

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/070/2016
(Present: V.V. Sathyarajan)
Dated: 13th December 2016

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Areekode,
Malappuram

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 17557 and is under the jurisdiction of Electrical Section, Keezhaparamba. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 08-12-2015 directed the appellant to remit an amount of Rs. 1,98,505.00 being the short assessment based on the findings that the meter was sluggish during the period from 05/2014 to 01/2015. An objection against the short assessment was filed before the Assistant Engineer and later revised the short assessment bill to Rs. 56,175.00. Again the appellant filed petition against the demand before the Assistant Engineer which was rejected without stating any valid reason or regulations.

So the appellant had approached the Hon'ble CGRF (Northern Region) by filing a petition in OP No. 04/2016-17. The Forum disposed of the petition by ordering to quash the bill and directed to issue the revised bill for two billing cycles based on average consumption of three months after the replacement of meter. Accordingly the respondent issued revised bill dated 06-10-2016 for Rs. 42,402.00. Still aggrieved, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant, M/s Indus Towers Ltd., has 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, Keezhparamba with consumer No: 1167071017557 and paying current charges regularly without any dues or delay. But they had been given a bill amounting to Rs. 1,98,505.00 for the period from 05/2014 to 01/2015 towards the short assessment. An objection has been filed before the Assistant Engineer against the short assessment which was revised to Rs. 56,175.00 and issued on 04-02-2016 without considering any of the objections raised against the assessment or any clarifications and without support of any Rules or Regulations and directed to remit the revised assessment.

Though the appellant again filed petition before the Assistant Engineer against the illegal demand, he rejected the petition without stating any valid reason or regulations. So the appellant approached the Hon'ble CGRF (Northern Region) by filing the petition with OP No. 04/2016-17 against the illegal short assessment bill. But the Forum ordered to quash the bill and directed the licensee to issue the revised bill for two billing cycles by considering the average consumption of three months after the replacement of the meter. The appellant argued that the short assessment bill is purely illegal, imaginary and by the following reason, the appellants are not liable to pay the bill amount.

1. The meter installed for the electrical connection with consumer no. 1167071017557 was replaced on 02-02-2015 with a new meter. The billing for the months up to 01/2015 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.

2. 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 was not tested for declaring the same as faulty/sluggish. It could be possible by the meter reader to check the correctness of the meter by testing the same when the low consumption was noticed. But the person authorized to conduct the checking of meter to ascertain the correctness of the meter has not followed the above Regulations even the consumption was found less when compared to the previous period.

3. Here the short assessment was done with the assumption that, since the consumptions for the period of 05/2014 to 01/2015 were less than the average consumption after replacement of the 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 decrease in consumption in a previous period by declaring the meter as faulty/sluggish in a later stage.

4. In the version filed by the respondent licensee, it is stated that "the bill was issued on the basis of Regional Auditing Officer's findings that the consumer's energy meter was sluggish for the period from 05/2014 to 01/2015 as per the consumption pattern. The Assessing Officer merely based on the findings of the auditing team that the meter was sluggish for the period from 05/2014 to 01/2015, the short assessment bill was issued without any evidence for the slow running of the meter such as any test report of the meter. The findings of the audit team after around one year of the replacement of the old meter by depending on the record verification is totally baseless. The meter was not reported or declared as faulty during this period and hence the short assessment made by declaring the meter as sluggish after around one year is not sustainable. The short assessment was made by the Assistant Engineer, taking an average consumption for a previous period by declaring the meter as sluggish due to the dip in consumption is against the Regulations related to the billing of the consumers in the Kerala Electricity Supply Code, 2014.

5. The order of the Honourable CGRF to issue, revised short assessment bill for two billing cycles by taking the average consumption after the replacement of the meter is not in order as the meter was not declared as faulty and the licensee not presented any request to issue such an order. As per the Regulation 125 (1) of KESC 2014, the assessment made as per the average consumption after the replacement of faulty meter is only permitted in the case of previous average consumptions of the faulty meter period is not available. In the present case, the meter was not even declared as faulty for the reassessment based on the average consumption after the replacement of the faulty meter. It is not known that in any case, the KSE Board revised any bill issued to any consumer for the average consumption during the faulty meter period in the case of lesser consumption recorded after the replacement of the faulty meter.

Considering all the above, the appellant hereby pray before this Honourable Kerala Electricity Ombudsman to quash the order of the Honourable CGRF Northern Region and cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section, Keezhparamba..

Arguments of the respondent:

The short assessment bill issued by the Assistant Engineer, Electrical Section, Keezhaparamba on 06-10-2016 for an amount of Rs. 42,402.00 as per the order of the Honourable CGRF is not illegal and imaginary. The appellant is liable to pay the amount.

1 The bills for the months from 5/2014 to 1/2015 were done for the unit of consumption recorded in the faulty energy meter and not based on the actual consumption of the consumer with consumer number 1167071017557 because the energy meter was sluggish for the period. This fact is evident from the consumption pattern of the consumer. The faulty meter was replaced on 02-02-2015 with new meter. The present bill in dispute dated 06-10-2016 for an amount of Rs. 42,402.00 is based on the average consumption of three billing cycles after the replacement of the energy meter as per the Regulation of 125(1) of the Supply Code, 2014 and according to the order of the Honourable CGRF, Kozhikode.

