

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/003/2022**(Present: A.S. Dasappan)****Dated: 31st March, 2022**

Appellant : Sri. Narayanan. K.,
Energy Head, Indus Towers Ltd.,
8th Floor, Vengarath Towers,
Palarivattom,
Ernakulam Dist. 682024

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Pattanakkad, Alappuzha Dist.

ORDER**Background of the case:**

The appellant is a consumer of Electrical Section, Kuthiyathode, KSEB Ltd., with consumer number 11551690247550. The connected load in the premises having three-phase supply is 12.66 kW and tariff allotted is LT VIF. The appellant had been given exorbitant bills from the month 04/2020 onwards and hence, the bill amount was not remitted by the appellant. As per the request of the appellant, the energy meter was tested in TMR Division, Pallom and found defective. As such, the appellant was given revised bills from 05/2020 to 10/2020. The appellant remitted the bill amount from 01/05/2020 to 02/2021 on 19/02/2021. Later, the appellant was given another bill for Rs.43,641/- which is the surcharge for the amount. As such, the appellant approached Consumer Grievance Redressal Forum (CGRF), Central Region with a request for exemption from remitting the surcharge amount. The Forum registered the petition vide OP No. 41/2021-22 and issued order on 12-12-2021 with a decision that the petitioner was bound to pay the demand for surcharge raised by the Licensee.

Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant "Indus towers Ltd.", a company incorporated under the provisions of the Companies Act 1956 for providing passive infrastructure service to telecommunication service providers and subsequent of the order of Hon'ble High Court of Delhi in copt14/2014 dated 18-4-2013, the passive infrastructure of M/S Bharati Air Tel Ltd, Vodafone Essar cellular Ltd. and Idea Cellular Ltd. are dissolved and merged with Indus Towers Ltd.

The Company has more than 6700 own mobile tower sites all over Kerala with Electrical Connections from KSEBL and paying around Rs. 35/- Crores per month towards electricity charges. Among the above, one site under Electrical Section, Kuthiyathode with Consumer No. 1155169024752 with a connected load of 12.66 kW and paying the monthly electricity charges promptly as per the bills issued by the KSEBL authorities.

The consumption recorded in the meter for the above electrical connection from the month of 04/2020 were very exorbitant and the recorded consumption exceeded the maximum limit of 24x7 working with full load of 12.66 kW connected load. Then the Assistant Engineer instead of checking the accuracy of the meter and inspecting the connected load and all, sent a letter instructing to enhance the connected load as they couldn't prepare the bill by their software as the consumption exceeded the maximum limit for the sanctioned connected load of 12.66 kW. Since there was no additional load were connected, the appellant requested to test the meter for accuracy and revise the bills for the previous six months period as per the Regulation 115 of KESC 2014 by an application dated 31/07/2020. After around 4 months of time, the meter was tested for accuracy in the lab at TMR, Pallom and as per the test report dated 27/11/2020, the meter was faulty. Then again, the appellant requested to revise the bill for a period of six months prior to the request as per the Regulation 115 of Supply Code 2014 by the letter dated 01/02/2021 and adjust the excess amount paid, if any. Accordingly, the bills for the period from 04/2020 to 09/2020 were revised based on the average consumption of three months period after the replacement of the faulty meter and

the demand for the period from 04/2020 to 02/2021 amounting to Rs. 6,73,368/- after adjusting the excess amount paid was issued on 06/02/2021 with due date 16/02/2021 by the Assistant Engineer and the appellant paid the bill on 18/02/2021. After remitting the bill a demand was issued by the Assistant Engineer for surcharge for the period from 22/04/2020 to 18/02/2021 for Rs. 43,639/- vide letter dated 23/03/2021. Since the demand of surcharge is illegal, the appellant filed a petition dated 01/04/2021 before the Assistant Engineer for cancelling the surcharge demanded. The Assistant Engineer denied the petition and directed to remit the surcharge vide his letter dated 15/09/2021. Hence, the appellant had filed the OP No.41/21-22 before CGRF, Ernakulam. But the Forum has not analyzed the facts of the case with the Regulations in the KESC 2014 and released a purely partial order dated 18/12/2021 without considering the contentions and the lapses happened from the Licensee. The Forum considered only that the appellant had not paid the average bill for the period. As the accounts department not allowed to remit a lump sum amount without any invoice or based on an erroneous invoice, the appellant can't remit a lump sum amount without any basis. The Licensee is bound to issue monthly bills based on the consumption recorded in a correct meter. Since the consumption recorded in the meter was not possible with the connected load in the premises, it could be easily detected that the meter was faulty. Instead of checking the meter, the Assistant Engineer sent a letter for enhancing the connected load for billing the erroneous consumption.

