

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

FILE NO. EOM. 24/2015

Petition No. 1/2015

Name of Petitioner: **Pawan Kumar Soni,
Partner, Keshari Industries,
C/o. Shri S.K. Kejriwal,
Arnav Court, A.K. Azad Road
Rehabari, Guwahati – 781008**

Appeal petition dated 01.04.2015 under section 42(6) of the Electricity Act, 2003 read with clause 5(1) of Chapter-IV of the Guidelines for Redressal of Consumer Grievances.

29.06.2015

Appellant : M/s. Keshari industries, Guwahati
Respondent : The Area Manager, IRCA-II, APDCL, Maligaon, Guwahati.

ORDER

Appellant approaches CGRF, Guwahati on 19.02.2015 to redress his grievances. CGRF has not taken up the petition within the statutory period prescribed under clause 5(1) of Chapter IV of the Guidelines. Hence, this appeal.

The appeal petition dated 01.04.2015 has been taken up under clause 6(3) of the Guidelines for redressal of consumer grievances and conciliation held on 10.04.2015. Hearing has been taken in presence of the Petitioner and Respondent. Conciliation fails as Petitioner and Respondent could not arrive at conclusion due to difference of opinion.

Thereafter, the petition dated 01.04.2015 has been taken up afresh as per clause 8(1) of the Guidelines. Hearing has been taken on 24th April, 2015 and 11th May, 2015 where in Petitioner and Respondent are present along with their appointed counsels.

The appellant is a partnership firm duly registered under the Partnership Act 1932 and engaged in the business of manufacturing and sale of plastic molded furniture and house hold items and for that purpose, owns a unit at Abhoypur, North Guwahati – 781031.

The appellant connected load/contracted demand is 696 KW=819 KVA and is categorized as HT category V(C)-HT-II Industries. The appellant is provided with meter no. AS897181 for the purpose of billing and installed the said meter at the outside of the factory boundary and gate.

The appellant states that on 11.09.2014, T&C Division, APDCL, Amingaon visited the factory and inspected the meter bearing no. AS897181. Thereafter, a report as follows is prepared:

“As per letter no. GM (Com-Rev)/HVCMS/GEC-II/2012-13/110 dated 20.08.2014 from the General Manager (Com.-Rev.), APDCL, Bijulee Bhawan, the following site has been visited by the undersigned and observed that meter cover, terminal cover and cabinet box polycarbonate

seals are opaque and paper seals (meter cover) are found broken. The CMRI data download is taken and found "Meter Cover Open" – tamper event is recorded on 22.08.2013 at 10:28 PM and several times on 02.01.2014. Therefore, the existing meter (AS 897181) is replaced with a new meter (AS 897448) and is taken for further investigation at T&C laboratory on 15.09.2014 at 1:00 PM and the consumer is requested to be present during investigation. The old meter (AS 897181) is resealed in a box and sealing details are given below. Paper seal No. LZ 12397, LZ 12398, LZ 12399, LZ 12400, LZ 12401, LZ 12402 duly signed by APDCL officials and consumer representatives."

There is nothing in the inspection report to show that the meter was rendered defective or that the meter was converted to an instrument for recording less than the actual consumption or meter was running slow.

Appellant also states that after inspection on 11.09.2014, the meter was totally dismantled on 15.09.2014 in the name of investigation. Thereafter, a minute of the meter investigation was prepared wherein observation to the following effects was made:

"The meter cover is opened up and photographs of various inside parts/elements of the meter is taken and observed that meter Cover, Terminal Cover, Cabinet Box seals are found in suspicious condition i.e. opaque to see. After opening of the meter cover, inside of the meter is checked and compared with a new meter (APD19514) opened in presence of consumer and photographs are taken for further analysis at manufacturers facility."

Appellant further states that the investigation found no tempering or defects whatsoever with the meter or any of the electrical measuring parameters of the meter.

Meter was totally dismantled leaving no scope to the consumer to seek investigation/testing of the meter in some other laboratory of its choice.

Meter cover was opened in presence of consumer, APDCL representative and technical staff of the Secure Meters on 15.09.2014. As such there cannot be any question of meter cover open on 22.08.2013 or on 02.01.2014 and recording of tamper event on 22.08.2013 and 02.01.2014. No accuracy test whatsoever was conducted over the meter to find out whether there was any error(s) as required under clause 4.2.1.4.1 of the Supply Code, 2007 and as such the meter was correct.

