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APPEAL PETITION No. P/017/2020
(Present: A.S. Dasappan)
Dated: 19th August 2020

Appellant : Sri. Narayanan K.,
Energy Head,
Indus Towers Ltd.,
Palarivattom,
Ernakulam

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd, Thodupuzha,
Idukki

ORDER

Background of the case:

The appellant represents M/s Indus Towers Ltd., a company providing passive infra structure service to telecommunication providers. The appellant is a 3 phase LT VI F consumer bearing number 32080 under Electrical Section No.1, Thodupuzha, with a connected load of 13280 watts. The Assistant Engineer, Electrical Section No.1, Thodupuzha, issued a short assessment bill dated 24-11-2018 by directing the appellant to pay Rs 80477/- for the period from 05/2017 to 10/2017 due to the dip in consumption for the above period compared to the previous period by declaring the meter as sluggish. Against the short assessment bill, the appellant had approached the CGRF, Ernakulam by filing a petition OP No. 074/2019-20. The Forum dismissed the petition vide order dated 29-01-2020 due to lack of merits. Aggrieved against this, the appellant has submitted this appeal petition before this Authority On 19-02-2020.

Arguments of the appellant:

The appellant has put forward the following arguments in the appeal petition.

The meter of the service connection was declared as faulty during the month of 08/2017 without any record of final readings and replaced on 07/10/2017. The bills up to the month of 07/2017 were issued for the actual consumption recorded in the meter with status of the meter as working and for the faulty meter period of 08/2017,09/2017 and up to 07/10/2017 were issued for an average consumption 2650 units per month without any basis. The previous 3 months' average consumption before the declaration of the meter as faulty is 2169 units. But the bills were issued for 2650 units instead of 2169 units. Hence the excess amount collected during the faulty meter period by applying erroneous average should be refunded.

The meter reading and consumption statement from 04/2015 to 03/2018 is as follows.

Month	IR	FR	Consumption	Remark
Apr-15	22038	23506	1468	MW
May-15-	23506	25258	1752	"
Jun-15	25258	26882	1624	"
Jul-15	26882	28194	1312	"
Aug-15	28194	29911	1717	"
Sep-15	29911	32124	2213	"
Oct-15	32124	34430	2306	"
Nov-15	34430	36678	2248	"
Dec-15	36678	38620	1942	"
Jan-16	38620	40623	2003	"
Feb-16	40623	42556	1933	"
Mar-16	42556	44765	2209	"
Apr-16	44765	44765	2435	"
May-16	44765	49634	2434	"
Jun-16	49634	52579	2945	"
Jul-16	52579	55469	2890	"
Aug-16	55469	58983	3514	"
Sep-16	58983	62635	3652	"
Oct-16	62635	66084	3449	"
Nov-16	66084	69982	3898	"
Dec-16	69982	73537	3555	"
Jan-17	73537	77428	3891	"
Feb-17	77428	81436	4008	"
Mar-17	81436	85104	3668	"
Apr-17	85104	88587	3483	"
May-17	88587	91034	2447	MW
Jun-17	91034	93055	2021	"
Jul-17	93055	95093	2038	"
Aug-17	95093	0	2650	MF Avg.
Sep-17	0	0	2650	"

Oct-17	0	631	3016	MC on 7/10/2017 bill bill issued on 11.10.2017
Nov-17	631	4895	4264	
Dec-17	4895	9508	4613	MW
Jan-18	9508	14378	4870	MW
Feb-18	14378	19539	5161	MW
Mar-18	19539	23132	3593	MW

From the above meter reading and consumption statement, it can be seen that, by the same meter the consumption varied from 1312 units to 4008 units hence the dip in consumption from 05/2017 to 07/2017 is quite normal. The short assessment bill prepared and issued with the assumption that the meter was sluggish. The CGRF considered in the order that, "the petitioner has not furnished any document to prove any reason for the low consumption during the said period or the usage of Electricity generator from diesel generator set". It is totally baseless and erroneous. The purpose of the installation of a tested meter in a premises of a consumer is for measuring actual energy consumed. As per Regulation 104 of Supply Code 2014, the licensee shall not supply electricity expect through a correct meter installed.

