

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/004/2017
(Present: V.V. Sathyarajan)
Dated: 28th April 2017

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Kottarakkara
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 appellant's three phase service connection is 19459 with tariff LT VI F which is coming under the jurisdiction of Electrical Section, Kulakkada. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the invoice dated 21-04-2016 directed the appellant to remit an amount of Rs. 35,376.00 being the short assessment based on the findings that the meter was sluggish during the period from 04/2013 to 07/2013. An objection against the demand was filed before the Assistant Engineer and he rejected the petition without quoting any valid reason or regulations, but revised the short assessment to Rs.14,950.00.

So the appellant had approached the Hon'ble CGRF (SR) by filing a petition in OP No. 156/2016. The Forum ordered to quash the short assessment and directed to revise the bill for the meter faulty period based on the meter reading in the succeeding three months after replacement of the faulty meter. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

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. 19459 was declared as faulty during the month of 06/2013 and replaced on 12-06-2013. The monthly bill for the month of 05/2013 was issued for the previous average consumption of 2618 units without taking the meter reading and with Door Lock status. The previous average of 361 units is without taking the meter reading and with Door Lock status. The previous average of 2618 units was taken to issue the monthly bill for the month of 06/2013. The billing for the month up to 04/2013 were done for the actual consumption recorded in the meter and the status of the meter was shown in the monthly bills as working.

2. The monthly reading and consumption details of the above consumer from 06/2012 to 10/2013 are as follows.

Month	Initial reading	Final reading	Consumption	Remarks
Jun-12	113465	116359	2894	Meter working
Jul-12	116359	118732	2373	Meter working
08-Dec	118732	121820	3088	Meter working
09-Dec	121820	124352	2532	Meter working
10-Dec	124352	126766	2414	Meter working
11-Dec	126766	128795	2029	Meter working
12-Dec	128795	131420	2625	Meter working
Jan-13	131420	135197	3777	Meter working
Feb-13	135197	137991	2794	Meter working
Mar-13	137991	140677	2686	Meter working
Apr-13	140677	142473	1796	Meter working
May-13	142473	142473	2618	D/L-average charged
Jun-13	142473	142552	79	Meter declared as faulty & average 2618 units were charged
Jul-13	7	1758	1751	Meter replaced on 12/6/13. Consumption from 12/6/13 to 5/7/13 = 1751 units + previous average 611 units up to 12/6/13. Total 2362 Units charged
Aug-13	1758	5123	3365	
Sep-13	5123	8744	3621	
Oct-13	8744	11861	3117	

The short assessment bill of Rs. 35,376.00 has been issued alleging that the meter might had been sluggish for the month of 04/2013 as the consumption recorded was low as 1796 units. The bill was prepared by taking the previous three months average consumption for the period of 03/2013 to 01/2013 of 3086 units and reassessed, for the period of 04/2013 to 07/2013.

As per the Regulation 33(2) of the Terms and Conditions of 2005, which was in effect in that time, the meter faulty period should be assessed as per the previous six months average consumption. But the licensee issued the short assessment bill by taking the three months average consumption before the meter faulty period without considering the consumption recorded for the month of 04/2013 as it was alleged that the meter was sluggish. On filing objection before the Assistant Engineer, the bill was revised to Rs. 14,950.00 by taking six months average consumption.

In the order of the Honourable CGRF, in Para 6, it is stated that the appellant did not produced any documents to prove reduction in consumption during the meter faulty period (04/2013). But as per any Regulations in the Terms and Conditions of Supply, 2005 or any Section of the Electricity Act, 2003 not stipulates to produce the documents to substantiate the reduction in consumption for any period. It is the duty of the licensee to ascertain the correctness/accuracy of the meter by periodical inspection and not by the consumer. Again it was stated that the appellant was no disputes for the declaration of the meter as faulty. It is true that the appellant have no disputes in the declaration of meter as faulty and the objection is in the matter of declaring the meter as sluggish based on the lower consumption without any evidence or test report of the meter and hence the appellant had remitted the bills issued based on the previous average consumption fixed by the licensee without any disputes. Hence the findings of the Honourable CGRF that the meter was sluggish for the month of 04/2013 is totally regular and the order to reassess the consumer based on the consumption in the succeeding three months after replacement of the meter. A sluggish meter is not defined anywhere in the Act or Code and hence once the billing was done with the status of meter working and after a long period, the reassessment based on the dip in consumption and declared as the meter was sluggish is totally irregular.

As per the regulation 152(2) of the Supply Code, 2014, the realization of Electricity charges short collected shall be limited for a maximum period of 24 months, even if the period during which such anomaly persisted is found to be more than 24 months. The Honourable CGRF Central Region taken into consideration of the above Regulation and quashed a short assessment bill issued from the Electrical Section Thodupuzha No. 1 by its order dated 15-06-2016 in the OP No. 64/16-17.

