

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/078/2016
(Present: V.V. Sathyarajan)
Dated: 13th February 2017

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Vadakkanchery,
Palakkad

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 appellant's three phase service connection is 12001 having 34.300 kW connected load under LT VI F tariff and is under the jurisdiction of Electrical Section, Vadakkanchery. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated directed the appellant to remit an amount of Rs. 87,350.00 being the short assessment based on the findings that the meter was sluggish during the period from 09/2014 to 04/2015. An objection against the demand was filed before the Assistant Engineer but he did not allow the petition and rejected without quoting any valid reason or regulations.

So the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 65/2016-17. The Forum vide order dated 09-09-2016 directed the respondent to re-assess the short assessment based on the average of 3 billing cycles after the replacement of meter and to issue a fresh bill based on the above only for a period of 2 billing cycles. Based on the above order, the bill of Rs. 87,350.00 was revised to Rs. 22,037.00. Aggrieved against this, the appellant has submitted 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 infra-structure service to telecommunication service providers and subsequent of the order of Honourable High Court of Delhi in copt 14/2014 dated 18-04-2013, 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, Vadakkanchery with consumer no: 12001 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. 87,350.00 towards the short assessment for the period from 09/2014 to 04/2015. An objection had been filed before the Asst. Engineer against the short assessment bill and the Asst. Engineer did not consider any of the objections and directed to remit the short assessment made illegally.

Then the appellant had approached the Hon. CGRF (NR) by filing the petition with OP No. 65/2016-17 against the illegal short assessment bill. But the Forum partially admitted the petition and directed to revise the illegal short assessment bill with limitation for two months without considering the facts and concerned regulations in the KESC 2014.

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 of the above service connection was declared as faulty during the month of 09/2014 and replaced on 07-04-2015. Average of the previous billing period of 05/2014 to 12/2013 was fixed and bills were issued and payments made accordingly for the meter faulty period. Then, after a long period, the findings that the average fixed for the assessment of meter faulty period was not correct and the short assessment based on the average consumption for the post period average taken for the assessment of faulty meter change is not legal and not sustainable. Hence the appellant is not liable to pay the short assessment bill prepared illegally.
2. As per the Regulation 125(1), 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 the instant case, the previous readings of the meter faulty period are available and hence the short assessment based on the average after the faulty meter changing period is not legal and sustainable.

3. From the copy of the monthly bills of the above service connection, the consumption pattern for the period of one year back to the meter faulty period is as follows:

08/2014	-	8147	}	Average taken for the assessment of faulty meter
07/2014	-	1467		
06/2014	-	3262		
05/2014	-	4815		
04/2014	-	4704		
03/2014	-	4086		
02/2014	-	4111		
01/2014	-	5600		
12/2013	-	4877		
11/2013	-	4328		
10/2013	-	4187		
09/2013	-	4742		

From the above, it is seen that the details of the previous period of meter faulty was available for taking the average consumption for the assessment of faulty meter period. Since the fluctuations in the consumption for the period from 06/2014 to 08/2014, the average for the previous period of 05/2014 to 12/2013 were taken for the calculation of the bills during the faulty meter period. By verifying the consumption pattern for the previous one year period it can be presumed that the average of the period of 06/2014 to 08/2014 was more or less correct i.e., 4292 units and the yearly average is 4527 units and hence the fluctuations in the consumption for the period of 08/2014 to 06/2014 might had been due to the error in reading or the difference in reading date. Hence the statement of the respondent that "The consumption of the preceding months to the replacement of meter showed decrease in consumption which might have been a result of meter becoming sluggish is not correct and only a imagination. The average consumption for the period from 6/2014 to 08/2014 showed considerable decrease and increase due to defective meter is also an incorrect statement." The short assessment made based on the chances without evidences is not sustainable and not liable to pay by the appellant. The billing was done for these months as per the actual consumption recorded by the same meter. The status of the meter was recorded as working in the bill for the month of 06/2014 to 08/2014 and after a long period, the findings that the meter was sluggish by simply depending on the dip in consumption without any test in the meter is totally baseless. So the short assessment as per the average consumption after the replacement of the faulty meter is not in order. As per the Regulation 125 (1) of KESC the assessment for the faulty meter period based on the three months average consumption after the replacement of the faulty meter is permitted only in the case of where the previous details are not available. In the present case the previous history is available and hence the short assessment based on the average of post period of meter replacement is not sustainable.

4. As per the Regulation 125 (1) of KESC, in the case of faulty 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. But in the present case, the previous six months average were taken for the billing of the faulty meter period of 09/2014 and 04/2015.

The average fixed is as follows:

05/2014	-	4815		
04/2014	-	4704		
03/2014	-	4086		
02/2014	-	4111		
01/2014	-	5600		
12/2013	-	4877		
			28193/6	= 4699 Units

As per Regulation 125 (1) of KESC, the average should be fixed as follows:

05/2014	-	4815		
04/2014	-	4704		
03/2014	-	4086		
			13605/3	= 4535 Units

Hence the average consumption already fixed for the faulty meter period was itself not correct and to be revised and the excess amount collected may be adjusted towards the future bills.

