

ELECTRICITY OMBUDSMAN, RAJASTHAN JAIPUR

Case No. : EOR 434/2018

In the matter of representation filed before the Electricity Ombudsman,
Rajasthan, Jaipur by

Shri Sunil Agrawal
Agrawal Agency, Station Road,
Barmer-344001

Appellant

v/s

Jodhpur Vidyut Vitran Nigam Ltd.,
New Power House, Basni,
JODHPUR-342005

Respondent

Represented by

Appellant: Shri Sunil Agrawal, Owner

Respondent: XEN(O&M), JdVVNL, Barmer,
Shri Amit Chhangani Advocate

Heard on 4.7.18 in presence of

Appellant: Shri Sunil Agrawal, Owner

Respondent: Shri Amit Chhangani Advocate

Coram
G.R.Choudhary
Electricity Ombudsman,
Rajasthan

Order

Date: 5.7.18

1. Registration of the case

The Appellant filed a representation on 16.5.18 before the Electricity Ombudsman, Rajasthan which was registered on same day at Case No. EOR – 434/2018.

2. Brief of the case

The Appellant is having an electricity connection in Non Domestic category (A/c No. 1610-0358) for sanctioned connected load of 10 kW, at Barmer under AEN (CSD-I), JdVVNL Barmer in Barmer district of the Respondent. The minimal facts leading to this representation are narrated hereunder:

- i. The Appellant is having grievance regarding debit of recovery raised by the Audit for Rs 292923/- due to revision of bills from Jul'15 to Sep'16 by taking average of preceding six months consumption {Clause 32(1)(i) of TCOS-2004} on account of meter being stopped/defective.
- ii. The Appellant approached the Circle Level Grievances Redressal Forum of the Respondent at Barmer (Forum in short) for redressal of his grievance. The Forum accorded it's decision on 17.3.18.
- iii. Being not satisfied by the decision of the Forum, the Appellant filed the representation before the Electricity Ombudsman for redressal of his grievance.

3. Representation

In the representation along with documents submitted, the Appellant stated as under:

- i. The Appellant stated that he received a notice issued by AEN(CSD-I) Barmer vide number D-2619 dated 2.1.17. In the notice it was asked to deposit an amount of Rs. 292923/- otherwise the above amount will be added in the bill to be issued. It was made to known that above recovery has been raised by the Audit for the period of Jul'15 to Sep'16 in which meter remain stopped and bills for less energy consumption were issued. The Appellant stated that there was no commercial activity going on in the premise during this period in which less energy consumption has been noticed by the Respondent and during two months his meter remain defective/stopped for which he deposited the average bill as issued by the Respondent.
- ii. The Appellant stated that he was forced to deposit the whole amount raised by the Audit in order to put up his grievance before the Grievance Redressal Forum.
- iii. The premise which was in the ownership of the Appellant's father was being used by the Appellant for running a restaurant, which remain closed for a long period, the meter remain stopped/defective only for two months afterwards the meter was replaced.
- iv. The Appellant stated that amount raised by the audit was not correct. His meter remain stopped/defective only for two months and the Audit raised a huge amount ignoring the facts and it was not acceptable to him, as such the wrong audit charges be credited as above.
- v. The Forum in it's meeting dated 17.3.2018 decided that charges raised by the Audit were in order and in case the Appellant deposits the amount raised by the Audit then total LPS amount may be credited for which the Appellant has not agreed.
- vi. The relief sought from The Ombudsman:
To direct the Respondent to refund/credit the excess amount deposited against the recovery raised by the Audit.

4. Processing of the case

- 1) The notices were served on dated 16.5.18. A copy of the representation received from the Appellant was forwarded in terms of the Regulation 7(1) of the RERC (Settlement of Disputes by Electricity Ombudsman) Regulations, 2010 (Electricity Ombudsman Regulations in short), to the Respondent and the Forum for sending reply / comments/ factual report, so as to reach to the Electricity Ombudsman by 15.6.18 along with necessary supporting documents and the proof of serving a copy of the same to the Appellant.
- 2) The Appellant was also asked to furnish his comments, if any, on the Respondent's reply, to the Electricity Ombudsman by 27.6.18 along with a proof of serving a copy of the same to the Respondent.