In accordance with the provisions of the Central Electricity Authority (Installation and Operation of meters) Regulations 2006, amended from time to time, the billing to be done for the actual consumption recorded in a tested meter and not based on any assumption or imagination. The consumer is not bound to submit any documents to prove their consumption pattern. If the meter is faulty, the Regulation 125 of KESC 2014 clearly directs how to bill the consumer. Hence the order of the CGRF is totally erroneous and to be set aside.

As per the regulation 125 (1) of Supply Code 2014, in the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective. Provided that, the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available. In this case, the meter was declared as faulty only during the month of 08/2017 without testing the meter. The bills issued during the faulty meter period were paid by appellant. Hence the short assessment bill issued without any basis is not sustainable as per the regulations.

A sluggish meter is not defined anywhere in the Act or Code and the short assessment made only based on the dip in consumption in a previous billing period with the assumption that the meter was sluggish without testing is not sustainable and hence to be cancelled.

The regulation 116(2) of Electricity Supply Code 2014 says that, if the meter is found defective, the licensee may test at site, if feasible, and if not feasible, the meter shall be replaced with a correct meter and the defective meter shall be got tested in an accredited laboratory or in an approved laboratory. But in the instant

case, the licensee failed to do so. Hence the short assessment bill is not sustainable. Any rules or regulations in the Electricity Act or Electricity Supply code are not supporting to re-assess a consumer merely based on the dip in consumption in a previous billing period by declaring the meter as sluggish/faulty after a long period.

As per the Regulation 115(1) of Supply Code 2014 the meter shall normally be tested in the laboratory of the licensee, approved by the Commission. Regulation 115(9) says that "In the case of meter is found to be faulty, revision of bill on the basis of the test report shall be done for a maximum period of 6 months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revisions shall be adjusted in the two subsequent bills. If any doubt in the consumption, the licensee can test the meter and can be reassessed for previous six months based on the test report of the meter. But in the present case, the meter was not tested for declaring the same as sluggish/faulty and the licensee declared arbitrarily that the meter was sluggish after a long time without any support of test certificate of the meter.

Considering all the above facts, the appellant prayed before this Authority to set aside the erroneous order of the CGRF and to issue necessary orders to cancel the short assessment bill issued illegally by the respondent and refund the excess amount collected during the meter faulty period by applying erroneous average.

Arguments of the respondent:

The service connection having consumer. No.1156180032080 under Electrical Section No. I Thodupuzha is registered in favour of Sri Biju T. Nair, Indus Towers Ltd, Palarivattom under LT 6F tariff applicable to Private Cellular Tower with Connected Load of 13280 watts.

The Internal Audit Wing of the Kerala State Electricity Board Limited on inspecting the books and records maintained with respect to Con. No. 32080 of Electrical Section No. I Thodupuzha came to the conclusion that the billing of the consumer during the meter faulty period from 5/2017 to 10/2017 was not done on the basis of previous 3 months average when the energy meter was working properly, as such the consumer was undercharged for the above period.

From the consumption pattern, it is clear that the consumer was undercharged from 5/2017 to 10/2017 with considerable dip in consumption. Further the energy meter of the subject premises was changed on 07/10/2017 and thereafter the consumption showed sharp increase ever since. This clearly indicates that the consumer was undercharged from 5/2017 to 10/2017.

Regulation 134 of Kerala State Electricity Supply Code 2014 provides that "If the licensee establishes either by review or otherwise that it has undercharged the consumer the licensee may recover the amount undercharged from the consumer by issuing a bill". By virtue of the above Regulation, short assessment bill for Rs. 80,477/- was issued to the consumer.

It is admitted that aggrieved by the issuance of the short assessment bill, the appellant had filed a complaint before the Assistant Engineer, Electrical Section, No. I, Thodupuzha and a reply was given to the appellant. On the basis of the factual position stated above and as per the reply produced by the appellant it is clear that the consumer was undercharged during the period 5/2017 to 10/2017. The Kerala State Electricity Board Limited has every right to conduct a review in accordance with Regulation 134 of the Kerala Electricity Supply Code 2014 and realise the loss from the consumers who were thus undercharged. As stated above, the energy meter was faulty for the period from 5/2017 to 10/2017. The consumption prior to as well as subsequent to the above period shows that consumption was higher in the premises and the consumer was undercharged for the period from 05/2017 to 10/2017. From the uniform consumption pattern shown in the premises during the period when the energy meter was correct, it can reasonably and logically be concluded that the consumer remained undercharged. Therefore, the appellant is bound to remit the short assessment bill. There is considerable public interest involved in realizing the dues from the undercharged consumers, otherwise such loss sustained to the licensee would also be reflected in the tariff petition and the consequent tariff hike and the burden will have to be met by other innocent consumers too.