No finding whatsoever has been recorded regarding any defect in the meter or slow running of meter.

The inspection report dated 11.09.2014 points out opaqueness and breakage in seals and the CMRI report downloaded on 11.09.2014 points out cover open – unspecified cover start. The said findings are in no manner sufficient to adjudge meter defective, in as much as, to come to such conclusion, the authority is required to refer the meter for laboratory test. The same has not been done.

As far as Meter cover seals bearing No. 7222800, LZ 13448 and PO4384 are concerned, the same were affixed on 25.01.2013 and there is no finding regarding any breakage to the said seals in the Inspection Report dated 11.09.2014 save and except that the seals bearing No. LZ 13448 and PO4384 were opaque (i.e. unclear). As far as meter terminal cover seals bearing no. 0001561 and 0001562 are concerned, the same were affixed on 25.07.2013 but on 25.01.2013, the meter terminal cover was affixed with seal bearing No. PO4385. As such, it can be safely concluded that the

APDCL officials broke the said seal bearing No. PO4385 on 25.07.2013 and replaced the said seal with seals bearing No. 0001561 and 0001562 for the reasons best known to them. Similarly, as far as cabinet box seal bearing no. 2029639 is concerned, the same was affixed on 28.03.2014 but prior to that, on various dates, seals were changed as would be evident from the meter record book wherein different seal numbers for different days have been noted down. Thus, from the meter Record book, it can be seen that the meter cabinet box was opened frequently by the APDCL staffs/officials and seal were also changed by them from time to time. As such, there is very likelihood that while handling the same, the seals affixed with other accessories viz, meter cover, meter terminal cover were rendered opaque by the visiting officials but that by itself is not conclusive proof to establish that any tampering was done to the meter and/or the meter was rendered defective and/or that by reason thereof, the meter started running slow or registering less consumption.

The Area Manager after meter investigation issued provisional assessment order dated 19.01.2015 forwarding therewith a statement of calculation of assessment bill dated 19.01.2015 demanding differential amount of Rs. 74,67,272.00 for period from 22.08.2013 to 11.09.2014 on the ground of slow running of meter or registration of less consumption on the basis of average consumption of 11.09.2014 to 31.12.2014 alleging that the meter was rendered defective on 22.08.2013 as confirmed by the CMRI downloaded on 11.09.2014. The provisional assessment bill was served upon the appellant directing to pay within 02.02.2015 ignoring the settled position of law that question of payment of provisional assessment bill would arise only after passing of final assessment order.

The letter of Chief General Manager (Com.), APDCL dated 20.08.2014 directed the Respondent opposite party to conduct accuracy test of the meter. But defying not only the said direction but also applicable law, no test whatsoever was conducted over the meter which clearly established that the opposite party has least regard not only towards the applicable law but also towards the lawful direction issued by the higher authority.

As far as clause 4.2.2.4 of the Supply Code is concerned, the same can be applied after complying with the requirements as incorporated under clause 4.2.1.4.4 of the Supply Code. Not to speak of complying with the said requirement even testing of meter was not done. As such it is totally absurd to say that there is no illegality, irrationality or procedural impropriety in preparing the bill as per 4.2.2.4 of the Supply Code. The said clause says bill can be revised for the period during which electricity is provided without meter by taking into consideration of previous 3 months or the subsequent 3 months after rectification and reinstallation of the meter or new meter whichever is higher.

It is settled principle that merely because consumption varies from month to month or during any particular period of time, the same by itself is not sufficient to hold that the meter is defective or some tampering is done to the meter. In order to book a consumer on the ground of defect in the meter, it is incumbent for the authority (Respondent) to establish that meter was stopped and/or that the meter was running slow and/or that there was errors in reading and that the actual reason of such errors could not be ascertained and such a finding is possible only if the meter is placed on automatic test bench to find out its accuracy. The same having not done, the entire exercise vitiate and for the said reason the impugned bill is not sustainable in laws.

