

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION NO. P/039/2016

(Present: V.V. Sathyarajan)

Dated: 30<sup>th</sup> September 2016

Appellant : Sri Arun R. Chandran  
Energy Head, Indus Towers Ltd.,  
Palarivattom, Ernakulam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd, Iritty,  
Kannur

**ORDER****Background of the case:**

The appellant represents M/s Indus Towers Ltd, a company providing passive infra structure service to telecommunication providers. The consumer number of the above service connection is 8556 and is under the jurisdiction of Electrical Section, Sivapuram. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the letter dated 17-12-2015 directed the appellant to remit an amount of Rs. 64,935.00 towards the short assessment for unauthorized additional load for the period from 01/2010 to 08/2010 and unauthorised extension based on the inspection report of general audit conducted in the Section. The appellant has submitted an objection petition before the Assistant Engineer which was rejected by him. Aggrieved against the above demand, the appellant submitted a petition before the Consumer Grievance Redressal Forum, Kozhikode which was dismissed vide order in OP No. 166/2015-16 dated 07-04-2016. Not satisfied with the order of the Forum, the appellant has submitted this appeal petition before this Authority.

**Arguments of the appellant:**

The appellant, M/s Indus towers Ltd, a company incorporated under the provisions of the Companies Act, 1956 for providing passive infra-structure service to Telecommunication Service Providers and subsequent of the order of Honourable High court of Delhi in copt 14/2014 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 appellant have more than 6000 own Tower sites all over Kerala with KSEB supply and paying around Rs. 1 crore per day (30 crores per month) towards electricity charges at a high rate of Rs.10.85 per unit and among that, one site under Electrical Section, Sivapuram with consumer no: 1167766008556 and paying current charges as per their bills regularly without any dues or delay. But the appellant had received a letter dated 17-12-2015 directing to remit an amount of Rs. 64,935.00 towards the short assessment of penalization for unauthorized additional load for the period from 01/2010 to 08/2010. An objection against the illegal demand was filed before the Assistant Engineer and the Assistant Engineer rejected the objection without quoting any valid reason or regulations.

Then the appellant had approached the Hon'ble CGRF (NR) by filing the petition OP NO. 166/2015-16. But in the petition, the Chairperson as per her findings, the petition is allowed and ordered to quash the impugned bill of Rs. 64,935.00. But the second and third members were recorded difference of opinion and hence, as per the Regulation 11(3), the Hon'ble Forum issued final order as the petition is dismissed and the demand of Rs. 64,935.00 raised by the licensee is upheld.

1. Since the case pertains to the period from 01/2010 to 08/2010, which is after, around 5 years of period, the details of the inspection and un-authorized additional load are not available with us for verification.
2. As per our record, an additional load to the tune of 4 kW was sanctioned by the KSEB authorities on 29-07-2010 to the electrical connection with consumer No. 1167766008556.
3. As per the Section 56(2) of the Indian Electricity Act, 2003, and the connected Regulation 136(3) in the Supply Code, 2014, the assessment prior to the period of two years is not sustainable. The Section 56(2) of the Act says, notwithstanding anything contained in any other law for the time being, in force, "no sum due from any consumer, under this section shall be recoverable after a period of two years, from the date when such sum first due unless such sum has been shown continuously as recoverable as arrear for electricity supplied and the licensee shall be cut off the supply of the electricity. Please note that the Honourable CGRF, Southern Region considered this point in the

OP No. 1429/2015 of M/s. Indus Towers v/s Assistant Executive Engineer, Electrical Sub Division, Ranny South and quoted as" This particular Section in the Electricity Act, 2003 is a very important limitation clause for the welfare of the licensee and protection of the consumer" and passed favourable orders to the appellant. So the assessment made after two years of the alleged period is not sustainable as per law.

4. The penalization for the unauthorized additional load was issued according to the Section 126 of the Act, 2003. The Section 126, stipulates the procedure of inspection of the site, provisional assessment, chance for filing objection if any and final bill after hearing the petitioner etc. even in continuation of the additional load or any other type of misuse of electricity. The Honourable High Court of Kerala in its judgment in W/P Nos.30111 and 30564 of 2012 2014(2) KLT 833 highlighted and upheld that. Imposing of penalty being penal in nature, it is mandatory for the Board to put the consumer with notice of such proposal and to consider his objections. Section 126 contemplates a comprehensive procedure in this regard. Therefore, even for imposition of penalty on the allegation of continuance of unauthorized usage, the procedure contemplated under 126(2) & (3) are mandatory. Copy of the judgment of the Hon'ble High Court is attached herewith. In this particular case, the licensee failed to do so and hence the penalization is not sustainable.