The consumption recorded from 04/2020 was in the range of 11250 units against a connected load of 12.66 kW and it is not possible even for working 24x7 manner with full load. The maximum possible consumption with a connected load of 12.66 kW is 9115 units even it was worked for full load by 24x7. Hence, it could be easily realized by any one that the meter was faulty. Even then the licensee consumed around four months' time to test the meter for declaring it as faulty.

Since the meter was faulty as per the test report, the revised demand for the period from 04/2020 to 02/2021 was issued only on 06/02/2021 based on the average consumption for the three months period after the replacement of the faulty meter with due date as 16/02/2021 and the amount was emitted on

18/02/2021. Hence, the demand of surcharge for the period prior to date of issue of the correct bill is not legal and sustainable before the law in the land.

As per the Regulation 116 of KESC 2014, the licensee shall periodically inspect and check the meter and associated apparatus. 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. In this case, the licensee not tested the meter even the consumption was not matched with the connected load and instead, they were directed to enhance the connected load for billing the exorbitant consumption with their software.

The actual demand for the period from 04/2020 to 02/2021 was issued after adjusting the excess amount remitted was issued only on 06/02/2021 with due date 16/02/2021 and there was no delay of the payment from the appellant's side except the two days from the due date, then the demand of a huge surcharge for the period from 22/04/2020 to 18/02/2021 is not legal.

The CGRF not considered any of our grounds and lapses happened from the licensee and not seen any analysis of the facts in the order. Instead, without mentioning anything about the case, it was ordered that the appellant is bound to remit the surcharge.

Under all the above grounds, it is requested to admit the Appeal Petition and issue necessary orders to set aside the erroneous and partial order of the CGRF, Ernakulam and cancel the illegal demand of surcharge issued by the Licensee.

Arguments of the respondent:

M/s. Indus Towers Ltd. defaulted payment of bills issued from office of Assistant Engineer, Electrical Section, Kuthiathode from 01/05/2020 on the contention that the meter was faulty and the average bill issued was erroneous. So, the appellant requested for testing the meter vide letter dated 31/07/2020. The fee for testing the meter was remitted only on 14/10/2020 and the meter was sent to TMR Division, Pallom for testing on 27/10/2020. The meter was declared faulty on 27/11/2020 and the bills issued for 6 months from 05/2020 to 10/2020 was revised and informed the appellant on 24/12/2020.

The new meter was installed on 23/10/20. But the bills issued in 11/20,12/20 and 1/2021(based on the consumption in the new meter) were also not paid by the consumer. So, disconnection notice was issued on 13/01/2021 and the current charge from 01/05/2020 to 02/2021 was paid by the appellant in lumpsum on 19/2/2021.

Since the appellant has not paid the bills issued to them from 05/2020 to 02/2021 in time, surcharge amount of Rs 43,641/- was demanded by the system in the bill for 03/21 for belated payment of monthly bills. The bill issued on 01-05-2020 can be paid without surcharge till 10-05-2020. But the bill issued on 01-05-2020 was paid by the appellant only on 19-02-2021(that is delay of more than 10 months) and the subsequent monthly bills issued in 6/2020, 7/2020 up to 2/2021 were also paid belatedly on 19-02-2021. If the appellant had any objection about the bills issued from 5/2020, the appellant could have paid the average amount of bills issued from 1/2020 to 4/2020. But the appellant decided not to pay even a single rupee to KSEB Ltd. though the appellant were consuming energy in large scale. If they had paid an average amount every month, there is no question of surcharge arising in the bill for 3/2021. The appellant has failed to remit the monthly bills on or before the due date and therefore the appellant is liable to pay surcharge.

Current bill is issued to a monthly consumer after 30 days consumption of energy. The consumer gets 10 days' time to pay the bill without surcharge. After 10 days, the appellant is liable to pay surcharge for the period for which he delayed the payment.

In this case, there is 10 months delay in remitting the current charges from 5/2020 to 2/2021 and the payment was effected for 10 months in lumpsum on 19.02.2021 exempting surcharge. So, the appellant is liable to pay the surcharge from 11.05.2020 to 18.02.2021.

Analysis and findings:

The hearing of the case was conducted on 25-02-2022 in the office of the State Electricity Ombudsman, Kochi. Sri. M.Y. George attended the hearing for the appellant and Sri. Rajesh Jose, Assistant Executive Engineer, Electrical

Subdivision, Pattanakkad from the respondent's side. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The appeal petition referred to the realization of surcharge for a revised bill amount, following the detection of defectiveness of the energy meter installed in the premises of the appellant. The connected load in the premises is 12.66 kW.