The inspection report dated 11.09.2014 points out opaqueness and breakage in seals and the CMRI report downloaded on 11.09.2014 points out cover open unspecified cover start. The said findings are in no manner sufficient to adjudge the meter defective/tempered, in as much as, to come to conclusion, the Respondent authority is required to refer the meter for laboratory test. The same having not been done the entire exercise undertaken by the Respondent authority against the provision of laws/rules and consequently the bill is in question to be set aside.

Clause 4.2.1.4 and clause 4.2.2.4 of Supply Code make it abundantly clear that if the meter is removed for any laboratory test, the supply to the consumer is to be provided by passing the meter i.e. directly from the transformer and during the period when supply is provided by passing the meter, there is no reading of electricity consumption. As such provision has been made for issuance of bill on the basis of average consumption. In the instant case, there was not a single day when electricity was supplied without meter as meter was removed and new meter was installed on 11.09.2014.

The inspection dated 11.09.2014 pointed out that the seals affixed with the meter cover, meter terminal cover and cabinet box were found opaque and that meter cover opening event was found logged as per CMRI. Seals affixed with meter and meter cover are external accessories having nothing to do with recording of any of the electrical measuring parameters to record less reading than the actual. It is incumbent for the authority to establish that any of the electrical measuring parameters were rendered deficient to record less reading than the actual. There is no finding in that regard.

In the name of investigation, the meter was dismantled leaving no scope for the consumer to seek testing of the meter in some other laboratory of its choice. The authority making allegation of defect is required to test the meter in laboratory. But, the provisions of clause 4.2.1.4 of Supply Code applicable in the case of defective meter was totally done away with.

The inspection dated 11.09.2014 and the minutes of the meter investigation dated 15.09.2014 are absolutely silent regarding the kind of tampering / defect caused to any of electrical measuring parameters fitted with the meter. It is incumbent for the authority to establish that any of the electrical measuring parameter was rendered defective/ slow which resulted in less registration of consumption. There being no finding to aforesaid effect.

The impugned assessment bill for the differential amount for the period 22.08.2013 to 11.09.2014 has been issued solely on the ground that after installation of new meter on 11.09.2014, the meter recorded average consumption of 7746 units per day during the period from 11.09.2014 to 31.12.2014 ignoring the fact that consumption of electricity in an industry during any particular day, month and year depends on various factors such as raw materials, shut down of industry, type of finish product etc. All these are vital factors in the production of industry during any particular day, month and the some fluctuate and do not remain constant depending upon the demand supply gap. As such merely because consumption of electricity after the installation of new meter is higher, it is not proper to revise the bill on the said basis without taking into consideration the relevant provision of law.

The above contentions of the appellant have been contested by the Respondent authority. Chief General Manager (Com.), APDCL has

directed APDCL, Maligaon IRCA-II to thoroughly inspect and accuracy test of the meter no. AS 897181 installed at premises of M/s. Keshari Industries, North Guwahati. The HVEMS cell of the APDCL found (-) 50.52% deviation of consumption during January-June, 2014 than January-June, 2013.

Respondent authority visited consumer premises on 11.09.2014 and inspected the meter in presence of consumer and his representatives suspecting that there might be unauthorized consumption. The meter has not been stolen but it has been tampered with deliberately as the meter cover, terminal cover and cabinet box polycarbonate seals are found in opaque condition and paper seal of the meter cover are found broken. Since polycarbonate seals are found in opaque conditions and paper seals inside the meter cover were found broken, therefore as per the Part-I Rule 3 of the Central Electricity Authority (Installation and operation of Meters) Regulations, 2006, the comprehensive meter reading instrument data (CMRI) was downloaded at site when meter cover was found open. The recorded data reveals that the meter has been tampered with on 20.08.2013 (at 10 PM) and several times on 02.01.2014. Therefore, as per clause 4.2.1.3.3 of the Supply Code, the existing meter was removed for the purpose of testing in presence of appellant consumer on 11.09.2014. It is also relevant to refer to Regulation 18(2) of the Regulations, 2006 that the licensee may instead of testing the meter at site can remove the meter and replace the same by a tested meter. In addition, the meters installed in circuit shall be tested if study of consumption pattern changes drastically from similar months of the previous year. In this connection study carried by the HVCMS cell of the APDCL on the pattern of consumption of electricity by the consumer and it was found that there is a deviation of consumption to the tune of (-) 50.52% during the period January to June, 2014 than the January to June, 2013.