Considering all the above, the appellant prays before this Honourable Kerala Electricity Ombudsman to cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section, Sivapuram.

**Arguments of the respondent:**

The respondent has adduced the following arguments in his statement of facts filed by him.

It is partially admitted that an objection was filed before Assistant Engineer, Electrical Section, Sivapuram on 28-12-2015 to cancel demand of Rs. 64,935.00 as per Section 56, Clause 2 of Electricity Act, 2003 and Regulation 136, Clause 3 of Supply Code, 2014. The Assistant Engineer, Electrical Section, Sivapuram already given reply on 18-01-2016, which as per Kerala State Electricity Supply Code, 2014, Regulation 134(1), the licensee can recover any amount which was undercharged while issuing bill for previous period.

As per clause 51(2) the Kerala State Electricity Board, Terms and Conditions of Supply 2005, the penalty for unauthorized additional load is liable to be levied till the unauthorized additional load either removed or regularized as per rules. For subsequent demand as per the above clause does not need a fresh inspection or assessment as contemplated under Section 126 of the Electricity Act.

The limitation of Section 56(2) of Electricity Act, 2003 is not applicable since the first bill is raised only on 17-12-2015. The Audit Wing of the KSEB Ltd has assessed that the penalization for unauthorized additional load for 4 kW was not billed from 07-12-2009 to 29-07-2010 and hence as per their direction a bill issued amounting to Rs. 64,935.00 on 17-12-2015 as undercharged bill.

An inspection was conducted in the premises of appellant on 16-03-2009 with the help of APTS of KSEB Ltd and unauthorized additional load of 4 kW was detected. A provisional invoice for Rs. 1,46,000.00 was issued on 27-03-2009 with notice to file objection if any within 7 days or to remit the amount. The petitioner remitted the amount without any objection. Hence process under Section 126 was completed. As the consumer continued to use unauthorized additional load, the penalty for unauthorized additional load of 4 kW was demanded up to 12/2009. By mistake penalty for unauthorized additional load was not demanded from 12/2009 to 7/2010 i.e. till the regularization of the unauthorized load. The Inspection Wing of KSEB Ltd pointed out the omission and directed to levy the undercharged amount.

### **Analysis and findings:**

The hearing of the case was conducted on 06-09-2016 in the CGRF Court Hall, Kozhikode and Sri. M.Y. George represented for the appellant's side and Sri Anandan, Assistant Engineer in charge, Electrical Sub Division, Iritty appeared for the respondent's side. On examining the petition and 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 conclusions leading to the decision.

One of the main arguments raised by the appellant is that the respondent cannot raise a bill after a period of 2 years from the date of occurrence of such issue as per Section 56 (2) of Electricity Act. Hence the question is whether the claim of the KSE Board is barred by limitation under Section 56 (2) of the Electricity Act, 2003 read with Regulation 136 (4) of the Kerala Electricity Supply Code, 2014.

Section 56 (2) of Electricity Act, 2003, which reads as under;

**“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity”.**

The Apex Court have interpreted this Section in detail in the reported decisions in Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC7794 AIR 2008 Jha 99) and other and Brihanmumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11(Bom) where it was held as follows respectively.

**“The period of two years as mentioned in Section 56 (2) of the Electricity Act, 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of electrical energy”. “Amount of charges would become due and payable only with the submission of the bill and not earlier. Word “due” in this context must mean due and payable after a valid bill has been sent to consumer”.**

Hence from the above, it is difficult for me to agree with the argument of appellant that the claim is barred by Section 56 (2) of Electricity Act 2003. The period of two years as mentioned in Section 56(2) of Electricity Act 2003, would run from the date when such a bill is raised by Board against the consumer and become due for payment only after that demand has been raised. In the disputed case, the bill was raised on 17-12-2015 and as such the bar of limitation will not attract. In such a situation, even if the bill was raised under Electricity Act, 2003, the bar of limitation under Section 56(2) will not attract, since the bar will start only from the due date of the bill, which is 17-12-2015 in the instant case.