5. Replies, comments and arguments

- i. The Respondent furnished the reply to the representation on 18.6.18 along with a proof of serving a copy of the same to the Appellant.
- ii. No reply/ comment on the Appellant's representation were received from the Forum.
- iii. The Appellant furnished the comments on the Respondent's above reply on 25.6.18 along with a proof of serving a copy of the same to the Respondent.

iv. The Respondent's reply along with the Appellant's comments thereupon have been summarised as under:

- a. The Respondent stated that before filing grievance before the Settlement Committee, the Appellant filed complaint before the District Forum Barmer bearing No. 09/2017 titled Sunil Agarwal Vs. Assistant Engineer, JdVVNL and sought following relief: -

“अतः परिवाद पेश कर निवेदन है कि

क. यह कि परिवादी का परिवाद स्वीकार कर विप्रार्थी विभाग द्वारा उनके द्वारा दी जा रही विद्युत सेवा में लापरवाही व त्रुटि मानते हुए परिवादी के विद्युत खाता संख्या 16100358 में गलत अंकेक्षण रिपोर्ट द्वारा जो बकाया राशि 2,92,930/- दर्शाई गई को निरस्त फरमावे व परिवादी के पक्ष में आज दिन तक अदा किये गये विद्युत बिल का नो-ड्यू जारी फरमावे।

ख. कि विप्रार्थी विभाग की लापरवाही व त्रुटि मानते हुए परिवादी को पहुंचे मानसिक आघात पेटे रूपया 20,000/- रूपये तथा परिवाद व्यय के 5,000/- रूपये दिलवाये जावे।

ग. कि अन्य कोई सहायता जो न्यायहित में दौराने परिवाद, परिवादी के पक्ष में प्रमाणित हों परिवादी को विप्रार्थी विभाग से दिलाई जावे।”

Wherein after receiving notices from the District Forum the Respondent filed reply and afterwards the Learned District Forum, Barmer dismissed the complaint on 8.2.17.

- b. After dismissal of above mentioned complaint by District Forum the Appellant filed Civil Suit along with application U/s 151, bearing No. 52/2017 titled Sunil Agarwal Vs. Asst. Engineer, JdVVNL before Civil Judge, Barmer and also sought same relief.
- c. After filing the suit the notices were issued and the Respondent filed reply to the Suit as well as Misc. Application. The application under Section 151 CPC filed by the Appellant was decided on 25.05.2017 and the prayer of the Appellant was dismissed.

- d. During pendency of the Suit proceeding the Appellant filed application under Order 23 Rule 1 CPC regarding withdrawal of Suit on the ground of settlement take place between the parties. On the basis of the application so filed by the Appellant, Suit was dismissed as withdrawn vide order dated 30.10.2017. It is pertinent to mention here that while dismissing the Suit the learned Civil Judge also mentioned in his order that the Appellant does not want to proceed further in the matter therefore the file is decided.
- e. It is made clear that both the matters attain finality and the Appellant never challenged those orders before the Appellate Authority, afterwards the Appellant deposited amount of Rs. 2,92,953/- before the concerned Authority.
- f. The Respondent stated that on 17.03.2018, the Forum decided the matter of the Appellant took a view that since the Audit Department found that while taking reading of the meter on 23.06.2016 , it is found that the meter was stopped and consumption recorded was very low in spite of no change in connected load therefore the Audit Department took assessment of consumed electricity on the basis of TCOS, 2004 clause-32(1)(i). As per above clause the consumption of electricity which shall be assumed as the same as recorded by correct meter for the corresponding period of the previous year or the average consumption of previous six months, whichever is higher and then chargeable unit 33836 were imposed, cost of which was Rs. 2,92,953/-.
- g. The Respondent stated that no violation has been done by him and all actions have been taken as per the law and charges which were imposed in Audit Report were correct as per TCOS Rules 32(1)(i) therefore contention of the Appellant is not maintainable.
- h. The Respondent stated that issue which were raised before the Ombudsman already been adjudicated by the District Forum as well as Civil Court Barmer wherein no relief has been granted to the Appellant and all the facts are suppressed by the Appellant.
- i. Therefore the Respondent prayed that this reply to the Representation may kindly be taken on record and the representation filed by the Appellant may kindly be dismissed with cost.
- j. In reference to the above reply, the Appellant commented that the case filed before the District Forum was dismissed because the electric connection was being used for commercial purpose (NDS category) for which learned District Forum was not entitled to hear.
- k. The Appellant filed the case before the Civil Court, but due to deficiencies the stay application was dismissed with the direction to the Respondent that in case the Appellant submits application before them, then they will redress it as per rule soon.
- l. On dated 17.10.18 (correctly 17.10.17) the Respondent disconnected the electric supply. The concerned JEN forced the Appellant to deposit all the dues to restore the supply. The JEN assured that after depositing the dues his case will be referred before the settlement committee.
- m. The Appellant deposited complete dues and after many pursuance the case was put up before settlement committee. The decision was not acceptable to the Appellant, then he filed the appeal before Ombudsman.