Respondent further insists that meter cover, terminal cover, cabinet box seals were found to be in suspicious conditions i.e. opaque condition and after opening the meter cover, inside of the meter was checked and compared with a new meter (APD 19514) which was opened in presence of consumer and photographs were taken for further analysis at manufacturer's facility.

Respondent states that bill dated 19.01.2015 for the period for the period from 20.08.2013 to 11.09.2014 on the basis of clause 4.2.2.4 of the Electricity supply code 2007 was raised and there is no illegality irrationality or procedural impropriety in preparing the bill. The basis for presentation of the said bill dated 19.01.2015 is manifestly clear that it has been done on the basis of average consumption for the period from 11.09.2014 to 31.12.2014 which equals to 7746 units per day.

The bill dated 19.01.2015 is not a provisional bill as per Section 126 of the Electricity Act, 2003. But, it is a bill to recover the loss sustained by APDCL for tampering of the meter by the Appellant as is reflected from the consumption pattern. Therefore, Respondent feels question of entertaining any representation against the said bill and thereafter preparation of final bill does not arise.

The meter in question was not defective but it has been tampered with by the Appellant. The clause 4.2.1.4.4 of the Supply Code refers to defective meter only. Here in this case, the meter has been tampered and in order to recover the loss supplementary bill was prepared. The question of any kind of laboratory test before raising the bill dated 19.01.2015 is irrelevant as the said bill has been prepared as per the provisions of clause 4.2.2.4 of

the Supply Code and on the basis of average consumption of the Appellant.

The bill dated 19.01.2015 has been prepared as per clause 4.2.2.4 of the Supply Code on the basis of the consumption pattern of the Appellant and the fact that on investigation, polycarbonate seals of the cabinet box were in opaque condition and the paper seals were found broken. It is enough evidence that the meter was made to run in slow manner and therefore said bill dated 19.01.2015 was prepared on the basis of average consumption.

The bill dated 19.01.2015 was prepared on the basis of consumption pattern of the appellant as per clause 4.2.2.4 of the supply Code. No action was taken as per the provision of section 126 of the Electricity Act, 2003.

The impugned action has not been taken as per provision of section 126 of the Electricity Act, 2003 and as such application of provisions of clause 5.A.3 of the Supply Code is not enforced.

It was found that the meter was tempered to make it run slow. According to the study of consumption of electricity by the HVCMS of APDCL, it was found that there is deviation of consumption to the tune of (-) 50.52% during the period January to June, 2014 than the January to June, 2013. As such there is every reason to believe that some mischief has been committed to record less consumption by the meter. While opening the meter cabinet, the question of breaking the paper seals or tempering the meter by APDCL authorities is altogether irrelevant in this case and whenever meter box was opened, the same was done in the presence of the authorized representative of the Appellant.

Further, there has been complete adherence to the provisions of the Supply Code and relevant provisions of law in raising the bill dated 19.01.2015.

Observation & Findings:

The Chief General Manager, APDCL letter No. GM (Com-Rev.)/HVCMS/GEC-2/2012-13/110 dated 28.10.2014 directed Area Manager, APDCL, Maligaon, the Respondent to thoroughly inspect and accuracy test the meter no. AS 897181 installed at M/s. Keshari Industries, Abhoypur, North Guwahati in view of fact of deviation in energy consumption January, 2013-June, 2013 compared to January, 2014 – June, 2014. Accordingly, APDCL, T&C Division-II, Amingaon, Guwahati -31 visited the Industry, the Appellant on 11.09.2014 and found that there is evidences of tempering of the meter as stated in their inspection report dated 11.09.2014. The report states “the CMRI data download is taken and found “Meter cover open” – temper event is recorded on 22.08.2013 at 10:28PM and several times on 02.01.2014”. The Appellant consumer who was present given a signed statement as – “ I was present during above inspection, checking and verified & found correct data and comments recorded by APDCL (LAR) authority”

It appears Respondent authority APDCL stated the bill dated 19.01.2015 is not a provisional bill as per section 126 of the Electricity Act, 2013. But it is a bill to recover the loss sustained by the Respondent authority for tempering of meter by the Appellant as reflected from the consumption pattern as per the report of HVCMS dated 20.08.2014. Even though tempering of the meter is alleged, the Respondent authority decline to invoke sections 126/135 of the Act. Rather they take up the inspection of the meter as per provision of the supply code relating to defective meters. Respondent authority also says the meter was made defective to register less consumption. Respondent authority once says the meter is tempered

and also states that meter was defective. As such the Respondent authority is not precise and unambiguous while raising allegations.

