

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

FILE NO. EOM. 11/2010

Petition No. 2/2010

Name of Petitioner : Sri Arun Kumar Das
'OY-OY', Hospital Road
Karimganj
Assam - 788710

ORDER SHEET

24.12.2010

Sri Arun Kumar Das of 'OY-OY' Hospital Road, Karimganj – 788710, the Appellant Petitioner, hereinafter called "the Petitioner" filed an Appeal Petition before the Electricity Ombudsman which was received on 21.09.2010. The appeal preferred under chapter IV(5)(1) of the Assam Electricity Regulatory Commission Guidelines, against the decision of the Consumer Grievances and Redressal Forum Hills and Barak Valley Zone dated 23.08.2010 under Memo No. GM/BVZ/CGRF/E-25/10/792.

Main contention of the Petitioner (who hails from Karimganj but shifted to Mumbai some fifty years ago) is that 10 years ago he constructed a six storied building at Karimganj comprising of 6 residential flats connected to 6 individual meter for maximum load capacity from 1 KW-1.64 KW. Another portion of the building which is a commercial complex was connected to a meter of 6 KW capacity. In 2007, the Petitioner decided to develop the commercial portion into a full fledged Supermarket for which additional load of 45 KW will be required along with the existing load of 6 KW. The Petitioner prayed before the Deputy General Manager, CAEDCL, CEC, Silchar – 5 vide letter no. 'nil' dated 29.09.2007 for permission for installation of 100 KVA transformer against the existing connections informing that construction of the commercial portion of the building was in the advanced stage of completion. All the connections of the said building is in the name of the Petitioner. The Senior Manager, Karimganj Electrical Division, CAEDCL, Karimganj vide No. CAEDCL/KED/T-44(GF)/07-08 dated 22.10.2007 sanctioned additional 45 KW of load in favour of the Petitioner under certain terms & conditions. In the sanctioning letter it was mentioned -----

Existing load : 6 KW (This 6 KW of load was previously sanctioned by the SDE, Karimganj Electrical Sub Division as mentioned in term and condition no. 5 of the load sanctioned letter)

Additional load : 45 KW

Total : 51 KW

As per term & condition (1) of the sanctioning letter, the Petitioner made payment of Rs. 2,97,756/- (Rupees Two Lakh Ninety Seven Thousand Seven Hundred Fifty Six) to the CAEDCL on 20.12.2007 as per bill dated 29.11.2007 raised by the ASEB for construction of 11 KV line and 100 KVA substation. On 22.04.2008 the Petitioner signed an application provided to him by CAEDCL for the new connection. The application comprised of inter-alia Annexure 1: Application and Agreement form –

Low Tension Service Connection (refer to clause 3.7.1) of the AERC Regulations, for the new connection: Appendix 2 (clause 5.1) for commercial connection, Appendix 3: Test Report (for internal wiring), details of load and load Distribution , total wattage 42465 watts (phase -1: total 13855 W, phase-2: total 13910 W, phase-3: total 14700W).

As the construction works of the Super market i.e. the commercial portion was nearing completion and 6 months since elapsed from the date of granting approval and installation of 11 KVA line and 100 KVA Sub station was not forthcoming therefore the Petitioner in order to make the Super market operational, installed a D.G. set of 62.5 KVA. Initially, the Electrical Inspector raised some objections but on rectification of the objections accorded approval vide letter No. SEI/S/TS-161/2008/271 dated 07.07.2008 for commissioning of the 62.5 KVA (50 KW) Generator with status "Stand by". Thereafter, the Petitioner received two bills dated 29.07.2008 amounting to (1) Rs. 54,805/- towards load security for 42.465 KW commercial load and (2) Rs. 21,342/- towards cost of meter E/M 3x240v -5A CT-75/5A class – 5. The Petitioner made payment of both the bills on 30.07.2008 and 31.07.2008 respectively.

The Petitioner also stated that when the licensee completed service connection extension work and is ready to give supply the licensee shall serve a 30 days notice on the consumer to take power supply. If the consumer fails to avail power supply within the notice period the agreement shall come into force. In this case no such notice was served on him even after deposit of load security. Under such circumstances the Petitioner becomes entitled to draw the additional load immediately after depositing of load security.

