioned in the CGRF petition was not discussed in the CGRF by the respondent

and even not replied into the Counter petition. Further, the appellant was not informed to attend CGRF held on 6-7-2021 either by intimation or by phone. If he had been given a chance to attend the CGRF hearing, he would have recorded the Software issue of Meter. But without his presence, the CGRF merely passed an ex-parte order which is not acceptable to him

7.7 The appellant has stated the meter-related issues are to be analyzed only by MRT and not by the respondent who is the field engineer. If any report is furnished by the MRT it is found a valid report. The appellant has stated that there is **also** a provision, wherein he can could challenge test the meter in the third-party lab, if the MRT report is not satisfactory to him. This opportunity was denied to him. However the respondent's claim of reducing the load in the existing service connection 249-013-491 was due to the new service connection effected on the same premises, is not a sound argument. If at all the new service connection is had been effected against the rules the responsible officers are liable for penal action. Further, the appellant has produced two property taxes in the name of Kalpana Ganesh and M/s.Elcon vide tax no 2944 dt 1-3-21 and 2943 dt 1-3-2021.

7.8 The appellant again mentioned that if any petition is received by the licensee it has to be replied to as per regulation within 10 days. However, this had not happened. The appellant further said that the licensees' view that the petitioner has to accept whatever the licensee version is put forth could not be accepted unless it is scientifically proven with facts. Hence this was not acceptable to him. The appellant again stated that the respondent has not replied to the specific issue of the software neither in the counter of the appeal petition nor discussed in the CGRF order.

7.9 The Appellant has stated that his service connection was disconnected on 17.02.2021, compelling him to pay all the charges inclusive of the abnormal M.D penalty charges with the belated payment surcharge on 18.02.2021 to get restoration of the electric power to the industry. The appellant argued that having paid all the charges inclusive of the MD penalty with surcharges did not mean that there was no dispute in the software, as claimed by the licensee. He had

paid the amount under protest including DCRC charges and got the service reconnected to run the business. Further, the appellant has stated that his claim of software issue was confirmed with subsequent failure of meter in three-months i.e. on 28-02-21. Till then the software issue complaint was pending with the CGRF for disposal. During that period the meter healthiness was not declared by the respondent through their technical expert MRT.

7.10 Finally the appellant requested the EO to pass an order based on his prayer, and that he had not been given a proper reply from the respondent on the defectiveness of the meter on software issues, the CGRF also never discussed the same in their hearing and the respondent also never replied in the counter for appeal petition and appealed not to accept the respondent version on load transfer to a new service connection which was effected on the same premises.

8.0 Arguments put forth by the Respondent during the hearing:

8.1 Counter Arguments made by the respondent during the hearing was that the prayer of the appellant was not related to the meter defective software but disputed over the claim of the bill i.e., software on Billings not Meter.

8.2 Respondent has categorically declared that the meter that was in service till 24.2.2021 and the billing period found correct. However the consumer has indicated that on 28.2.21 that the display was not functioning. There was no issue with the software in the meter.

8.3 The respondent has stated that during the billing period of 10/2020 the excess MD has been accepted by the petitioner and paid the charges. However he never disputed with the recording of the meter and not made any representation of defectiveness in the meter. Further the respondent has stated that the claim of the petitioner that whenever the MD is high the energy consumption should also be high is not correct. The respondent further argued that the recording of MD purely depends on the usage of the load by the petitioner. If the petitioner uses more load on a particular day or week, or particular time, the Meter will record the actual

usage of the highest MD. Hence, the claim of the petitioner on recorded MD high with the lesser energy (i.e. during 9/2020 the consumption 34,805 and the MD recorded is 138.96 KW) and lesser MD on higher energy period (i.e. during 8/2020, the consumption is 36102.80 and the MD recorded is 135.68) is not valid.

8.4 The respondent further stated that the MD excess charge was claimed during the highest recorded period only. There is no technical flaw and has denied that there was any software issue on the meter till 24.2.2021. In the disputed period, the reading was taken in the presence of the consumer. Further the MD recorded was found less for the billing period 11/2020, 12/2020, 1/2021 and 2/2021. From 11/2020 onwards the petitioner has diverted some load to the new service connection obtained for the same activities. The consumer intentionally reduced the load and hence his recorded MD found less during the subsequent billing period of 11/2020, 12/2020, 1/2021 and 2/2021.

8.5 The respondent strongly argued against the claim of the appellant that the meter was defective for a certain period of time and got set right during subsequent periods is not correct on technical grounds and will not happen. Such occurrence will not happen on any static meter, once a Meter is defective it ever be defective in service.