Now, in view of written statement filed on 11.05.2015 by the Respondent authority the proceeding is taken up as per provision of the Electricity Supply Code and related matters, 2004 (First Amendment) 2007 and the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006.

The meter in question has been installed outside the consumer's premises as per provisions at clause 7(b)(i) of the Regulations, 2006. However, no real time display unit at the consumer premises to indicate electricity consumed, was installed. The licensee or the Respondent authority shall be responsible for the safety of the meter in such case as per clause 13(3) of the Regulations, 2006.

The HVCMS of APDCL analyses the consumption of the Appellant consumer and stated that January-June, 2013 consumption was 246370.67 whereas January-June, 2014 was 121908.67 which is 50.52% deviation. Clause 18(2) of the Regulations, 2006 has provision that meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of the previous years. The said clause also says "The testing for consumer meter above 650 volts should cover the entire metering system including CTs, VTs. Testing may be carried out through NABL accredited mobile laboratory using secondary kit, measuring unit and phantom loading or at any accredited test laboratory and recalibrated if required at manufacturer's works".

In view of said provision, it is understood, the Chief General Manger (Com.) of the APDCL vide letter dated 28.08.2014 directed the Respondent authority that the meter in question must be thoroughly inspected and accuracy must be tested.

The Respondent authority visited the Appellant's premises on 11.09.2014 and inspected the meter in question and downloaded the records of the meter which reflects the meter was made defective on 22.08.2013 to register less consumption (Report No. 1446/14 dated 11.09.2014). The meter in question was replaced on 11.09.2014 itself and new meter no. AS897448 was installed. The defective meter is removed for testing as per provision at clause 4.2.1.3.3 of the Supply Code 2007. The defective meter was further investigated vide minutes of the investigation of meter no. AS897181 performed at T&C Division, Amingaon, APDCL (LAR) on 15.09.2014. Thereafter bill dated 19.01.2015 is prepared as per provision 4.2.2.4 of the Supply code, 2007. The Respondents says that the average consumption was less during the period 22.08.2013 to 11.09.2014 when compared to average consumption during the period 11.09.2014 to 31.12.2014 after installation of new meter on 11.09.2014. Respondent relied on provision at clause 4.2.1.3.3, 4.2.1.4.1, 4.2.1.4.4 of Supply Code and bill is prepared as per provision at clause 4.2.2.4 of the Supply Code, 2007.

The Licensee or the Respondent revise the bill as per procedure given in clause 4.2.1.4.4 and it says "if the meter, on testing, is found to be incorrect after testing and the consumer does not dispute the test result.....".

In the instant case in the name of testing two reports prepared by the Respondent. They are inspection report Sl. No. 1446/14 dated 11.09.2014 and minutes of investigation of meter no. AS897181 performed at T&C Division, Amingaon, APDCL (LAR) on 15.09.2014.

The report dated 11.09.2014 indicates meter was taken for further investigation at T&C laboratory on 15.09.2014. The minutes of investigation on 15.09.2014 as below:

“On today, the 15th September, 2014, Dismantling & Investigation of the meter bearing Serial No. AS897181 (main meter) were carried out in presence of consumer and APDCL representatives. Mr. Mukul Saikia of Secure meters Ltd. has deputed his technical staff Mr. Nimai Patra to attend the dismantling and investigation of the meter at T&C Division, Amingaon.

The meter cover is opened up and photographs of various inside parts/elements of the meter is taken and observed that meter cover, terminal cover, cabinet box seals are found in suspicious condition i.e. opaque to see. After opening of the meter cover, inside of the meter is checked and compared with a new meter (APD19514 opened in presence of consumer and PHOTOGRAPHS are taken for further analysis at Manufacturers facility.