5. Please note that, any rules or regulations in the Electricity Act or Electricity Supply Code not supporting to reassess 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.
6. 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. It could be possible by the meter reader/any other authorized officers to check the correctness of the meter by testing the same when the low consumption was noticed. But any authorized persons were followed the above Regulation to ascertain the correctness of the meter even when the consumption was recorded to 1467 units and 8147 units against the average of 4535 units compared to the previous period. The meter is installed by the licensee and it is the duty of the licensee to confirm the correctness of the same and not by the consumer.

The Honourable CGRF not considered any of the above facts/Regulations in the KESC and simply issued order as partially admitted the petition and directed to revise the short assessment bill limiting for two months period. Hence the appellant hereby pray before this Honourable Kerala Electricity Ombudsman to consider all the above facts and quash the order of the Honourable CGRF Northern Region and

1. Cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section, Vadakkanchery.
2. Issue necessary orders to adjust the excess amount collected during the faulty meter period of 09/2014 and 04/2015 by fixing wrong average to the future bills.

Arguments of the respondent:

Consumer No. 12001 in the name of Arun R Chandran, Authorised Signatory, M/s. Indus Towers Ltd, Kochi is a three phase Low Tension consumer under the billing tariff LT VI F. The power connection was given on 28-10-2008 with a connected load of 34.300 kW. The power connection is being used for mobile towers for which continuous supply of electricity is needed.

It is submitted that the meter of the consumer was faulty during the months from 9/2014 to 04/2015. Since the meter was faulty, it was replaced on 07-04-2015. A short assessment bill of 87,350.00 was issued by the 2nd respondent herein.

As per Regulation 125 of Kerala State Electricity Supply Code, 2014, if the meter is found defective or damaged, the consumer shall be billed based on the average consumption for a period of past three billing cycles preceding the date of meter being found defective. If the required details pertaining to previous billing cycles are not available, the average shall be computed from the three billing cycles after the meter is replaced. Regulation 125 of the code is reproduced below:

125. Procedure for billing in the case of defective or damaged meter-

(1) 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:

Provided that, any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average.

(2) Charges based on the average consumption as computed above shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter.

(3) In case, the Maximum Demand Indicator (MDI) of the meter at the installation of the consumer is found to be faulty or not recording at all, the demand charges shall be calculated based on maximum demand during corresponding months or billing cycle of the previous year, when the meter was functional and recording correctly.

(4) In case, the recorded maximum demand (MD) of corresponding month or billing cycle of past year is also not available, the average maximum demand as available for lesser period shall be considered:

Provided that the above sub regulations shall not be applicable in the case of a tampered meter for which appropriate action under the provisions of the Act shall be initiated by the licensee.

As per the Meter Reading Register the average consumption for the period from 06/2015 to 08/2015 was 5802 units, as furnished below:

Month	Consumption
06/2015	5020
07/2015	6758
08/2015	5628
Average	5802

But the consumption of the preceding months to the replacement of meter showed decrease in consumption which might have been a result of meter becoming sluggish. The average consumption for the period from 06/2014 to 08/2014 showed considerable decrease and increase due to defective meter. Thereafter the meter becomes completely faulty from 9/2014.

Therefore the past three billing cycles were unavailable for issuing short assessment bill. Hence as per Proviso to Regulation 125, the reassessment was done computing the three billing cycles after the meter is replaced.

The short assessment was made as per the details furnished below:

Average consumption for the 3 billing
cycles after replacement of meter - 5802 Units

Calculation

5802 units x 8	46416 Units
5802 x 8 x @ Rs. 9	Rs. 417744
Less already collected	Rs. <u>372168</u>
	Rs. 45576
Duty @ 10%	<u>41774</u>
Total	Rs. 87350

It is submitted further that no evidence, as contemplated in Proviso to Regulation 125 (1), was furnished by the consumer about conditions of working and occupancy of the concerned premises during the said period which might have had a bearing on energy consumption for computing the average. Moreover, the power connection was given to a mobile tower for which continuous supply of electricity was needed and hence the Proviso regarding the occupancy of the premises has no effect on computing the average.

It is submitted further that the bill was issued on 01-05-2016 which falls due on 28-05-2016 i.e. 30 days from the due date as per Regulation 134 (1) of Supply Code 2014. As per Section 56 (2) of the Electricity Act, 2003, the amounts due from the consumers are recoverable after the period of 2 years from the date when such sum becomes first due. Section 56(2) is reproduced below:

56 (2) 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 sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

In the case in hand, the bill was issued on 01-05-2016 and hence the bill became first due on 28-05-2016. Hence the above amount is recoverable within a period of 2 years from the date when it became first due. This has been upheld by the Hon'ble High Court of Kerala in WP(C) 90/2009. The Hon'ble Court ordered that the word "due" in Section 56(2) of the Electricity Act, 2003 bear the meaning that it is upon the issuance of the bill that the amount becomes due. The scheme of Section 56 (2) is that the amount becomes due when the bill is issued.