The Petitioner further stated that on 26.08.2008 four officials from CAEDCL, Karimganj visited the premises of the Petitioner to make an assessment of connected load without informing the Petitioner. The Petitioner was in Mumbai at that point of time. After conducting of the inspection, the officials handed over a report to the employees of the Petitioner. In the said inspection report the officials had duly taken note of the fact that the supermarket is connected to a 50 KW DG set. But the Sub Divisional Engineer KESD, CAEDCL, Karimganj, issued an order on 27.08.2008 against the Petitioner holding that the Petitioner's connected load was more than the contract load and that he was found to be enjoying power for commercial purpose. The said order also directed the Petitioner to appear in the office of the Sub Divisional Engineer, KESD, CAEDCL, Karimganj on 30.08.2008 and make payment against some provisional assessment bill, failing which his service line would be disconnected. The Petitioner who was in Mumbai immediately rushed down to Karimganj after his employees informed him about the matter. Apprehending that he will have to suffer serious losses, for no fault of his own, if the service connection is illegally disconnected, the Petitioner under protest vide letter dated 01.09.2008 made payment of the two purported assessment bills bearing no. 054 and 055 dated 30.08.2008 amounting to Rs.82,165/- and Rs.41,731/- respectively. On 12.09.2008, the SDE, KESD, CAEDCL, Karimganj wrote to the Sr. Manager, MTI Division, CAEDCL that the Petitioner have applied the new service connection after observing all necessary formalities and that payment made for load security and installation of CT meter on 30.07.2008 and 31.07.2008. After that on 19.09.2008, the authorities of CAEDCL furnished a bill dated 19.09.2008 being the cost of another CT meter for an amount of Rs. 21342/-. The authorities have raised this bill under the pretext of installation of a check meter as stated by the Petitioner.

The Petitioner out of fear of losing the service connection made payment of the bill on 01.10.2008 and the CAEDCL provided the additional load on 01.10.2008 to the Petitioner for which he applied way back on 29.09.2007.

The Petitioner reiterated in his Appeal Petition that since he had already paid the load security for 42.465 KW commercial load on 30.07.2008 against the bill raised by the authorities on 29.07.2008, therefore the order dated 27.08.2008 issued by the Sub Divisional Engineer, KESD, CAEDCL, Karimganj that the Petitioner's connected load was found to be more than the contracted load and that the Petitioner was enjoying power for commercial purposnd that he was wrongly billed vide bills amounting to Rs. 82,165/- and Rs.41,731/-. Date of both the bills 30.08.2008. The Petitioner also protested that he was wrongly billed for amounting to Rs.21342/- for the cost of check meter issued vide bill dated 19.09.2008 as he already paid the cost of a meter on 31.07.2008. Being aggrieved and prejudiced at the hands of authorities in CAEDCL, the Petitioner filed a complaint before the CGRF, Bijulee Bhawan , Guwahati-1, inter-alia praying for the following relief:

- A. Refund of Rs. 82,165/- illegally taken vide bill dated 08.09.2008.
- B. Refund of Rs. 41,731/- illegally taken vide bill dated 08.09.2008.
- C. Refund of Rs. 21,342/- illegally taken vide bill dated 19.09.2008.

Total Rs. 1,45,338/- (plus 18% interest on the above amount)

The CGRF, Bijulee Bhawan transferred the case to the CGRF Hills and Barak Valley Zone, Silchar. The CGRF Hills and Barak Valley received the complaint on 08.06.2010 from the CGRF, Lower Assam Zone, Bijulee Bhawan and gave award on the complaint petition of the Petitioner communicated vide Memo No. GM/BVZ/CGRF/E-25/10/792 dated 23.08.2010. Extract of the award given by the Forum is reproduced below:

"The member of the Forum sit together in a meeting held on 17.08.2010 and discussed in details the statements of both the parties and arrived at the following decisions:

1. Installations of two meters are justified as per AERC's Guideline. Since the consumer is enjoying power for different purposes from the same transformer and the connections are provided with different individual meter, hence as per Guideline and provision of the AERC and higher authorities, another 'Check meter' is installed to check any misuse.

Therefore, the appellant cannot be allowed any relief to this point.

2. The appellant prayed for relief from the two assessment bills:
 - (i) One for unauthorized extension of load for Rs.82165/- and
 - (ii) Other for using the power by changing the category i.e. the load released for Domestic(D/L) purpose utilized for Commercial (C/L) purpose for Rs.42731/-."

The Forum discussed the statements of both the parties and the relevant records and the records exhibits of both the parties. The Inspection report of the Senior Manager, Karimganj Elect. Division, APDCL, which was signed by (1) Sri D. Nath, Sr. Mananger, KED (2) Md. Iskandar Ali Manager, KED (3) Sri N. Paul

SDE, KESD and the J.E.. KESD and also signed by Sri Ravi Singh, as consumer representative.

The report detected the unauthorized extension of load and the use of power for the purpose other than sanctioned. Since the consumer representative signed the report that he agreed on the detection. As such, the Forum giving proper weight age to the appeal declares that the bills served by the SDE, KESD, basing on the inspection report are justified.

Hence, the consumer as well as appellant could not be allowed any relief to these points also.

The appeal is disposed of accordingly.”

The award was signed by :

1. The Chairman, CGRF (Hills & BV), Silchar
2. Member, Rep. of Consumers, CGRF, Hills & BV, Silchar
3. Member Convener, CGRF, Hills & BV Zone

Being aggrieved and dissatisfied by the impugned judgment and order dated 23.08.2008 of the CGRF, Hills and Barak Valley Zone, the Petitioner filed this Appeal before the Electricity Ombudsman praying to set aside the impugned Judgment and order vide Memo No. GM/BVZ/CGRF/E-25/10/792 dated 23.08.2010 passed by the CGRF, Barak Valley Zone and grant the following relief as claimed by the Petitioner in his complaint dated 18.05.2010 before the CGRF Hills and Barak Valley Zone with costs:

1. Refund of Rs. 82,165/- illegally taken vide bill dated 08.09.2008.
2. Refund of Rs. 41,731/- illegally taken vide bill dated 08.09.2008.
3. Refund of Rs. 21,342/- illegally taken vide bill dated 19.09.2008.