The meter is at present in the custody of T&C Division, Amingaon.”

Further during the course of hearing it is ascertained by the Respondent including representative of the Secure Meter Ltd., the manufacturer of the meter in question that no testing was undertaken on 15.09.2014. Also, no report was received from the manufacturer.

Therefore, the report dated 11.09.2014 & 15.09.2014 cannot be taken as complete report as per provisions at clauses 4.2.1.4.4 & 4.2.2.4 of the Supply Code, 2007 including clause 18(2) of the Regulations, 2006.

Furthermore as directed by the Chief General Manager (Com.), APDCL, no accuracy test is completed as per procedure at clause 18(2) and Part I(2) of the Regulations, 2006. The words “Photographs are taken for further analysis at manufacturer facility” of investigation report dated 15.09.2014 manifestly clarifies that test of the meter is not yet completed as per procedure laid down in the Supply Code, 2007 and Regulations, 2006.

In similar case of test of meter no. ASEG4180 (Star Cement) dated 25.04.2013 submitted by the Appellant as Annexure-G of their petition dated 01.04.2015, the test report of the MTI Amingaon states clearly about the accuracy of the meter. Such examination not completed so far as the meter no. AS897181 of the present case as per provision at clause 4.2.1.4.1 of the Supply Code, 2007 and clause Part I (2) of the Regulations, 2006.

The Appellant consumer is a manufacturing industry which primarily produces items on market demand of its finish product. The consumption of electricity is related to the demand of the product in the market.

It is seen that there has been uneven consumption of electricity since the day of the installation of meter on 14.08.2010. Therefore, it is legally required on the part of the Respondent authority to follow the procedures at clause 18(2) of the Regulations, 2006 and clause 4.2.1.4.1 of the Supply Code 2007 before arriving any conclusion. This has been intention of the CGM (Com.), APDCL as reflected in his inspection dated 20.08.2014.

The Respondent authority has taken up the issue on the basis of meter was made defective on 22.08.2013 whereas notice to claim additional assessment has been raised as in case of a incorrect/stopped meter as per clause 4.2.2.4 of the Supply Code Regulations, 2007. It appears

Respondent authority is not precise and unambiguous in raising provisional assessment bill to recover the alleged loss.

The observation of the CGM (Com.) dated 20.08.2014 purely based on the billing data provided by the Respondent. Respondent is well aware of deviation in consumption as monthly meter reading and billing have been done regularly w.e.f. the date of installation of meter on 14.08.2010. Clause 4.2.2.1 of the Supply Code, 2007 requires distribution licensee or the Respondent to take monthly meter reading statement downloaded. In the instant case the same is not done putting the Appellant consumer in disadvantage situation.

It is also understood during the course of hearing that the meter in question was dismantled on 15.09.2014 while investigation was conducted at MTI Amingaon. It is not possible to resemble the same for the purpose of testing although the investigation report dated 15.09.2014 says – “taken for further analysis at the manufacturer’s facility”. It now appears the very evidence of alleged defect in the meter in question has been lost by their (the Respondent) conduct.

Award: In view of the above discussion and findings, I have no hesitation to conclude that the Respondent authority has not followed laid down procedures at clause 7(b)(i), 13(3), 18(2) of Regulations, 2006 including clause 4.2.1.2.5, 4.2.1.4.4, 4.2.2.1, 4.5.7 of Supply Code, 2007 before issuance of the bill No. 263 dated 19.01.2015. Therefore, the bill dated 19.01.2015 is not enforceable. Appeal Petition allowed. No costs to be borne.

Sd/-
(R.L. Duarah)
Electricity Ombudsman

Memo No. EOM. 24/2015/99

Dated Guwahati the 29th June, 2015

Copy to:

1. **Shri Pawan Kumar Soni, Partner, Keshari Industries, C/o. Shri S.K. Kejriwal, Arnav Court, A.K. Azad Road, Rehabari, Guwahati – 781008.**
2. **The Chairman, Consumer Grievance Redressal Forum, ASEB Campus, Sixmile, Guwahati-781022.**
3. **The Area Manager, IRCA-II, APDCL, Maligaon, Guwahati-781012.**

Secretary,
O/o the Electricity Ombudsman