8.6 Respondent further argued that appellant's dispute that the meter was found defective only during the excess MD period i.e. 8/2020, 9/2020 and 10/2020 and found correct during load diverted period and less consumption period i.e. 11/2020, 12/2020, 1/2021 and 2/2021 is not correct as he is selective in his claim.

8.7 Respondent has countered that the appellant has been properly informed through registered post for the CGRF hearing which was returned from the postal department for the non-existence of the address and submitted to Hon'ble Ombudsman and also stated that appellant has been informed by phone for the hearing of CGRF on 6.7.2021 by AE and through SE's office.

8.8 The respondent has further asserted that the software issues are only for the billing matters and not on the issue with meters. The claim of the appellant on meter defective was neither informed nor represented till the 24.2.2021 billing period. Further, the respondent has stated that the Meter defective period is 25-02-21 to 28-02-21 as the meter is found defective on 28-02-21 and unable to retrieve meter data from the meter as informed by MRT i.e. during the defective period of i.e 25-02-21 to 28-02-21.

8.9 The respondent argued that during the reading taken on 24-02-21 all the parameters of the Meter were recorded in the note of Consumer as well as in the official records where there is no absence of Voltage and current and recorded in the consumer ledger card. Also the respondent informed that on the billing month 08/2020, the instantaneous MD on the reading taken the time, it was 133 KW and hence no fault in the meter during the appellant Excess usage period

8.10 The excess MD bill alone has been raised as per the TNERC regulation for the first time at 1%, second time at 1.5%, third time at 3% and fourth time at 10%. During this, the appellant intervened and mentioned that in his CGRF petition it was mentioned that there were software issues. The respondent has again reiterated that there was no issue of defects in meter during the regular billing period. All the parameters have been recorded at the time of reading in front of the consumer. During that period there was no absence of voltage and current. There was no issue till the billing cycle up to 24.2.2021, however there was a display failure on the meter on 28.2.2021 which was also informed by the consumer. There was no doubt on the meter reading and also the internal parameters of the meter during the earlier period. The respondent has further argued that there was no intentional delay on the CGRF for hearing other than the prevailing pandemic COVID issues.

9.0 Findings of the Electricity Ombudsman:

9.1 I have heard the arguments of both the appellant and the Respondent. Based on the arguments and the documents submitted by them the following

conclusion is arrived.

The claim of the appellant has the following grievances before the Electricity Ombudsman :

1) During 8/2020 the Energy consumption is high at 36102.8 units and the MD is 135.68KW and during 9/2020, the energy consumption is 34805.6 units and M D recorded is 138.96 KW and this behavior leads to software issues.

2) Alleged claim of the appellant on the meter software issue and

3) Whether the prayer of the appellant to set aside excess demand charges levied in LTCT SC No. 249-013-491 is tenable?

10.0 Findings on the first issue:

10.1 The appellant in his arguments has stated that he has agreed to the usage of Energy for the period from 08/20 to 10/20 but he is not agreeable to the penalty claimed for exceeding sanctioned demand. He further argued, that during the 8th month billing, the consumption recorded was 36102.80 units and the MD recorded was 135.68 KW, and in the 9th month billing the consumption was 34805 units, but the MD recorded at 138.96KW, the appellant argued for higher energy consumption lesser MD recorded, lesser energy consumption higher MD recorded. Hence the appellant suspected that the recording of the MD in the meter was an error.

10.2 The respondent has stated that the claim of the petitioner that whenever the MD is high the energy consumption should also be high is not correct. The respondent further argued that the recording of MD purely depends on the usage of the load by the petitioner. If the petitioner uses more load on a particular day or week, or particular time the Meter will record the actual usage of the highest MD. Hence, the claim of the petitioner on recorded MD high with the lesser energy (i.e. during 9/2020 the consumption 34,805 and the MD recorded is 138.96 KW) and lesser MD on higher energy period (i.e. during 8/2020, the consumption is 36102.80 and the MD recorded is 135.68) is found not valid.

10.3 In this context, I would like to refer the definition of “Maximum Demand“ in regulation 2 (1) (n) of TNE Distribution code which is reproduced below:

“2. Definitions:

(1) In this Code, unless the context otherwise requires:

(n) Demand

b. “Maximum Demand” in a month means the highest value of the average Kilovolt-amperes in case of HT Services and KW in case of LT services, delivered at the point of supply of the consumer during any consecutive thirty / fifteen minutes in a month depending on the nature of the load.”