Perused the Appeal Petition, as per guidelines 5(1) of the Guidelines for Redressal of Consumer Grievances notified by the Assam Electricity Regulatory Commission, any consumer if aggrieved by the non-redressal of the grievance by the Forum i.e. Forum for Redressal of Consumer Grievance, may make a representation to the Ombudsman within thirty days from the date of the decision of the Forum. In this case, order was passed by the CGRF, Hills and Barak Valley Zone, Silchar on 17.08.2010 and the same was communicated to Sri Arun Kumar Das, 'OY-OY', Hospital Road, Karimganj vide Memo No. GM/BVZ/CGRF/E-25/10/792 dated 23/08/2010. Although thirty days have elapsed from the date of decision of the Forum, I admit the Appeal Petition considering the fact that the date of communication of the order was made on 23.08.2010. Now it is to be decided

- (a) whether the action of the authority i.e. electricity supplier, CAEDCL, Karimganj penalizing the Petitioner by raising the two provisional assessment bills no. 054 dated 30.08.2008 and 055 dated 30.08.2008 amounting to Rs.82,165/- and Rs.41,731/- respectively is justified and
- (b) whether the action of the authority i.e. the electricity supplier, CAEDCL, Karimganj in raising the bill dated 19.09.2008 upon the Petitioner towards the cost of another Check Meter is justified when the Petitioner has already made payment for a meter on 31.07.2008 and also to decide who should bear the cost of the check meter.

Altogether 3(Three) sittings were held on the date 26.10.2010, 19.11.2010 and 09.12.2010.

On the first date of hearing, Sri Anup Kumar Das, authorized representative appeared on behalf of the Appellant Petitioner, Sri Arun Kumar Das.

Respondents namely (1) Md. Alauddin, Member Convener, CGRF(BV & Hills) Zone (2) Dipankar Nath, Senior Manager, Karimganj Electrical Division, APDCL, Karimganj (3) Sankar Deb, Assistant Executive Engineer, Karimganj Electrical Sub-Division, APDCL, CAZ, Karimganj appeared. Nirranjan Paul, the then Assistant Executive Engineer, Karimganj also appeared.

On the second date of hearing, Sri Anup Kumar Das, authorized representative appeared on behalf of the Appellant Petitioner, Sri Arun Kumar Das.

Md. Abdul Aziz, Junior Manager of Karimganj Electrical Sub-division, authorized representative on behalf of the Respondent Sankar Deb, Assistant Executive Engineer, Karimganj Electrical Sub-Division, APDCL, CAZ, Karimganj.

On the third and final date of hearing, Sri Arun Kumar Das, the Appellant Petitioner; Sri Anup Kumar Das and Sri Rahul Gautam, Advocate appeared.

The Respondents - Sri Dipankar Nath, Senior Manager, Karimganj Electrical Division, APDCL, Karimganj and Sri Sankar Deb, Assistant Executive Engineer, Karimganj Electrical Sub-Division, APDCL, CAZ, Karimganj appeared.

Heard both the parties and perused all the documents submitted before the Electricity Ombudsman.

The Chairman CGRF, Hills and Barak Valley (H&BV) Zone, Silchar vide letter No. CGRF/H&BV/E-24/10/1079 dated 12.11.2010 submitted that the award given by the Forum against the Appeal Petition of Sri Arun Kumar Das 'OY-OY' Hospital Road, Karimganj may be taken into account as comments of the Respondent Member Convener, CGRF (H&BV) and I accepted the prayer.

A.

It is seen that on 29.07.2008 the SDE, KESD Karimganj raised a bill No. 013 Book No. CE(M)ASEB/SCB/2007 upon the Petitioner amounting to Rs. 54,805/- towards load security for 42.465 KW commercial load. The Petitioner made payment of the bill vide cheque on 30.07.2008, Receipt No. Rt/CEM/05-06 A 1046 dated 30.07.2008. When payment of load security for 42.465 KW Misc commercial load was received by the authority on 30.07.2008 the authority should have taken immediate steps to convert the category of the consumer Petitioner from Domestic B to Commercial. But that was not done till 26.08.2008. On 26.08.2008 after physical verification in the premises of the Petitioner, the authority found him to be indulged in malpractice by unauthorizedly raising his connected load to 31 KW and by changing his category from Domestic B to Commercial. The test report dated 26.08.2008 is a copy of format of Appendix-2 : Determination of Connected Load (Clause 5.1) for Domestic/General Category/Commercial connection only. In this report category of the Petitioner is mentioned as Domestic B connected load was found to be 31.562 watt. It is mentioned in the report that Generator having capacity 50 KW installed with change over switch with supply mains of CAEDCL. It is also mentioned in this report that "power utilized for commercial purpose but billing done as domestic B category". This report was signed by (1) JE, KESD (2) Manager, Karimganj Electrical Division, CAEDCL, Karimganj (3) Senior Manager, Karimganj Electrical

Division, CAEDCL, Karimganj (4) SDE, KESD, CAEDCL. The Petitioner was served notice vide No. KESD/CAEDCL/T-31/07-08/672 dated 27.08.2008 for involving in the act of malpractice as defined in clause 4.5.4 and 5.A.3.2 of AERC (Electricity Supply Code and related matters) Regulations, 2004 (First Amendment) 2007.

