

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/054/2016
(Present: V.V. Sathyarajan)
Dated: 18th November 2016

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Pathanapuram,
Kollam

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 29711 and is under the jurisdiction of Electrical Section, Pathanapuram. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 04-03-2016 directed the appellant to remit an amount of Rs. 57,558.00 towards the short assessment for the period from 11/2011 to 02/2012. An objection against the demand was filed before the Assistant Engineer and the same was rejected without quoting any valid reason or regulations.

So the appellant had approached the Hon'ble CGRF (SR) by filing a petition in OP No. 78/2016. The Forum disposed of the petition by ordering to quash the bill and directed to issue the revised bill for two billing cycles. The respondent issued revised bill for Rs. 28,153.00 dated 12-08-2016. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant stated that they 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, Pathanapuram with consumer No. 29711 and paying current charges as per their bills regularly without any dues or delay. But, they had given a short assessment bill amounting to Rs. 57,558.00 towards the short assessment for the period from 11/2011 to 02/2012.

An objection against the illegal demand was filed before the Assistant Engineer who rejected the objection without quoting any valid reason or regulations. Then the appellant had approached the Hon'ble CGRF (SR) by filing the petition with OP No. 78/2016. But in the petition, the Forum ordered to quash the bill and directed to issue the revised bill for two billing cycles and accordingly the licensee issued the revised bill for the amount of Rs. 28,153.00.

The short assessment bill is purely illegal, imaginary and by the following reason, the appellant is not liable to pay the bill amount.

1. The meter installed for the electrical connection with consumer No. 29711 was declared as faulty during the month of 01/2012 and replaced on 23-01-2012. The previous average was taken to issue the monthly bill for the month of 01/2012. The billing for the month up to 12/2012 was done for the actual consumption recorded in the meter and the status of the meter was shown in the monthly bills as working. 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.

As per regulation 116 (1) and (2), the licensee shall periodically check the meter and associated apparatus. If the meter is found defective the licensee may test it at site, if feasible, and if not feasible, the meter shall be replaced with a corrective meter and the defective meter shall be got tested in an accredited laboratory or an approved laboratory. In the instant case the meter not tested for declaring the same as faulty/sluggish. Here the short assessment was done with the assumption that, since the consumptions for the period of 10/2011 to 02/2012 were less than the average consumption after replacement of the faulty meter, the meter might have been sluggish for the above period. The Honourable Ombudsman may please be noted that "Any rules or regulations in the Electricity Supply Code of 2014 or any sections in the Electricity Act, 2003 not supporting to reassess a consumer merely due to

the dip in consumption in a previous period by declaring the meter as faulty/sluggish in a later stage."

Considering all the above, the appellant pray to quash the order of the Honourable CGRF, Southern Region and cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section, Pathanapuram.

Arguments of the respondent:

1. The service connection with consumer number 29711 was provided for functioning a mobile tower in the name of M/s Indus Towers Ltd, Palarivattom, Cochin. At present the consumer is under LT VI F tariff as per the tariff notification with effect from 16-08-2014.

2. The Regional Audit Office team Kottarakkara had conducted an inspection in the Section and reported that the consumer number 29711 was under charged from 11/2011 to 02/2012. The consumption pattern of the consumer is almost identical. The energy consumption details of the consumer from 01/2011 to 12/2012 are submitted. But on verifying the consumption pattern of the consumer during 11/2011 to 02/2012, it is seen that a considerable decrease in energy consumption was occurred in that period. The consumption for 11/2011 was 1706 units, 12/2011 was 1494 units and 01/2012 was 298 units. On noticing that the meter was faulty, it was changed on 23-01-2012 itself and on that day the reading in the meter was 142702, that was the same as that of 05-01-2012 (monthly reading taken date) and the recorded consumption was 0 units. Accordingly an average of 3146 units was billed in 01/2012 and 2386 units was billed in 02/2012 (1783 units as meter faulty average and 603 units as recorded consumption from 23-01-2012 to 06-02-2012)

3. As the consumption for the previous three billing cycles were in sluggish, the average consumption of the past three billing cycles after replacing the meter was taken for short assessment billing as per Regulation 125(1) of the Supply Code, 2014. After changing the meter, the consumption pattern of the consumer was as follows:

03/2012 - 4214 units
04/2012 - 3819 units
05/2012 - 3392 units

The average consumption comes to 3808 units

Accordingly a short assessment bill for Rs. 59,183.00 was served to the consumer on 01-03-2016 for the period from 11/2011 to 02/2012 as per Regulation 125 (1) and as per Regulation 134 (1) of the Supply Code 2014.