It is further submitted that after the meter was replaced, the consumption of the consumer has gone high again. The connected load of the consumer always remained constant from the date of connection i.e. 28-10-2008 without increase in load, the consumption would not change and hence the contention of these respondents that the low consumption during the period before the meter was found faulty is due to defect in meter.

As per Regulation 134 of Supply Code, 2014, the licensee is authorised to recover the arrears for the entire meter faulty period. As per the agreement executed by the consumer these respondents have the power to recover the

arrears of electricity charges based on a bill issued as per Regulation 136 of the Supply Code. Hence the unwillingness to remit the bill is a breach of contract.

It is submitted that the short assessment was made only at a single rate and there is no penalisation. The assessment was made for the energy which was escaped recording in the meter through the defect of the meter. From the consumption pattern of the consumer, it can be understood that the meter was sluggish before becoming faulty. The billing was done as per the Statutory Provisions i.e. Regulation 125 and 134 of Supply Code, 2014 of the Kerala State Electricity Regulatory Commission.

There were no procedural error on the part of the licensee as alleged by the petitioner. The Regulation 125 (1) is strictly adhered to while issuing the short assessment bill. Besides, the consumption pattern of the relevant period is very clear in deciding the fact that the meter was sluggish before becoming defective.

The Hon'ble Forum vide order dated 09-09-2016 directed this respondent to re-assess the short assessment based on the average of 3 billing cycles after the replacement of meter and to issue a fresh bill based on the above only for a period of 2 billing cycles.

Based on the above order, the bill of Rs. 87,350.00 was revised to Rs. 22,037.00 and the bill was prepared for issue. But on receipt of this appeal petition, the bill was kept in abeyance for finalisation of this appeal. Since these respondents are ready to revise the bill amount to Rs. 22,037.00, this petition is infructuous and hence to be dismissed.

The contentions of the appellant in the representation are false, fictitious and frivolous. The argument of the appellant that the average taken for assessment was not correct is not sustainable. The average taken is as per Proviso to Regulation 125 which is legal. The period preceding the date of changing meter is the faulty period and hence average cannot be calculated using the said period. This is quite evident from the reading taken from the replaced meter. Even though the meter showed lesser reading during the preceding months, it showed good reading during the succeeding months. From this pattern, it is clear that the meter was faulty during the preceding months and perfectly working after the meter is replaced.

Hence it is submitted that in the light of the above and other pleadings which may be submitted at the time of hearing, the Honourable Ombudsman may dismiss the petition in to with costs to these respondents.

Analysis and findings:

The hearing of the case was conducted on 04-01-2017 in the Court Hall of CGRF, Kozhikode and Sri. M.Y. George represented for the appellant's side and Sri Premraj C.V., Assistant Executive Engineer of Electrical Sub Division, Vadakkanchery 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 finding of the Assessing Officer that the meter was sluggish during the period from 12/2013 to 08/2014 after a period of 1 year 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 during June 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 revised short assessment bill for Rs. 22,037.00 to the appellant after reassessing on the basis of average consumption of 5802 units per month 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 the respondent has detected that the meter was faulty for the period from 09/2014 to 04/2015 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 07-04-2015.

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 demand for a previous period from 09/2014 to 04/2015 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 succeeding months consumption which was made after a lapse of 1 year. The respondent's contention is that the meter showed decrease in consumption which might have been a result of meter becoming sluggish. The consumption for the month of 7/2014 was 1467 units and the consumption for 8/2014 was 8147 units. Hence the argument of sluggishness cannot be proved conclusively without conducting testing of the meter. 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. It is pertinent to note that average of the previous billing period from 12/2013 to 5/2014 were fixed, bills were issued and payments made accordingly for the meter faulty period by 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.

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 12/2013 and it was replaced only on 07-04-2015 without conducting an inspection or testing of the alleged faulty meter in an accredited lab. According to the respondent the monthly consumption shows enormous decrease from 12/2013 onwards. 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.

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 presumption only that the meter was sluggish from 12/2013 onwards and hence is not sustainable. There is no material to show that the respondent has conducted any detailed checking of the appellant's meter. It is also found that the duty @ 10% calculated as Rs. 41,774.00 is not correct. In this background, the issuance of short assessment bill on the appellant merely on the basis of presumption and succeeding consumption pattern only cannot be justified before law and liable to be quashed.

Decision

In view of the above findings the revised short assessment as per the order of CGRF for Rs. 22,037.00 is hereby quashed. The order of CGRF in OP No. 65/2016-17 dated 09-09-2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/078/2016/ _____ /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, Vadakkanchery, Palakkad

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