v. During the hearing both the parties reiterated their respective written arguments as above. The Appellant stated that his premise was not in use during the period under dispute but couldn't produce any proof in support of the same. The Appellant stated that running meter cannot be considered as stopped which is evident if we look at the consumption recorded and billed in the billing month of March 2016 for 252 units. The Appellant stated that it was the responsibility of the Respondent to keep the meter in healthy condition if the Respondent was considering this meter as stopped/defective then why it was not replaced for such a long time due to which he has to bear huge financial burden without any fault. The Respondent stated that from billing month Sept'2015 onwards till this meter was replaced on 25.7.2016, the meter became defective/stopped and did not recorded correct energy consumption where as there was no change in the usage of electricity consumption as the restaurant of the Appellant was operational as usual and it is situated in the main market of the Barmer. The Respondent was asked the reason for not considering the consumption of billing month July15 for calculating average because as per meter reading sheet till billing month July15, the meter was running and there was no any remark in the binder/meter reading sheet regarding meter stop/defective and substantial consumption is there also. The Respondent could not reply for it and stated that audit considered billing month Dec'14 to Apr'15 for taking average. About maintainability of the case the Respondent did not produce any relevant document on the basis of that this representation can be rejected and also when the Forum has entertained the grievance of the Appellant and accorded it's decision on 17.3.2018. About not replacing the meter timely the Respondent agreed that as per regulations the rebate of 5 % can be allowed.

6. Settlement by Conciliation

Both the parties were explained about the factual position of the case within the framework of the Act/ Rules and the Regulations made there under and were advised in view of the Regulation 7(2) of the Electricity Ombudsman Regulations, to reach some settlement of the representation but no settlement could be reached. They furnished a written statement in this regard. The Electricity Ombudsman, therefore, analysed the case and accorded the decision as hereunder.

7. Analysis of the case

Based on the written statements / documents provided by both the parties, arguments made during the hearing and considering the applicable provisions of the Act, relevant Rules & Regulations, Tariff and TCOS etc, the case has been analysed as under:

Maintainability of the case

The contention of the Respondent is not correct that the case under reference is not admissible before the Ombudsman. As per "The Consumer Protection Act -1986" the person who avails services for any commercial purposes is not covered in the category of Consumer for District Consumer Forum hence learned District Forum dismissed the case on 8.2.17 on this ground stating that the case is not maintainable before the District consumer Forum. Similarly on non producing the relevant documents the Civil Court did not grant stay, although the Civil Court ordered as under:-

The Respondent is Vidyut Nigam and to redress the consumer grievances and disputes between consumer and supplier there are various regulatory forums/mechanisms are available and the petitioner did not produce any such document in which request for depositing the current dues was made by the petitioner before the Respondent and in absence of which court cannot order the Respondent to accept the amount of current bill and it is directed that if petitioner submits any application for depositing current bill then the Respondent will take early action for disposal of the same as per rules and with these directions the petitioner's application submitted under sec.151 of CPC was dismissed on 25.5.17. No decision/order has been given by the Civil Court on the Petitioner's main suit as it was withdrawn by the Appellant. Then the Appellant deposited the Forum fee for his grievance on 8.2.18 and the Circle Forum decided it on 17.3.18 but the decision accorded was not acceptable to the Appellant.

As per regulation 7(1)(c) of RERC (Guidelines for Redressal of Grievances) Regulations, 2008 if the Appellant's grievance is not redressed by the Forum within the specified time or the consumer is not satisfied with the disposal of his grievance, he will be free to approach the Ombudsman.

As per the **Regulation 5(1)** of the Electricity Ombudsman Regulations "a consumer, aggrieved with the decision of a forum or non-redressal of the grievance, is entitled to file a representation before the Electricity Ombudsman".

Looking to the above, as the grievance of the consumer was neither decided by the District consumer Forum nor by the Civil Court and the decision of the Circle Forum is not acceptable to the Appellant; the representation under reference cannot be dismissed on these grounds.