The grounds arrived at in the Order dated 29.01.2020 of the Consumer Grievance Redressal Forum, Ernakulam in OP No.74/2019-20 are comprehensive and sustainable for the reason that appellant has no logical and convincing grounds to prove the sudden dip in the consumption for the period from 05/2017 to 10/2017.

As a responsible consumer, appellant should have explained the sudden dip in the consumption from 05/2017 to 10/2017 on the basis of records and evidence and should have co-operated with the licensee for an equitable and genuine solution to clear the loss sustained to the licensee on account of undercharging in the premises for the above period. Without taking any positive efforts in this regard the appellant finds refuge in certain provisions of the statute quoting the same totally out of context deviating from the very purport of the enactment.

The findings of the Consumer Grievance Redressal Forum, Central Region upon hearing the matter and analysing the matter thread and bare as per Order dated 29.01.2020 in the petition No.74/2019-20 are under sustainable grounds and clearly vindicates the position taken by this licensee. The Regulation 125(1) of the Kerala State Electricity Supply Code 2014 states that in case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective. The purport of the above Regulation clearly vindicates the right of the licensee to review similar instances and establish on the basis of clear statistics and data, the date from which the energy meter was found defective, which may be distinct and apart from the date from which the meter was declared defective. The Regulation 134 of the Kerala Electricity Supply Code 2014 asserts the right of the licensee to realize loss from the consumers who were

undercharged. The instances of undercharging have a wide meaning and not clearly defined in the Regulation.

The meter reading statement produced by the appellant clearly indicates that there is sudden dip in consumption from 5/2017 to 10/2017. The consumption shot up from the range of 4200 units to 5161 units since the faulty meter was replaced on 7/10/2017. It is incumbent upon the appellant to provide analytical reasons for the above dip in the consumption without which the arguments of the consumer citing statutes cannot be accepted as done by the Consumer Grievance Redressal Forum, Ernakulam. The facts and circumstances were also verified by the Consumer Grievance Redressal Forum while arriving at the logically sound decision under the Order dated 29/01/2020 in OP No.74/2019-20.

The testing of the energy meter is also an option left with the consumer. The appellant have cautiously avoided the testing of the energy meter as the same would be detrimental to his own interest. The factual position and statistics are overwhelmingly against the Appellant and the Order dated 29/01/2020 in OP No.74/2019-20 holds good. He has filed this petition not in good faith. Therefore, based on the above it is prayed that this representation against the order of Consumer Grievance Redressal Forum may kindly be dismissed by this Authority with costs to the Opposite Party.

Analysis and Findings: -

An online hearing of the case was conducted on 06-07-2020, at 11A.M.as per prior information to both the appellant and respondent and with willingness of them. Sri M.Y. George represented the appellant in the hearing and Smt. Shajida V.A., Assistant Executive Engineer, Electrical Sub Division, Thodupuzha for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The appellant had been given bills for 08/2017 and 09/2017 for 2650 units and for 10/2017 for 2385 units and the appellant remitted the amounts. The average of 2650 units was assessed taking the average of the consumption recorded for 04/2017, 05/2017 and 06/2017. Later this average was reassessed by the respondent, as per audit report, to 3720 units taking the average of the consumption recorded in the same meter for 02/2017, 03/2017 and 04/2017 and issued the disputed short assessment bill to the appellant.

The contention of the appellant is that any testing of the meter was not done before declaring the meter as faulty. The finding of the Assessing Officer that the meter was faulty in 08/2017 is only an imagination and hence the short assessment bill is not sustainable. On the other hand the respondent argued that the consumption pattern confirmed that the meter became faulty from 05/2017 itself. So, average energy consumption was arrived and issued demand as

contemplated in Regulations. Further, the appellant could not produce any evidence to show the reasons that there was variation in the consumption pattern in their premises.

The point to be decided in this case is as to whether the issuance of short assessment bill for Rs.80477.00 to the appellant on the basis of average consumption of 3720 units per month for the periods from 04/2017 to 10/2017 is in order or not?