Another contention of the appellant is that the penalization for the unauthorized additional load issued according to the Section 126 of the Act, 2003 is not sustainable. However, the appellant was issued with a penal bill for an amount of Rs. 1,46,000.00 towards the unauthorized load of 4 kW and unauthorised extension on the basis of an inspection conducted by APTS Wing of KSEB on 08-04-2009 and the same was remitted by the appellant. Thereafter the penalization was continued and the appellant remitted the penal charges until 07-12-2009. The unauthorized additional load has been regularized on 29-07-2010. But for the period from 07-12-2009 to 29-07-2010, the respondent failed to take any action to disconnect connection and collection of penal charges, even though notice dated 27-03-2009 issued to the appellant.

As per rules, when the unauthorized additional load and unauthorized additional extension is detected, it is the responsibility of the licensee to issue a provisional assessment for the irregularity committed, along with a notice to the consumer, asking to remove the additional load / unauthorized extension or to take steps to regularize the same within a reasonable time. The Clause 51 (4) of the KSEB Terms & Conditions of Supply, 2005, says that **“the unauthorized load should be got regularized by the party (consumer) within a period of 3 months on placing the application to the Assistant**

***Executive Engineer and on payment of additional security deposit and other charges”, as per rules.*** It is the responsibility of the respondent to disconnect the service connection, if the unauthorized additional load and unauthorized additional extension is not regularized within three months, after giving notice. If objections are filed, the licensee has to inspect the premise afresh and see whether any irregularities still exist or are being done there and then proceed against him as per rules. The principles of natural justice imply to maintain procedural fairness also.

Here in this case, the respondent admits that they failed to continue the penalty from 07-12-2009 to 29-07-2010 and also to conduct an inspection in the appellant's premises to ascertain the use of disputed unauthorized additional load in question. The Hon'ble Commission while disposing the Petition No. DP/75/2009 has held that *“the difference between the average monthly energy consumption for last 12 normal months before the additional unauthorized load is connected and the monthly energy consumption after the unauthorized load is connected shall be used for charging the penalty.”* The respondent has not conducted a study on the above manner in order to find out whether the appellant has used the unauthorized additional load.

The Hon'ble High Court in its judgment in WP (C) 30111 and 30564 of 2012 clearly stated that as per Regulation 51(2) of the KSEB Terms & Conditions of Supply, the licensee is entitled to levy penalty for unauthorized additional load until removal of the unauthorized additional load or until regularization of such load. But the said Regulation cannot be considered as an independent provision apart from Section 126. The imposition of penalty being penal nature, it is mandatory for the licensee to put the consumer with notice of such proposal and to consider his objections. Section 126 contemplates a comprehensive procedure in this regard. Therefore, even for imposition of penalty on the allegation of continuance of unauthorized usage, the procedure contemplated under Section 126 (2) and (3).

Admittedly, there exists a dispute as to whether the unauthorized extension / unauthorized additional load continued for any period after the date of inspection or after the issuance of provisional assessment order. The respondent has admitted that they failed to continue the penalty from 07-12-2009 to 29-07-2010. Penalty for any continued unauthorized additional load can be imposed only if the assessing officer is convinced that the unauthorized additional load had actually continued during the period after the date of inspection, that too after complying with all procedures as per Section 126 (2) and (3).

In view of the reported decision of the Hon'ble High Court referred earlier the case in hand the respondent failed to make provisional assessment for the period after 07-12-2009 after giving an opportunity to the appellant to raise their objections, if any. The penal bill is seen issued based on the audit and the

Assessing Officer has not conducted any inspection after the issuance of provisional assessment already made. Further, the procedure as per Section 126 (2) and (3) was not seen followed. Hence the penal bill issued to the appellant cannot be justified.

### **Decision**

In view of the discussions, it is hereby concluded that the respondent has not followed the mandatory procedures contemplated under Section 126 (2) and (3) while issuing the penal bill for an amount of Rs. 64,935.00. Hence the penal bill issued is hereby quashed.

The order of CGRF in OP No. 166/2015-16 dated 07-04-2016 is set aside. The appeal petition is allowed. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/039/2016/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri Arun R. Chandran, Energy Head, Indus Towers Ltd., Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Iritty, Kannur

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Gandhi Road, Kozhikode