Audit charges

The Respondent attached a copy of meter reading sheet and billed energy statement from billing month of May'14 to Jan'18. The disputed meter was shown installed at the Appellate's premise in the billing month of Jan'2015. The bill of this billing month Jan'2015 has been shown issued on average basis. The reading shown is 11934 & 14015 on 5.5.15 and 20.6.15 respectively and accordingly 2081 units consumption was billed for billing month of July 2015 and there is no any remark in the meter reading sheet/binder regarding meter defective/stopped while taking reading on 20.6.2015. Afterwards the meter recorded almost negligible consumption till it's replacement i.e. 25.7.16 as such the meter remain stopped/defective in the period from 20.6.2015 to 25.7.2016 and correct energy was not recorded by the meter & billed to the Appellant consumer. In supply code there is a regulation 29(1)(i) to deal such type of meter stop cases: which reads as under:

29. Assessment in case of stopped, lost or stolen meter

(1) If the meter stops working for any reason, or the meter is stolen or lost, the consumption of electricity for the period during which electricity has been consumed with stopped meter or without a meter, shall be calculated as follows:

(i) All consumers except seasonal industrial and agricultural consumers.

The consumption of electricity shall be assumed as the same for the corresponding period of the previous year or the average consumption of the previous six months whichever is higher.

Similar provision is there in clause 32(1)(i) of TCOS 2004.

The Respondent did not consider the period of preceding six months (i.e. billing month Mar'15 to Jul'15) for average purpose, in which the meter was

in order to calculate the average energy for the period in which the meter remain stopped i.e. 20.6.15 to 25.7.16. The Respondent considered the consumption of billing month Jan'15, Mar'2015 & May 2015 for calculating average energy. Surprisingly in the B/M of Jan'15 the bill itself was issued on average basis and as per regulation the average consumption cannot be used for calculating the average again. After replacement of the meter on 25.7.2016, it started recording the consumption as per previous trend of the Appellant. Therefore it is concluded that the meter remain stopped in the period for B/M Sep'15 to Sep'16 . The average consumption for meter stop period be recalculated considering the consumption of preceding six month i.e. B/M Mar'15, May'15 & Jul'15 as per rules and regulations.

Rebate of 5%

1) The relevant provision is appearing under the Regulation 31(2) of the Supply Code Regulations, dealing with replacement of meter, which reads as under;

31. Replacement of meter

(2) In case a stopped/defective metering system is not replaced within a period of two months of its detection, a rebate of 5% on the total bill of the consumer prepared under clause 29, excluding electricity duty shall be allowed from third monthly bill in case of monthly/fortnightly billing and second bill in case of bimonthly billing after such detection till the meter is replaced.

2) In this case first time in the billing month of Sep'15 it was detected that existing meter is stopped and it was replaced on 25.7.16 after a period of more than two months. In view of above the Appellant was entitled for the 5% rebate on the total bills issued on average basis as per clause 29 of the supply code regulations in the billing months Nov'15 to Sep'16, excluding ED, as per above provision.

8. Award on Representation

Based on analysis of the case as above, the Electricity Ombudsman hereby passes the award under Regulation 8 of the Electricity Ombudsman Regulations, as under:

1. The Respondent is directed to consider the meter stop period from billing month of Sep'15 to Sep'16.
2. The Respondent is directed to revise the assessment on the basis of average consumption of preceding six months (i.e. B/M Mar'15, May'15 and Jul'15).
3. The Respondent is directed to allow a rebate of 5% as per Regulation 31 of Supply Code Regulations.
4. The excess amount recovered from the Appellant if any shall be refunded with interest at RBI rate, as per the **Regulation 37** of the Supply Code Regulations, payable from the date of recovery till the date of refund.
5. The amount as above shall be credited in next electricity bill to be issued by the Respondent, after the receipt of acceptance of this award by the Appellant.
6. No order as to costs.

9. Compliance of Award

- i. The Appellant may furnish to the Respondent within a period of **fifteen days** from the date of receipt of this award, a letter of acceptance that the award is accepted in full and final settlement of his claim. A copy of such acceptance be also forwarded to the Electricity Ombudsman.
- ii. The Respondent shall comply with this award as above, on receipt of the acceptance letter from the Appellant otherwise it shall be deemed to be a contravention of the RERC (Settlement of Disputes by Electricity Ombudsman) Regulations, 2010 and in that case the Appellant would be at liberty to take appropriate action against the Respondent including filing a representation before the Rajasthan Electricity regulatory Commission under the Section 142 of the Electricity Act, 2003, for such non-compliance.
- iii. The Respondent shall intimate the compliance of the award to the Electricity Ombudsman, Rajasthan.
- iv. If the Appellant does not intimate the acceptance, the award shall not be required to be implemented by the Respondent.

(G.R.Choudhary)
Electricity Ombudsman,
Rajasthan