10.4 On a plain reading of the above, it is noted that the Maximum Demand in a month means, the highest value of the average Kilovolt-amperes in case of HT services and KW in case of LT services delivered at the points of supply of the consumer during any consecutive thirty / fifteen minutes in a month depending on the nature of the load. In the case on hand, the appellant SC is LT CT and the MD is the highest value of the average KW delivered at the point of supply during any consecutive thirty minutes in a month depending on the nature of the load. Therefore, it is not justifiable to correlate the maximum demand recorded in a month with that of energy consumption. Hence, the argument of the appellant is not valid.

11.0 Findings on the second issue:

11.1 The appellant stated that his prayer on the CGRF petition dt. 12-11-2020 mentioned the software issues. Further, the appellant claimed that the software issues are to be addressed by the licensee either with the manufacturer or with the MRT report. As he raised the software issue with the CGRF on 12-11-2020 and pending disposal, he further adds that his prayer has been confirmed by the subsequent failure of the Meter on 28.2.21. This proves that the software issue existed in the meter from his prayer period of Excess M.D levied during the months of 08/2020, 09/2020, 10/2020, & 12 of 2020. This software issue which was mentioned in the CGRF petition was not discussed in the CGRF by the respondent and even not replied to the Counter petition filed before the Hon'ble Ombudsman.

11.2 The respondent has argued that there was no software issue on the Meter till 24.2.2021. All the readings during the disputed period of the appellant was taken in the presence of the consumer. Further the respondent has informed that the MD recorded was found reduced during the billing period of 11/2020, 12/2020, 1/2021 and 2/2021. From 11/2020 onwards, the petitioner had diverted some of the loads to the new service connection obtained for the same activities in the premises by producing property tax on his name and physical segregation made and rental agreement made with his wife in the name of ELCON company.

11.3 The consumer intentionally reduced the load by obtaining a new service connection. Hence his recorded MD found less during the subsequent billing period of 11/2020, 12/2020, 1/2021, and 2/2021. The purpose of a new service connection for the same activities was not denied by the appellant.

11.4 The respondent strongly argued against the claim of the appellant that the meter was defective for a certain period and set right in the subsequent period never happens and is ruled out on technical grounds. Such occurrence will not happen on any static meter. Once a Meter becomes defective, it will ever be defective and not record correctly if it is in service.

11.5 Respondent further argued that the claim of the appellant selectively disputing the Meter was found defective only on the excess MD period i.e. 8/2020, 9/2020, and 10/2020, and found correct during load diverted period less consumption period i.e. 11/2020, 12/2020, 1/2021 and 2/2021 is not a justified demand.

11.6 The respondent has further asserted that the software issues are only for the billing matters and not on the issue with Meter and the respondent stated that they have not received any call on the subject of a Defective Meter in service or any letter addressed claiming Meter defective till the 24.2.2021 billing period. The appellant only raised the billing software issue for all the disputed periods and not the Meter software issues. On 28.2.2021 the appellant representative from the factory informed the display failure in the meter. The same was inspected by the AE on the same day and the meter was replaced with the new one on 1.3.2021. Further, the respondent has stated that the Meter defective period is 25-02-21 to 28-02-21 as the meter was found

defective on 28-02-21 and the data was unable to be retrieved from the meter, as informed by MRT i.e., during the defective period from 25-02-21 to 28-02-21.

11.7 Further the respondent argued that during the monthly reading taken on 24-02-21, all the parameters of the Meter were recorded in the note of the Consumer as well as in the official records in the presence of the consumer, wherein there was no absence of Voltage and current and the same has been recorded in the consumer ledger card. The Assistant Engineer who takes the reading had mentioned in the consumer ledger card that the meter is normal during the billing cycle period i.e., 24-02-2021.

11.8 The respondent also further confirmed that on the billing month of 08/2020 the instantaneous MD reading taken at that time was 133 KW hence there was no fault in the Meter during the appellant's excess load usage period. The respondent argued that the appellant never raised any issue on the Meter's defect, but the issue of software billing on how the excess M.D charges levied and computed on his service from the first time to the fourth time. That was explained to him.

11.9 From the foregoing paras, the issue is to find out whether the Meter is defective or not, based on the excess MD levied period and the appellant's repeated raising of software issues in the Meter. During the entire hearing, the appellant accepts that the Energy consumption recorded by the Meter is correct, but asserts that higher energy consumption means higher M.D to be recorded.