Here the short assessment was done with the assumption that, since the consumptions for the month of 04/2013 was less than the average

consumption, the meter might had been sluggish for the above period. The Honourable Ombudsman may please be noted that "Any Rules or Regulations in the Terms and Conditions of Supply, 2005/Electricity Supply Code, 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 hereby pray before this Honourable Kerala Electricity Ombudsman to quash the order of the Honourable CGRF Southern Region and cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section, Kulakkada.

Arguments of the respondent:

The appellant was issued with a bill for Rs. 35,376.00 to realize the escaped current charges for the period from 04/2013 to 07/2013. The undercharging came to light on scrutiny of previous reading. Aggrieved by this the appellant approached Honourable Consumer Grievance Redressal Forum (South) vide OP No. 156/2016. The bill was revised to Rs. 14,950.00 during the hearing. The Honourable Consumer Grievance Redressal Forum (South) in its order dated 30-12-2016 in OP No. 156/2016 quashed the disputed bill and directed to issue fresh bill taking the consumption after replacement of energy meter.

The above petition is filed against the order dated 30-12-2016 in OP No. 156/2016 of the Honourable Consumer Grievance Redressal Forum (South) raising the following contention.

1. That the appellant is regularly paying the bill and there is no due in the part of the appellant.
2. The order dated 30-12-2016 in OP No. 156/2016 of the Honourable Consumer Grievance Redressal Forum (South) is irregular.

The changing position of the organization into a corporate entity necessitated a detailed study about the consumption pattern of the high consuming customers whom the Board treats as VIP customers. The bill was issued based on the scrutiny of the highly consumed costumer. On going through the Meter Reading Register it is noticed that the consumption from 04/2013 to 07/2013 was very low when compared with previous average. On going through the consumption pattern it is noticed that before 03/2013 (Average 3086) the consumption pattern is high and from 4/2013 to 6/2013 the consumption is very low. On 04/2013 the consumption falls to 1796 units with

FR 142473 and in the next month reading was not obtained and hence a bill issued with door lock status.

The average was calculated by taking the consumption of 02/2013, 03/2013, 04/2013 since at that time it was not revealed that the consumption in 04/2013 was not actual. In 06/2013 when the reading was taken a total consumption of 79 units were recorded for 2 months despite their installation were running properly. The Sub Engineer concerned who inspected the meter, tested and found not working properly and hence declared faulty. At the time of inspection nobody from the appellant's side was present in the site to convince about the status of the meter. The billing of the alleged period was done based on the consumption of 02/2013, 03/2013 and the sluggish period of 04/2013 instead of the period of 01/2013, 02/2013 and 03/2013. Hence a lower average was taken for billing and it can also be ascertained from the average readings of the meter after changing. The meter was changed on 12-06-2013. All these matters were already communicated to the appellant.

The abstract of reading register is as below

Month	Initial reading	Final reading	Consumption	Remarks
06/2012	113465	116359	2894	
07/2012	116359	118732	2373	
08/2012	118732	121820	3088	
09/2012	121820	124352	2532	
10/2012	124532	126766	2414	
11/2012	126766	128795	2029	
12/2012	128795	131420	2625	
01/2013	131420	135197	3777	
02/2013	135197	137991	2794	
03/2013	137991	140677	2686	
04/2013	140677	142473	1796 On 04/2013 bill was Issued for the actual consumption, not for average.	
05/2013	142473	142473	Door Locked, Average Charged for 2618 units	11/2012 to 04/2013

6/2013	142473	142552	Only 79 units for 2 Months hence average Charged for 2618 units	
Meter declared faulty and changed on 12/06/2013 (IR007)				
07/2013 (05/07/2013)	7	1758	1751 units for 24 days from 12/06/2013 to 05/07/2013)+611=2362 (2618/30X7=611) AVG. TAKEN IS 2618	
08/2013	1758	5123	3365	
09/2013	5123	8744	3621	
10/2013	8744	11861	3117	
11/2013	11861	14998	3137	
12/2013	14998	18301	3303	
01/2014	18301	22046	3745	

The respondent has no doubt about the fault of meter and the consumer never challenged the change of the meter, the previous being faulty. The consumer has never raised any objection about the change of meter till the bill issued to him. It is admitted that the consumer paying current charges as per the demand regularly. On going through the consumption pattern of appellant, it is noticed that before 03/2013 (Average 3086) the consumption pattern is high and from 4/2013 to 6/2013 the consumption is very low. The meter was changed on 12-06-2013 and the average consumption from 08/2013 to 09/2013 is found as 3493 units. (2 cycles after the change of meter).