Now, let us see what clause 4.5.4 says. As per clause 4.5.4 of the AERC (Electricity Supply Code and related matters) Regulations, 2004 (First Amendment) 2007 – “The Licensee may disconnect supply to the consumer if the consumer is found to have tampered or damaged the electric plant, line or meter of the Licensee during any inspections or otherwise. Such disconnection shall be effected only after issuing a notice of not less than 24 hours.” This clause is not applicable in this instant case because in the inspection report the licensee has not found the consumer i.e. the Petitioner to have tampered or damaged electric plant line or meter of the Licensee.

Now, let us see what the clause 5.A.3.2 says. As per clause 5.A.3.2 –

“Subject to the generality of the above, cases mentioned hereunder, shall be generally treated as Malpractice :

- a) Unauthorised supply of electricity to any service which is disconnected by the Supplier.
- b) Exceeding connected load authorised by the Supplier.
- c) Addition, alteration and extension of electrical installation in the consumer's premises without permission of the supplier or extension to any premises other than the one for which supply was contracted for.
- d) Non-compliance of orders in force imposing restriction of use of electricity for rational and equitable distribution thereof.
- e) Use of electricity for any purpose other than that for which supply is contracted for.

.....

In this case the Licensee issued notice under clause 5.A.3.2 (b) and (e) above.

This notice says that if the Petitioner did not remove the unauthorized portion of the load / cost of energy meter as the case may be within 24 hours and confirm the same action with a fresh test report and furnish an undertaking not to repeat such malpractice in future then his (Petitioner) service line will not be disconnected failing which his service connection shall be disconnected as per clause 4.5.4 and 5.A.3.3 of AERC (Electricity Supply Code and related matters) Regulations, 2004 (First Amendment) 2007 read with section 50 of the Electricity Act, 2003.

Vide the notice issued on 27.08.2008 the Petitioner was also requested to appear in the office of the SDE, Cachar Electrical Circle, Karimganj during working hours on 30.08.2008 for collection of provisional assessment bill assessed as per provision of clause 5.A.4. of AERC (Electricity Supply Code and related matters) Regulations, 2004 (First Amendment) 2007 for compensation of the loss of the utility due to committing malpractice.

Now, let us see what clause 5.A.4 says. As per clause 5.A.4 of the AERC (Electricity Supply Code and related matters) Regulations, 2004 (First Amendment) 2007 –

Where a consumer is found to be indulging in a Malpractice with regard to use of electricity and use of device to commit theft of electricity the authorised officer under section 126 of the Act may without prejudice to any other action that may be taken against such a consumer ask him to pay compensation which shall be assessed as stated here in below:

This clause clearly says that when a consumer is found to be indulging in malpractice with regard to use of electricity and use of device to commit theft of electricity then only the consumer is to be asked to pay compensation as per the formula under 5.A.4.1 for a period of maximum 12 months.

a. Domestic & Agriculture:-

b. Others:- $2x M (B-A) x 12 = \text{Rupees}$

'A' denotes the authorised load as per agreement

'B' denotes the total connected load detected at the time of inspection.

M means relevant fixed charge / minimum charge on the detected load as per tariff in force.

In this instant case, the Licensee by using the formula at 'b' above, issued two provisional assessment bills

- (i) No. 054 dated 30.08.2008 – due date 08.09.2008 – metering consumer no. DL-1-249/5 meter no. 07172034 (3Q) – connected load 31.302 KW CL LT – contract demand 6 KW. This assessment bill amounting to Rs. 82165/- is for unauthorized extension.

Billing Detail: $2 x 115.00(36.83-706) x 12 = 82165.00$

- (ii) No. 055 dated 30.08.2008 – due date 08.09.2008 – metering consumer no. DL-1-249/5 meter no. 07172034 (3Q) – connected load 31.302 KW CL HT – contract demand 6 KW DL(B). This assessment bill i.e. for change of category billing details :

5924 unit x 4.55 x 2 = 53908.00

6 x 110.00 x 2 x 12 = 15840.00

Less already paid (-) = 28017.00

Amount payable = 41730.00

The point to be examined is the intention of the Petitioner:- whether the Petitioner had utilized the power to commit theft. In this case, chronologically the record shows that

1. The Petitioner on 29.09.2007 prayed before the Deputy General Manager, CAEDCL, CEC, Silchar for installation of 100 KVA transformer.
2. The Senior Manager, Karimganj Electrical Division, CAEDCL, Karimganj sanctioned additional 45 KW of load under certain terms and conditions vide letter No. CAEDCL/KED/T-44(GF)/07-08/ signed by the Senior Manager dated 22.10.2007 mentioning in the letter,

Existing Load – 6.00 KW

Additional Load – 45.00 KW

Total – 51.00 KW

3. The SDE, KESD on 03.12.2007, issued a bill amounting to Rs. 2,97,750/- (Rupees two lakh ninety seven thousand seven hundred fifty only) dated

29.11.2007 towards construction of 11 KV line and 100 KVA substation. The Petitioner made payment of this amount by DD dated 04.12.2007 to CAEDCL, Silchar.