On going through the records it can be seen that the respondent has issued monthly bills based on the recorded consumption and the appellant remitted the same without any fail till 07/2017. It is to be noted that the respondent has suspected that the meter as faulty in 08/2017 and average 2650 units charged for 08/2017 and 09/2017, which was also remitted. It is pertinent to note that even without conducting any testing the appellant's meter, the respondent declared the meter as suspected faulty and replaced the meter on 07-10-2017. On going through the records, it is found that consumption recorded in the meter for the period from 04/2015 to 03/2018, the monthly consumption of the appellant shows the lowest of 1312 units (07/2015) to the highest of 5161 units (02/2018) recorded during the periods.

The records show that from 04/2015 onwards, the billing was continued for the actual consumption recorded in the meter with the status of the same meter as working. The respondent's contention is that the meter was faulty and therefore the appellant was billed with average consumption. During the month of 08/2017, meter reading was not recorded due to the reason of not visible. It is found that for the period from 05/2017 to 07/2017, the meter status is shown as 'working' and there is an average consumption of 2650 units during this period in the appellant's premises. The argument of sluggishness cannot be proved conclusively without conducting testing of the meter.

Regulation 125 of Supply Code, 2014 stipulates the procedure for billing in the case of defective or damaged meter. "In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of meter being found or reported defective.

Provided that the average shall be computed from the 3 billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available".

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Regulation 115 (9) says that "in the case the meter is found to be faulty, revision of bill on the basis of test report shall be done for a maximum period of 6 months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in two subsequent bills". Here in this case, the respondent suspected the meter as faulty that too even without

conducting any testing. There is no justification for further issuing such a demand for the previous months of 08/2017 to 10/2017 as there is no allegation of any wilful misuse by the appellant.

According to Clause 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of the consumer meters up to 650 Volts. In the instant case, the respondent has not followed the procedures prescribed above whenever the respondent suspects under recording of actual energy consumption. Further, there is no mechanism for the appellant to know whether the meter is working properly or not.

The respondent has argued that the Kerala State Electricity Board Limited has every right to conduct a review in accordance with Regulation 134 of the Kerala Electricity Supply Code 2014 and realise the loss from the consumers who were thus undercharged. But the review shall be based on exact facts by establishing the meter faultiness on conducting meter testing, preparing a site mahazar etc. and convincing the consumer.

Further the respondent's version that the appellant finds refuge in certain provisions of the statute quoting the same totally out of context deviating from the very purport of the enactment, is not admitted. The licensee and the consumer are equally binding to adhere the provisions in the statutes and the licensee can not avoid the provisions in the statutes at their will.

The respondent also argued that the testing of the energy meter is also an option left with the consumer. But in this case, the appellant has not raised any complaint against the working of the meter and the dispute occurred after one year on receiving the short assessment bill by the appellant. Hence it is the responsibility of the respondent to conduct the testing of the meter at the appropriate time when they issued average bills. The respondent is accountable for proving the faultiness of the meter and to collect the loss, if any occurred from the consumer accordingly. In this case it is not conclusively proved that the meter was faulty from 05/2017 onwards.

The statutory requirement of testing of the meter in an accredited lab is not done before declaring the meter as faulty. There is patent illegality in issuing the short assessment bill to the appellant. Without complying with the statutory formalities, the assessment now made in this case is not sustainable before law and liable to be quashed.

In the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately

succeeding the date of meter being found or reported defective. If there is an omission or error on the part of respondent, it has to be set right in time with a notice to the appellant giving him an opportunity for being heard. The appellant is bound to pay the electricity charges for his actual consumption.

There is no material to show that the respondent has conducted any detailed checking of the appellant's meter. The finding of the Regional Audit Officer is not based on any material evidences. In this background, the issuance of short assessment bill on the appellant merely on the basis of presumption cannot be justified before law and liable to be quashed.

Decision

From the conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 80477/- issued to the appellant.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed as ordered and stands disposed of as such. The order of CGRF in OP No. 74/2019-20 dated 29-01-2020 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/017/2020/_____ Dated _____.

Delivered to:

1. Sri. Narayanan K., Energy Head, Indus Towers Ltd., Palarivattom, Ernakulam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Thodupuzha, Idukki.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.