As per Clause 125 of the Kerala Electricity Supply Code, 2014, 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: Here the average consumption of the previous three months is available .

The respondent changed the meter in time i.e. on 12-06-2013 itself. The licensee is bound by law to issue a bill on the previous three billing cycles average consumption in the event of the meter becoming faulty. Hence an average reading of previous three months from 01/2013 to 03/2013 was taken for billing the period in which the meter was sluggish i.e., from 04/2013 to 07/2013 to onwards.

The consumption pattern is as follows:-

12/2012	-	2625 units
01/2013	-	3777 units
02/2013	-	2794 units
03/2013	-	2686 units
04/2013	-	1796
05 2013	-	2618 (Door lock average charged)
06/2013	-	2618 (Meter faulty Average charged)
Meter changed on 12/06/2013		
05/06/2013 to 12/06/2013	-	611 units (Meter faulty Average charged)
12/06/2013 to 05/07/2013	-	1751 units (New meter reading)
08/2013	-	3365
09/2013	-	3621
Average calculation before meter faulty		
01/2013 to 03/2013	=	(3777+2794+2686)
	=	9257/3=3086 Units

Considering the consumption pattern before meter changing ascertained that the meter was sluggish for the period 04/2013 to 07/2013 and hence the average consumption of 3086 (before meter changing) has to be billed for the period from 04/2013 to 07/2013. It may also be noted that the quota of the consumer is 2436 Units. (80% of the base average is the quota of the consumer and it is calculated by the system)

04/2013	=	3086 units	=	3086 X 8.5 = Rs 26231
05/2013	=	3086 units	=	3086 X 8.5 = Rs 26231
06 2013	=	3086 units	=	3086 X 9.1 = Rs 28082.6

(due to tariff revision dated 30/4/13 rate revised)

Average consumption from				
05/06/2013 to 12/06/2013	=	3086	=	30 X 7 days = 720 units
12/06/2013 to 05/07/2013	=	1752 units		
Total for 7/2013	=	720+1752	=	2471 units
Amount	=	2471 X 9.1	=	Rs 22486.1

Penal energy charges

04/2013	=	650 units X 8.5 = Rs 5525.00
05/2013	=	650 units X 8.5 = Rs 5525.00
06/2013	=	650 units X 7.58 =Rs 4927.00

07/2013	= Nil
Fuel surcharge @ 10 Paise	
04/2013	= 308.6
05/2013	= 308.6
06/2013	= Nil
Total energy charges	= 26231+26231+28082+22486
	= Rs 103030 + @10%
	= Rs. 113333/-
Total penal charges	= 5525+5525+4927
	= Rs 15977/-
Total Fuel surcharge @ 10 Paise	= 308.6x2=Rs 617.2
Grand total	= 113333+15977+617.2
	= Rs 129927.00
Less amount already paid	
From 04/2013 to 7/2013	= Rs 94551.00
Balance amount to be paid	= Rs. 35376.00

The bill issued to the consumer is for short assessment made in normal rate for the tariff applicable. The Kerala State Electricity Board is empowered by Clause 134(1) of the Kerala State Electricity Supply Code, 2014, to recover from the consumer, the amount undercharged by issuing bills. Hence the bill issued to the consumer is in order. The bill was raised only on 21-04-2016 and hence the cause of action will start to run only from 21-04-2016.

It is also brought to the kind notice of the Hon'ble Forum that the Hon'ble High Court of Bombay vide judgment (Brihatmumbai Municipal Corporation Vs Yatish Sharma and Others-2007 KHC 3784:2007 (3) KLTSN 11 (Bom)) has clarified the meaning due (marked as Exbt.R2) from the date of issuance of bill. The Hon: High Court, Bombay in case no. 3784/2007 has held that the above position as follows "In this context. I am reproducing the relevant portion of the main point spelt by Hon: Judge as follows:

"In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1) & (2) of Section 56. A sum cannot be said to be due from [he consumer unless a bill for the electricity' charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result [bat a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of section 56. a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him"

The undercharged bill amounting to Rs 35,376.00 was served on the consumer on 21-04-2016 and hence not struck by limitation as held in the

above judgment. It was detected that the meter reading for the period from 04/2013 to 07/2013 was from a meter suffering from defect.

Moreover the Kerala State Electricity Ombudsman vide its order dated 11-12-2012 in Petition No. P/236/2011 has concurred. The appellant's objection is limited to that of limitation and about the replacement of faulty meter. As stated supra the meter was replaced on the very next day when it came to the notice of this respondent.

The argument of the complainant that the claim is barred by Section 56 (2) of Electricity Act, 2003 would not stand since a **catena of decision** has established beyond doubt that 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 the Board against consumption of electrical energy and have become due for payment only after that demand has been raised.