4. On 27.12.2007 work order released by DGM/CEC/Silchar (as per para wise comment of the Respondent)
5. On 02.04.2008 date of completion of deposit work
6. The Petitioner received Annexure-I application form from CAEDCL on 22.04.2008 for new connection giving detail of –
 - (i) Load mentioning to wattage 42465 W in purpose/category – commercial proposed connected load 42465 W.
 - (ii) Appendix-2: Determination of Connected Load giving details of electrical equipments proposed to be put to use, total as 42465 W.
 - (iii) Appendix-3: Test report for interval which was signed on 17.06.2008 by Licensed Electricity Contractor, Silchar, Kariganj mentioning date of test as 02.10.2007. The said Test Report was also signed by one Electrical Engineer on 17.06.2008 mentioning the date of commencement as 07.06.2008.

In the details of load and load distribution 3-phase requirement was shown Phase-1 required 138550, Phase-2 13910 and Phase-3 14700 – total 42465 W.

7. On 30.04.2008 letter issued in connection with test report of High Voltage installation to the Senior Electricity Inspector, Silchar.
8. As stated by the Petitioner since his construction work of supermarket was nearing completion and nothing was forthcoming towards installation of the 11 KVA line and 100 KVA substation, he installed a DG set of 62.5 KVA. The Electrical Inspector raised certain obstructions vide No. SEI/S/TS-161/2008 dated 17.05.2008 after inspection of the electrical installation at the premises of the Petitioner on 13.05.2008.
9. On compliance of the observations by the Petitioner the Electrical Inspector granted approval for commissioning Electric Generating Plant (above 10 KW) at his building and commissioning of Generator 62.5 KVA (KW) with status standby and also approval accorded to drawings sign the electrical layout diagram vide No. SEI/S/TS-161/2008/275 dated 07.07.2008.
10. On 29.07.2008 the SDE, KESD, CAEDCL, Karimganj raised two bills amounting (i) Rs. 54,805/- (Rupees fifty four thousand eight hundred five) towards load security for 42.465 KW in commercial category and (ii) Rs.21,342/- (Rupees twenty one thousand three hundred forty two) towards cost of meter E/M 3x240v -5A CT-75/5A class – 5.

The Petitioner made payment against the bills amounting to Rs. 54,805/- and Rs.21,342/- vide cheque on 30.07.2008 and 31.07.2008 respectively.
11. On 08.09.2008 Special Agreement for transfer maintenance was executed by the Petitioner and the Senior Manager, Karimganj Electrical Division.
12. On 12.09.2008, the SDE KESD wrote to Sr. Manager, MTI Division, CAEDCL that the Petitioner has applied for new service connection after observing all necessary formalities and had made payment of load security on 30.07.2008 and installation of CT meter on 31.07.2008.

13. The SDE, CAEDCL, Karimganj on 19.09.2008 again raised a bill of amounting Rs,21342/- on account of cost of check meter. The Petitioner out of fear of losing the service connection made payment against the bill on 01.10.2008.

14. On 01.10.2008, the CAEDCL provided the additional load to the Petitioner.

It is seen that there was delay on the part of the licensee in supplying the additional load as required under clause 3.1 and 3.2 of the "AERC (Electricity Supply Code and related matters) Regulations, 2004 (First Amendment) 2007."

Thus chronological development clearly shows that the Petitioner complied with the requirements of the licensee to get the additional load of 42.465 KW under commercial category. After payment of the load security for additional load 42.465 KW for commercial category on 30.07.2008, I do not find any justified reason on the part of the licensee to penalize the Petitioner by issuing the two provisional bills dated 30.08.2008 amounting to Rs.82165/- and Rs.41731/-. In fact, the licensee should have taken immediate action to change the category from domestic B to commercial.

Over and above in the test report dated 26.08.2008, it is clearly mentioned that "power is consumed for commercial purpose but billing is done for domestic". The question arises for this act of licensee who is responsible. The consumer or the Licensee? It is observed that as on 04.08.2008 the licensee in the electricity bill of the consumer dated 14.08.2008 categorized him as domestic B with contract load 6 KW for the period from 03.07.2008 to 04.08.2008 . As on 04.08.2008 or as on 25.08.2008 there was no action on the part of the licensee to change the category of the Petitioner from domestic B to commercial. Therefore, the two provisional assessment bills prepared and served on the Petitioner under clause 5.A.4 and 5.A.4.1 is not justified.