The argument of the appellant in this case is as follows:

The regular electricity bill from 04/2020 is very exorbitant and even if the entire connected load in the premises is connected to the network of the Licensee during the billing period continuously, the consumption in the premises will be less than the units taken by the respondent for the billing. Instead of checking the meter following the lodging of complaint by the appellant, the respondent instructed to enhance the connected load enabling the respondent for preparing the electricity bill. Later, the meter was tested and found defective, thereby revised the previous bill. Though the grievance of the appellant is redressed, the respondent issued a demand of surcharge from 22-04-2020 to 18-02-2021 for Rs.43,639/-, which is the surcharge of the revised bill amount. As such, the realization of surcharge is illegal.

According to the respondent, the energy meter was declared defective on 27-11-2020, and the new meter had been installed on 23-10-2020. Though the appellant was given the regular monthly bills for the months 11/2020, 12/2020 and 01/2021 based on the consumption recorded in the new meter, the bill amounts were not remitted by the appellant and the remittance made only on 19-02-2021. Since the appellant has not paid the bills issued from 05/2020 to 02/2021, the Licensee can realize the surcharge amount.

On analyzing the document file, it is revealed the following:

The surcharge amounting to Rs.43,639/- is the accrued surcharge for the period from 22-04-2020 to 18-02-2021. In the electricity bill issued on 01-02-2021, an amount of Rs.6,04,892/- is seen as arrears. The electricity bill issued in the month 04/2020 is the disputed bill amount. It is a fact that the consumption

recorded in the meter in 04/2020 is exorbitant and mismatch with the connected load in the premises. The respondent has no material to show that the connected load exceeded the approved connected load of 13 kW. This Authority is of the view that the respondent had to arrange inspection in the premises and to detect the reason for the exorbitant consumption. If any restriction for the inspection in the said period, the respondent had to fix an average consumption till ascertaining the accuracy of the metering system and to issue the bill accordingly. In similar situation of exorbitant consumption, the Licensee can provide a calibrated meter in parallel in the premises meter and ascertain whether the error of the meter is within permissible limits. In this case, the defectiveness of the meter is confirmed with the consumption recorded and hence, there is no meaning to wait for a request for the testing of the meter.

The Licensee received the application for testing the meter on 31-07-2020, amount remitted by the appellant for the testing on 14-10-2020, meter was sent to TMR Division, Pallom on 27-10-2020 and meter was declared as defective on 27-11-2020. Immediately after replacing the energy meter, the respondent had reassessed the monthly consumption for the period from 05/2020 to 10/2020 based on the consumption recorded for 40 days @215 units per day and issued to the appellant on 24-12-2020. There was no due date for the remittance of the amount is seen in the notice given to the appellant.

The new energy meter was provided in the premises on 23-10-2020. The respondent had taken consumption for the month 11/2020, 12/2020 and 01/2021 recorded in the new meter and arrived at an average of 6609 units. Accordingly, the monthly bills issued for the period from 04/2020 to 09/2020 were revised to a total of Rs.4,03,602/-. The monthly bill amount for 10/2020 was computed as Rs.67,109/-. The monthly bills for 11/2020, 12/2020, 01/2021 and 02/2021 were issued to the appellant based on the actual consumption recorded in the newly installed meter. The bill amount as prepared above is less than the bill amount prepared based on the consumption of 215 units per day and issued on 24-12-2020.

On the above analysis, this Authority is of the view that the appellant is not liable to remit surcharge for the revised bills issued for the months 04/2020, 05/2020, 06/2020, 07/2020, 08/2020, 09/2020, 09/2020 and 10/2020 till 16-

02-2021. The appellant is liable to remit the surcharge for the bill amount prepared based on the consumption recorded in the new meter for 11/2020, 12/2020, 01/2021 and 02/2021.

Decision: -

From the analysis done and the conclusions arrived at, which are detailed above, I decide to quash the bill towards surcharge for Rs.43,641/- issued to the appellant.

The appellant is exempted from remitting the surcharge amount for the bills issued for the period from 04/2020 to 10/2020 and liable to remit the surcharge amount for the bills from 11/2020 to 02/2021, bills issued based on the consumption recorded in the new meter installed on 23-10-2020. The respondent is directed to issue a revised bill towards surcharge for the bill amount in the period from 11/2020 to 02/2021 within 15 days from the date of order. The Appeal Petition filed by the appellant is allowed to this extent and disposed of as such. The order of CGRF, Central Region, Ernakulam dated 12-12-2021 in OP No. 41/2021-22 is set aside.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/003/2022/_____ dated _____.

Delivered to:

1. Sri. Narayanan. K., Energy Head, Indus Towers Ltd., 8th Floor, Vengarath Towers, Palarivattom, Ernakulam Dist. 682024
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Pattanakkad, Alappuzha Dist.

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.