2 All the arguments levelled against the bill are based on technical and unrealistic grounds. It is to be noted that the consumer never objected the bill on the ground of excess unit charged and the objections are such that the licensee failed to check periodically the meter and so on.

3. The short assessment bill in dispute is based on Regulation 125(1) of Supply Code, 2014 and the average consumption is computed from taking the three billing cycle after the meter is replaced.

4 The meter was replaced on 02-02-2015 with a new meter after realizing that the existing meter had been sluggish for the period from 5/2014. But the short assessment bill was issued by the Assistant Engineer on 08-12-2015 after the Audit Team finding out that no short assessment bill was issued to the consumer for the meter faulty period. It is not true that the Assessing Officer based on the finding of the Audit Team without any evidence, to issue the short assessment bill. It is also not true that the short assessment bill dispute is based on the average consumption of a previous period before declaring the meter as sluggish.

5. The order of the Honourable CGRF to quash the short assessment bill dated 04-02-2016 and to issue a new bill based on the average consumption of three billing cycle after replacement of faulty meter as per the Regulation 125(1) of Supply Code, 2014 is just and reasonable. According to the order, the Assessing Officer issued a new bill with a calculation statement on 06-10-2016 for Rs. 42,402.00. The meter is replaced on 02-02-2015 after confirming the fact that the meter had been sluggish for the period from 5/2014 and therefore a further meter faulty declaration was not required to issue the short assessment bill. Thus all the arguments levelled against the short assessment bill are baseless and aimed to evade from the payment of the bill which the consumer is liable to pay.

Hence, the respondent requested to dismiss the appeal and to direct to the consumer to pay the short assessment bill according to the order of the Honourable CGRF.

Analysis and findings:

The hearing of the case was conducted on 29-11-2016 in the Court Hall of CGRF, Kozhikode and Sri. M.Y. George represented for the appellant's side and Sri K. Kumaran, Assistant Engineer-in-charge of Electrical Sub Division, Areacode 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.

The contention of the appellant is that no inspection in the premises or any testing of the meter was done before declaring the meter as faulty. The findings of the Assessing Officer that the meter was sluggish during the period from 05/2014 to 01/2015 after a period of 11 months are 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 during May 2014 itself. So, average energy consumption was arrived as per Regulation 125(1) of the Kerala Electricity Supply Code, 2014 and issued demand as contemplated in Regulation 125(3) of Supply Code, 2014. Further, the appellant could not produce any evidence to show 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 dated 06-10-2016 for Rs. 42,402.00 to the appellant after reassessing for a period of two billing cycles on the basis of average consumption of 3181 units per month considering the meter as faulty 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. It is to be noted that during the inspection of Regional Audit Officer only detected that the meter was sluggish for the period from 05/2014 to 01/2015 and a lesser consumption was recorded during that period. It is pertinent to note that even without conducting any inspection or checking the appellant's meter, the respondent declared the meter as faulty and replaced the same on 02-02-2015.

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 declared the meter as faulty that too even without conducting any checking. There is no justification for issuing such a huge demand for a previous period from 05/2014 to 01/2015 as there is no allegation of any willful 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 before charging the appellant as meter faulty. Further, there is no mechanism for the appellant to know whether the meter is working properly or not.

The assessment made in this case is relying on an audit report of Regional Audit Officer which was made after a lapse of 2 years. The statutory requirement of testing of the meter in an accredited lab or with a standard reference meter with better accuracy class 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 made in this case is not sustainable before law and liable to be quashed.

As per Regulation 118 of the Supply Code, 2014, ***“If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall be immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid future damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee.”***

In this case, the respondent assumed that the meter is sluggish from 5/2014 and it was replaced only on 02-02-2015 without conducting an inspection or testing of the alleged faulty meter in an accredited lab. The Audit team has pointed out that the meter was sluggish during the period from 05/2014 to 01/2015. 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. 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.

Here in this case, the respondent argued that the appellant failed to produce any evidence to show that there was variation in their consumption pattern. Though the appellant has not given any evidence about the conditions of working and occupancy of concerned premises during the said period, the short assessment bill preferred for the period in dispute based on audit report only and hence is not sustainable. There is no material to show that the respondent has conducted any detailed checking of the appellant's meter instead of an audit report of the audit team. In this background, the issuance of short assessment bill on the appellant merely on the basis of audit report cannot be justified before law and liable to be quashed.

Decision

In view of the above discussions it is made clear that there is patent illegality in issuing the short assessment bill to the appellant without complying with the statutory formalities as in the case of defective or damaged meter. Hence the assessment made in this case is not sustainable before law and is hereby quashed. The order of CGRF in OP No. 04/2016-17 dated 09-09-2016 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/070/2016/_____ /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, Areekode, Malappuram

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