Examination of the electricity bills of the Petitioner covering the following periods 01.04.2008 to 05.11.2009 clearly shows the energy consumption pattern of the Petitioner.

Electricity bills covering the period of 01.04.2008 to 31.10.2008.

Sl. No	Date of Bill	Bill No.	Unit shown as consumed	Period covered	Days covered	Amt. of Bill (Rs.)	Consumer No.	Meter No.	Connected Load mentioned
1	14.4.08	147006	155	3.3.08 to 3.4.08	31	911	14000100011401	7172034	6.00 KW
2	13.5.08	155464	426	3.4.08 to 3.5.08	30	2050	--as above--	--as above--	--as above--
3	8.6.08	166041	1545	3.5.08 to 3.6.08	31	6801	--as above--	--as above--	--as above--
4	12.7.08	177857	1497	3.6.08 to 3.7.08	30	6589	--as above--	--as above--	--as above--
5	14.8.08	189912	1919	3.7.08 to 4.8.08	32	8398	--as above--	--as above--	--as above--
6	Bill date not given Due date 13.10.08	258	1845	4.8.08 to 10.9.08	37	12331	CL-I-249/5 (consumer no. erroneously changed)	--as above--	31.302 KW
7	Bill date not given Due date 11.12.08	Not mentioned	1008	10.9.08 to 1.10.08	21	7356	CL-I-249/5 (consumer no. erroneously changed)	--as above--	31.00 KW
8	12.11.08	Not clear	Mentions "reading yet to be taken"	1.10.08 to 31.10.08	31	6065	<u>26 k/2</u> C/L	ASE155114	42.465 KW

As stated by the Petitioner billing amount at Sl. No. 6 and 7 appear to have been arrived at by applying penal rates.

List of electricity bills covering the period November 2008 to September 2009

Date of Bill	Bill No.	Units shown as consumed	Period covered	Days covered	Amount of Bill (Rs.)	Consumer No.	Meter No.	Connected Load mentioned
12.11.2008	Not clear	Mentions 'Reading yet to be taken'	01.10.2008 to 31.10.2008	30	6,065.00	26 K/2 C/L	ASE155114 M.F. RX20	42.465 KW
14.12.2008	Not clear	2830 + 85 = 2915	31.10.2008 to 07.12.2008	37	18,745.00	--as above--	--as above--	--as above--
10.01.2009	Not clear	1106 + 33 = 1139	07.12.2008 to 08.01.2009	32	11,116.00	-- as above - -	ASE155114 M.F. RX40	-- as above --
12.02.2009	Not clear	1092 + 33 = 1125	08.01.2009 to 09.02.2009	32	11,055.00	-- as above - -	ASE155114 M.F. RX20	-- as above --
13.03.2009	Not clear	Mentions 'Power Failure.' Reading not taken. Units billed 1125	09.02.2009 to 08.02.2009 (Mistake. 08.02.2009 to be 08.03.2009)	27	10,959.00	--as above--	--as above--	--as above--
09.04.2009	Not clear	2062 + 62 - 1125 = 999	08.03.2009 to 07.04.2009	30	10,537.00	--as above--	--as above--	--as above--
12.05.2009	Not clear	1440 + 43 = 1483	07.04.2009 to 08.05.2009	31	12,453.00	--as above--	--as above--	--as above--
11.06.2009	Not clear	1190 + 36 = 1226	08.05.2009 to 06.06.2009	29	11,347.00	--as above--	--as above--	--as above--
10.07.2009	Not clear	1296 + 39 = 1335	06.06.2009 to 04.07.2009	28	11,816.00	--as above--	--as above--	--as above--
12.08.2009	Not clear	1390 + 42 = 1432	04.07.2009 to 31.07.2009	27	12,233.00	--as above--	--as above--	--as above--
06.09.2009	Not clear	Reading not taken. Units billed 1432	01.08.2009 to 31.08.2009	31	12,580.00	--as above--	--as above--	--as above--
12.10.2009	Not clear	3088 + 93 - 1432 = 1749	31.08.2009 to 08.10.2009	38	13,945.00	--as above--	--as above--	--as above--
12.11.2009	Not clear	1552 + 47 = 1599	08.10.2009 to 05.11.2009	28	13,270.00	--as above--	--as above--	--as above--

As seen from the above statements, the energy consumption patterns of the Petitioner w.e.f. 03.04.2008 appears to have gone up to more than 3(three) times w.e.f. 03.05.2008 to 04.08.2008 than what it was in the bill for 03.04.2008 to 03.05.2008 and 03.03.2008 to 03.04.2008. Therefore, there is reason to believe that the Petitioner might have utilized the energy for commercial purpose during the period from 03.05.2008 to 04.08.2008. But the supplier of energy i.e. the CAEDCL, Cachar Electrical Circle, Karimganj ESD – 1 vide Bill No. 166041 dated 08.06.2008, 177857 dated 12.07.2008 and 189912 dated 14.08.2008 billed the consumer under category Domestic B mentioning connected load as 6.00 KW. The Appropriate Authority should have taken action against the erring official for billing the consumer Petitioner under Domestic B category if the consumer had utilized the power for commercial use by taking into account of the pattern of energy consumed for these period from 03.05.2008 to 04.08.2008 than what it was prior to 03.05.2008. But that was not done. Therefore, as on 04.08.2008 in the eye of the Electricity supplier i.e. the CAEDCL Karimganj, category of the consumer Petitioner was Domestic B and connected load 6 KW.