11.10 The version of the respondent is that all the energy meter parameters are available and recorded in front of the appellant representative and not even a single parameter was missed during the entire billing period i.e. from 6/2020 to 2/2021 and also during 8/2020 billing period, the moment (instantaneous) M.D at the time of reading also exceeded the sanctioned demand and shown as 133 kw. On the day of 28-02-21, the appellant representative stated that there was a display failure on the Meter. The same was inspected by AE on the same day itself and the Meter was replaced with healthy meter on 01-03-2021. This speedy action of the licensee's immediate response to the Appellant's meter defective issue is a fact to be considered.

Further, I would like refer regulation 7 (9) of the TNE supply code which is reproduced as follows;

“7. Installation of Meter

9. If the consumer considers that the meter is defective, he may apply to the Licensee to have a special test carried out on the meters at any time and the cost of such a test shall be borne by the Licensee or the consumer according as the meter is found defective or correct as a result of such a test. *****”

In this entire issue, there is no proof from the appellant for having requested the licensee about meter defectiveness.

Further, I had gone through the prayer of the appellant dt 05/11/2020 wherein he never raised software issue of Meter but discussed that Computer billing software which is reproduced below ;

"எங்களுடைய மின் கேட்பு அளவை 135 கிலோ வாட்டாக அதிகரிக்க முயன்றதாகவும் ஆனால் கணிபொறியின் மென்பொருள் அதற்கு இன்னமும் தயார் செய்யப்படவில்லை எனவும் அதனால் அவர் டி.எப்.சி.யை தொடர்பு கொண்டு கேட்ட பின்னர் அபராதத்தொகை விதித்ததாகவும் அது பின்னர் சரி செய்யப்படும் என்றும் தகவல் கூறினார்."

11.11 The same content of the representation also addressed to CE/D/Madurai on 9.11.2020. Again on 17-02-21 addressed to CE which is reproduced below;

"பார்வையில் கண்டுள்ள த. நா. மின்சார ஒழுங்குமுறை ஆணையத்தின் திருத்த அறிவிப்பாணையில் தெரிவித்துள்ளபடி கூடுதல் பயனீட்டு அளவிற்காக இரண்டாம் முறையாக செலுத்தப்பட்ட அபராதத் தொகையை கணக்கிற்கொண்டு தொழிற்சாலைக்கு தேவையான கூடுதல் மின்பளுவை அனுமதிக்குமாறு கேட்டுக் கொள்கிறேன். மேலும், மூன்றாவது முறையாக செலுத்திய அபராதத் தொகையான ரூபாய் 1,84,576/-ஐ வாரிய விதிமுறைக்குட்பட்டு 05-249-013-491 என்ற என்னுடைய மின் கணக்கில் நேர் (ADIUST) செய்யுமாறும் தற்போது விதிக்கப்பட்டுள்ள அபராதத் தொகையான ரூபாய் 5,10,365/-ஐ ரத்து செய்து தொழில் வளர்ச்சிக்கு உதவிடுமாறு பணிவன்புடன் கேட்டுக்கொள்கிறேன். மேலும், மின்னிணைப்பை துண்டிக்காத வகையில் நான் செலுத்தவேண்டிய நிலுவைத் தொகையில் அபராதத் தொகையினை கழித்து மின் நுகர்வுத் தொகையினை மட்டும் செலுத்தும் வகையில் ஆணை பிறப்பிக்கும்படியும் கேட்டுக்கொள்கிறேன்."

And on 18-02-21 letter addressed to AEE which is reproduced below

"மேலும், மூன்றாவது மற்றும் நான்காம் முறையாக செலுத்திய அபராதத் தொகையான ரூபாய் 1,84,576/- + ரூபாய் 5,10,365/- இரண்டையும் வாரிய விதிமுறைக்குட்பட்டு 05-249-013-491 என்ற என்னுடைய மின் கணக்கில் நேர் (ADJUST) செய்து தொழில் வளர்ச்சிக்கு உதவிடுமாறு பணிவன்புடன் கேட்டுக்கொள்கிறேன். மேலும், துண்டித்த மின்னணைப்பை மீண்டும் மறு இணைப்பு செய்திடுமாறும் கேட்டுக்கொள்கிறேன்."

11.12 On a plain reading of the above, it is found that there was no mention in the appellant's representations that the meter is defective / Meter software issues, and the request was for only the billing software and regularization of excess load only. Hence the arguments of the appellant that the software issue exists during the Excess M.D penalty period i.e. prior to meter defectiveness is found not valid.

12.0 Findings on the third issue:

12.1 Whether the third issue raised by the appellant to set aside excess demand charges levied in LTCT SC No. 249-013-491 is tenable is to be discussed in detail.