Month	Billed Consumption	Actual Consumption based on average
Nov-11	1706 units	3808 units
Dec-11	1494 units	3808 units
Jan-12	3146 units	3808 units
Feb-12	2386 units	3808 units
	8732 units	15232 units

Short Assessment (15232 - 8732) = 6500 units

(The tariff of the consumer at the time of meter faulty is LT VII A)

Current Charges 6500 units x Rs.8.05	=	52325.00
Duty	=	5233.00
Fuel Surcharge	=	1625.00
Total	=	59183.00

- i. The appellant is a service provider for different mobile phone operators. Their consumption of energy is almost identical and there should be no reason to vary the consumption as recorded from 11/2011 to 02/2012. The meter was changed immediately on detecting the meter as faulty (i.e., on 23.01.2012) by recording nil consumption. Short Assessment bill was issued as per the Regulation 125 (1) of the Supply Code 2014. The licence had under charged the appellant for the period from 11/2011 to 02/2012 and as per Regulation 134 (1) of the Supply Code, 2014, licence is permitted to collect the amount so under charged from the appellant.
- ii. In the petition filed before the Hon'ble CGRF (South), the appellant's main argument was that the short assessment bill to be quashed and had not raised any objection regarding the correctness of the meter or the average consumption calculated for short assessment. At the time of replacing the meter, the recorded consumption was zero. It being a mobile tower, there will be no chance for recording such a 'nil' consumption. Moreover the consumer never raised any doubt or complaint regarding the functioning of the meter. The consumer had enjoyed the benefit of less billing for the actual energy consumed during the period from 11/2011 to 02/2012. The licence has claimed only the short amount collected from the consumer. No penalization has imposed on the consumer and claimed only the balance amount actually due to the licence.

Analysis and findings:

The hearing of the case was conducted on 08-11-2016 in my chamber at Edappally and Sri. M.Y. George represented for the appellant's side and Sri K.O. Lalson, Assistant Executive Engineer, Electrical Sub Division, Pathanapuram 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.

In this case the meter reader who had taken the meter reading on 5-1-2012 has detected the reading as 142702 with '298' units and the meter reading as on 23-01-2012 as 142702 with '0' units and on finding the meter not working immediately replaced meter on 23-01-2012 itself. It would have been proper, had the respondent conducted testing of appellant's meter when the consumption shows decreasing. The consumption in the new meter from 23-01-2012 to 06-02-2012 was '603' units for the 14 days. From 06-02-2012 onwards, there was rise in energy consumption and the respondent continued to issue the regular monthly bills as per the meter readings and the same was paid by the appellant.

On a perusal of the energy usage of appellant by referring the meter readings furnished by the respondent there is a considerable reduction in the consumption recorded for the month of 11/2011 and 12/2011. At the same time the average consumption arrived after replacing the meter on 06-02-2012 onwards was found as 3808 units. In this case, the respondent failed to check the appellant's meter timely when there is reduction in the consumption recorded for the month of November 2011.

As per Regulation 125(1) of Supply Code, 2014, in case of defective or damaged meter, the consumer shall be billed on the basis of past 3 billing cycles immediately preceding the date of the 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.

Here in this case, the respondent declared the appellant's meter as faulty only on 06-02-2012. Hence the argument of the appellant that without declaring the meter as faulty there is no provision to reassess the appellant for the month of 11/2011 and 12/2011 merely due to a dip in the consumption can be admitted. Moreover, it is found that the appellant was already charged for the recorded consumption for the disputed months, there is no scope for a reassessment for the disputed period in question merely on the basis of an

audit report without establishing the meter as faulty. Considering these reasons there is no justification for the respondent to issue short assessment even after a lapse of 4 years on the basis of audit observations.

Decision

In view of the above findings the revised short assessment issued to the appellant for Rs. 28,153.00 is quashed. The order of CGRF in OP No. 78/2016 dated 08th August 2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/054/2016/_____ /Dated: _____

Forwarded to:

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

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, Kottarakkara - 691 506.