The Respondents including CGRF have stated in their para wise comment that on 26.08.2008 they made the mandatory physical inspection of the load and electrical installation prior to execution of the Agreement was done.

Again question arises when the Respondents raised the bill for load security for 42.465 KW, they should have definitely made physical verification prior to issue of this bill for load security. Without physical verification if the authority have claimed the bill then it may be presumed that they have accepted the proposed load details as per item as given along with the application Form on 22.04.2008. Appendix-2 determination of connected load category commercial, total load 42465 watts signed by the Electrical Supervisor License no. 3155 with validity up to 28.09.2008.

Now after physical verification on 26.08.2008, the Respondents have raised electricity bill No. 258 upon the Petitioner for the period w.e.f. 04.08.2008 to 10.09.2008 changing category from Domestic B to commercial (giving new consumer No. CL-I-249/5) mentioning connected load 31.302 KW (37 KVA). In this bill, contract demand was not mentioned and date of bill was also not mentioned. But due date was mentioned as 13.10.2008. As per record, the CAEDCL Karimganj released the excess load on 01.10.2008.

It is also observed that the licensee did not serve notice to the Petitioner under clause 3.5.6 of the AERC (Electricity Supply Code and related matters) Regulations, 2004 (First Amendment) 2007 citing plea that service of notice did not arise as the connection was provided on the same day after payment of assessment bills and the cost of check-meter. The plea is not acceptable as it goes against the provision of clause 3.5.6 of the Regulations.

B. On the question to decide who should bear the cost of the check meter, the Respondents namely - the Senior Manager, Karimganj Electrical Division, APDCL, Karimganj and the Sub Divisional Engineer, Karimganj Electrical Sub-Division, APDCL, CAZ, Karimganj vide their para wise comment on the Appeal Petition submitted before the Electricity Ombudsman on the date of hearing on 26.10.2010 stated under para I that that since the Petitioner is enjoying power for different purposes from the same transformer and the connections are provided with different individual meters hence as per guidelines and provisions of the AERC and higher authorities another 'check meter' is installed to check any misuse. The purpose of the two meters are different, one for recording of the new commercial connection of the Petitioner and the other for 'check meter' to check the consumption of all meters (new and existing) installed in the same building of the Petitioner, Sri Arun Kumar Das. On seeking further clarification in this connection, Respondent Sub Divisional Engineer, Karimganj vide letter No. 'nil' dated 18.11.2010 signed by the SDE submitted before the Electricity Ombudsman on the date of hearing on 19.11.2010 that the licensee is authorized "to install any additional equipment/device considered necessary for better control, operational efficiency and monitoring. Installation of 'check meter' against the 100 KVA distribution transformer of Sri Arun Kumar Das was essential for the purpose of better control and for monitoring of energy consumption and also for energy auditing purpose as the said transformer feeds power to a group of consumers of different categories in the same multistoried complex."

On the question of who should bear the cost of the check meter the Respondent vide letter mentioned above dated 18.11.2010 submitted that "as per clause 3.7.4.1 of the AERC (Electricity Supply Code and related matters) Regulations, 2004 (First Amendment) 2007 in the case of consumers having more than total load of 20 KW. All costs of extension including HT line, Distribution transformer and LT lines/cable/controls/breakers/panels and all associated equipments and civil works shall be borne by the consumers. As the 'check-meter' i.e. DTR meter is an essential and associated component of the said 100 KVA DTR (distribution transformer) for the purposes mentioned above, the cost of the said meter has to be borne by the consumer (in the instant case – Sri Arun Kumar Das).

The Respondent SDE, Karimganj Electrical Sub Division vide letter No. APDCL/KESD/AERC/10-11/ Camp AERC/ Guwahati dated 09.12.2010 submitted additional information giving the Regulation under which the Respondents raised the bill for the cost of check meter clause 3.7.4- chapter III: New Power Supply and clause 4.2.11 (para 3)- chapter IV: Electricity Supply Code Regulation.

As per submissions of the Respondents, it is clear that the 'check meter' was installed (i) to check any misuse of power and (ii) to check the consumption of all meters (new and existing) installed in the same building of the Petitioner, Sri Arun Kumar Das from the transformer and (iii) for the purpose of better control and for monitoring of energy consumption and also for energy auditing purpose as the said transformer feeds power to a group of consumers of different categories in the same multistoried complex.