12.2 The appellant has challenged the excess demand issued to his Ac no 249-013-491 and further, he stated that he paid the excess demand charge under protest for the month of 08/2020, 9/2020 &10/2020.

12.3 The appellant has agreed for the usage of Energy for the above periods is correct ie from 08/20 to 10/20 on the meter but he is not agreeable to the penalty claimed for M.D on the same Meter. Further, argued that there is little relaxation on Covid restriction to run the factory. Hence there is no possibility of M.D excess other than software issues.

12.4 The respondent stated that the MD excess charge was claimed during the highest recorded period only. There is no technical flaw. The respondent has denied that there was no software issue on the meter till 24.2.2021. All the readings in the disputed period were taken in the presence of the consumer. Further, the respondent has informed that the MD recorded was found less for the billing period of 11/2020, 12/2020, 1/2021, and 2/2021. From 11/2020 onwards the petitioner had diverted some loads to the new service connection obtained for the same activities in the premises by

producing property tax in his name, rental agreement in the name of his wife with physical segregation. The consumer intentionally reduced the load by obtaining a new service connection. Hence his recorded MD was found less during the subsequent billing period of 11/2020, 12/2020, 1/2021, and 2/2021. The purpose of a new service connection for the same activities was not denied by the appellant and a new LTCT service connection application was registered online on 21.07.2020 by the petitioner's wife in the name of ELCON Company for a load of 112 KW adjacent to the petitioner company for the same business. The ownership record (Property Tax) of the premises is in the name of Thiru. Ganesh (Appellant) and the adjacent side was physically segregated and given to his wife as a tenant to obtain another service. The new SC No 249-013-545 was effected on 10.10.2020. In this regard, I would like to refer regulation 27(15)(A) of TN Electricity Distribution Code, 2004 which is reproduced below:

“27. Requisitions for Supply of Energy:

15(A) Notwithstanding any contained in sub-regulations (14) and (15), a person or an establishment or an entity shall be given only one service connection in a premises or in continuous premises to run a business or service or occupation of another form of activity including its associated activities and for activities of the associates even if there is a permanent physical segregation.”

The GSTIN no 33AACFE3026E1Z5 confirmed that the appellant Thiru B.GANESH and his wife Tmty Kalpana Ganesh are Partners of M/S Elcon for which a new connection has been obtained for the same activities in the same premises with physical segregation. It confirms the argument of the respondent that the purpose of obtaining new service connection by the appellant is to share the excess load of the existing service connection.

12.5 The respondent version of the excess load used in existing service 249-013-491 gets reduced and utilized by the petitioner in the new service connection no. 249-013-545 is discussed below;

SC No.	11/2020	12/2020	01/2021
249-013-491	95.40 KW	114.32 KW	90.96 KW
249-013-545	37.04 KW	34.92 KW	34.88 KW
Total	132.44 KW	149.24 KW	125.84 KW

12.6 The argument of the respondent that the consumer consumed a lesser load in the existing SC No. 249-013-491 only after obtaining a new service connection No. 249-013-545 and not after the meter replacement is found valid.

12.7 From the foregoing paras, it is noted that during the monthly reading taken on 24-02-21, all the parameters of the Meter were recorded and there was no absence of Voltage and current and the same has been recorded in the consumer ledger card. On 28-02-2021, the appellant representative reported that there was a display failure in energy meter and the same was replaced with healthy meter on 01-03-2021. The appellant also accepted the energy recorded during 06/2020, 08/2020, 09/2020 and 10/2020 and disputed only the MD recording and suspects meter software issue. When there is a accuracy in energy recorded, there is no chance of wrong recording of MD in a same Static meter. Further there was no excess MD recorded during 07/2020, 11/2020 & 01/2021 and upto 24.02.2021 i.e. the date of last reading in the energy meter before it becomes defective on 28.02.2021. Therefore, I am of the opinion that the energy meter in the appellant's service connection SC No.249-013-491 was in healthy condition upto 02/2021 assessment. Further, the excess MD claimed by the respondent is in line with Regulation 5(2) of TNE Supply Code Regulations. Hence I am of the view that the Excess MD claimed by the respondent is found correct.

13.0 Conclusion:

13.1 As per my findings in the above para 10, 11 & 12, the energy meter in the appellant's service connection SC No.249-013-491 was in healthy condition upto 02/2021 assessment. Further, the excess MD claimed by the respondent is in line with Regulation 5(2) of TNE Supply Code Regulations. Therefore, I conclude that the Excess MD claimed by the respondent is found correct and hence I am unable to interfere with the orders of the CGRF of Dindigul EDC.

13.2 With the above findings the AP No. 18 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

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