To have a clear picture let us now see the definition of the Check Meter, Consumer Meter and Energy Accounting and Audit Meter as per definition under clause 2 of the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006:

- (i) "Check Meter" means a meter, which shall be connected to the same core of the Current Transformer (CT) and Voltage Transformer (VT) to which main meter is connected and shall be used for accounting and billing of electricity in case of failure of main meter.
- (ii) "Consumer Meter" means a meter, used for accounting and billing of electricity supplied to the consumer but excluding those consumers covered under interface Meters.
- (iii) "Energy Accounting and Audit Meters" means meters used for accounting of the electricity to various segments of electrical segments of electrical system so as to carry out further analysis to determine the consumption and loss of energy therein over a specified time period.

Let us now see what the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 says with regard to ownership of meter:

6. Ownership of meters

(2) Consumer meters:

- (a) Consumer meters shall generally be owned by the licensee.
- (b) If any consumer elects to purchase a meter, the same may be purchased by him. Meter purchased by the consumer shall be tested, installed and sealed by the licensee. The consumer shall claim the meter purchased by him as his asset only after it is permanently removed from the system of the licensee.

(3) Energy accounting and audit meters

Energy Accounting and Audit Meters shall be owned by the generating company or licensee, as the case may be.

.....

In this instant case the meter purchased as per bill dated 29.07.2008 amounting to Rs. 21342/- is a consumer meter as per definition and the consumer herein the Petitioner has no objection against payment of this bill which he made on 31.07.2008.

Now as submitted by the Respondents including the CGRF, H&BV Zone in their first para wise comment purpose of installation of the check meter as per bill dated 19.09.2008 was to check any misuse of electricity. But in the definition of check meter there is no mention that check meter be used to check any misuse of electricity. So, this reasoning of the Respondents is not tenable under the law.

“The Check Meter” (as purchased against bill dated 19.09.2008) used by the licensee for the purpose as mentioned at para (ii) and (iii) above falls as per definition under category Energy Accounting and Audit Meter as per definition and ownership of this meter lies with the licensee as per CEA (Installation and Operation of Meters) Regulations, 2006 under clause 6(3) above. Therefore, the reasoning of the Respondents that cost of this check meter has to be borne by the consumer is not tenable under the law.

After hearing both the Petitioner and Respondents and after perusing all the documents submitted before the Electricity Ombudsman and after taking into consideration of all aspects as discussed above, I have come to the conclusion that,

- (a) Action of the Respondents namely Senior Manager, Karimganj Electrical Division, APDCL, Karimganj and SDE, Karimganj Electrical Subdivision APDCL, CAZ, Karimganj penalizing the Petitioner by the two provisional assessment bill no. 054 dated 30.08.2008 for an amount of Rs. 82,165/- and 055 dated 30.08.2008 for an amount of Rs. 41,731/- is not justified
- (b) Action of the Respondents namely Senior Manager, Karimganj Electrical Division, APDCL, Karimganj and SDE, Karimganj Electrical Subdivision APDCL, CAZ, Karimganj to make payment of the cost of ‘check-meter’ by raising the bill dated 19.09.2008 amounting Rs. 21,342/- is not justified as the ownership of this meter used for the purpose mentioned at (ii) and (iii) above lies with the licensee as per Regulation 6(c) of the CEA (Installation and Operation of Meters) Regulations, 2006.

Therefore, the Respondents namely Senior Manager, Karimganj Electrical Division, APDCL, Karimganj and SDE, Karimganj Electrical Subdivision APDCL, CAZ, Karimganj are hereby directed to refund the following amounts to the Petitioner –

- A. Refund of Rs. 82,165/- illegally taken vide bill dated 08.09.2008.
- B. Refund of Rs. 41,731/- illegally taken vide bill dated 08.09.2008.
- C. Refund of Rs. 21,342/- illegally taken vide bill dated 19.09.2008.

Let copy of the order be served on the Petitioner to take follow-up action for refund of the above amount before the above Respondents namely Senior Manager, Karimganj Electrical Division, APDCL, Karimganj and SDE, Karimganj Electrical Subdivision APDCL, CAZ, Karimganj within a period of 1(one) month from the date of receipt of this order under clause 8(4) of the AERC “Guidelines for Redressal of Consumer Grievances” under intimation to the Electricity Ombudsman.

Let copy of this order be served to all the Respondents to comply with the order within 15(fifteen) days from the date of receipt of the acceptance letter from the Petitioner under clause 8(5) of the AERC “Guidelines for Redressal of Consumer Grievance” and report compliance to the Electricity Ombudsman within seven days from the date of compliance.

Let copy of this order be sent to the Chairman, ASEB, for favour of information and necessary action.

Let copy of this order be sent to the Secretary, Assam Electricity Regulatory Commission, for placing before the Commission.

Let copy of this order be sent to the Secretary, Central Electricity Regulatory Commission / Forum of Regulators (FOR), 3rd & 4th Floor, Chanderlok building, 36, Janpath, New Delhi – 110 001 for favour of information.

Let copy of this order be sent to the Member Convener, CGRF (Hills & BV), O/o the General Manager, B.V. Zone, APDCL, Silchar – 788005, for favour of information and necessary action.

Sd/-
(Neelima Dewri Dutta)
Electricity Ombudsman