In this case the bill is seen raised on 21-04-2016, and became due thereafter and time period of two years start from 21-04-2016 only and hence the complainant's argument is not maintainable. Further, it is not an arrear, but it is the charge for the unrecorded portions of energy used by the consumer. The same position has been reiterated by the Division Bench of Hon'ble High Court of Kerala in Thangal Kunju Musaliyar College of Engineering v/s Kerala State Electricity Board (2013(2) KLT SN 96(C No.122) (DB).

Further the amount demanded in the bill in dispute is not an arrear but it is the charge of escaped energy used by the consumer through which he had made profit. The consumer is bound to pay the charges for the electricity he has actually consumed.

Further it is worth noticed that the Hon'ble High Court of Kerala vide its judgment dated 09-02-2012 in WA 211/2012 in WPC 34768/2011 has pointed that the question of normal period of limitation is not applicable both towards electricity and water charges. Hence the limitation clause under Section 56(2) of the Act has no relevance in this complaint. Aggrieved by this the appellant approached Honourable Consumer Grievance Redressal Forum (South) vide OP No. 156/2016. The Honourable Forum during the course of hearing observed that KSEB Terms and Conditions of Supply, 2005 was in force at that time of the dispute and directed to revise the bill accordingly. The disputed bill was revised to Rs. 14,950.00 during the hearing, the details are as follows.

As per Regulation 33(2) of Terms and conditions of Supply, 2005, "If the Board is unable to raise the bill on meter reading due to its non-recording or malfunctioning, the Board shall issue a bill based on the previous six months average consumption. In such cases the meter shall be replaced within one month. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the

consumption will be determined based on the meter reading in the succeeding three months after replacement of the meter".

The average was calculated by taking the consumption of 11/12 to 4/13 since at that time it was not revealed that the consumption in 04/2013 was not actual i.e., $(2029+2625+3777+2794+2686+1796)/6=2618$ units. In 5/13 bill was issued for 2618 units since the premises kept locked. In 06/2013 when the reading was taken a total consumption of 79 units were recorded for 2 months despite their installation were running properly. Hence it can be confirmed that the meter was faulty after 3/2013. The bill was issued for the average consumption.

Since the average taken for meter faulty period was eluding the faulty consumption of 4/13 the new average is taken excluding the consumption of 4/13 and including the healthy consumption of 10/12 i.e. $(2414+2029+2625+3777+2794+2686)/6 = 2720$ units.

Actual amount to be realised from 4/13 to 7/13

04/2013	=	2720 X 8.5	=	Rs 23120
05/2013	=	2720 X 8.5	=	Rs 23120
06/2013	=	2720 X 9.1	=	Rs 24752

(Due to tariff revision dated 30/4/13 rate revised)

Average consumption from

05/06/2013 to 12/06/2013	=	2720/30 X 7 days	=	635units
12/06/2013 to 05/07/2013			=	1751 units
Total for 07/2013	=	635+1751	=	2386 units
Amount	=	2386 X 9.1	=	Rs 21713

Penal energy charges

04/2013	=	284 units X 8.5	=	Rs 2414
05/2013	=	284 units X 8.5	=	Rs 2414
06/2013	=	284 units X 7.58	=	Rs 2153
07/2013			=	Nil

Fuel surcharge @ 10 Paise

04/2013	=	272
05/2013	=	272
06/2013	=	Nil

Total energy charges	=	23120+23120+24752+21713	=	92705
Duty			=	9271
Total penal charges	=	2414+2414+2153	=	6981

Total Fuel surcharge @ 10 Paise	=	544
Grand total	=	109501
Less amount already paid from 04/2013 to 07/2013	=	Rs. 94551/-
Balance amount to be paid (Rupees Fourteen thousand nine hundred and fifty only)	=	Rs.14950/

The bill dated 21-04-16 of Rs. 35,376.00 is revised to Rs. 14,950.00 and new bill issued.

The Honourable Consumer Grievance Redressal Forum (South) in its order dated 30-12-2016 in OP No. 156/2016 quashed the disputed bill and direct to issue fresh bill taking the consumption after replacement of Energy Meter. The respondent brought to the attention of the Honourable Ombudsman the following facts.

1) In the Judgement of the Honourable Forum in Para 6 it is clearly mentioned that "The appellant did not produce any documents to prove reduction in consumption during the meter faulty period. Therefore it is just and proper to revise the bill as per Regulation 33(2) of the Terms and Conditions of Supply, 2005, under which the consumption for the meter faulty period will be determined based on the meter reading of the succeeding three months after the meter was replaced, the KSEB Terms and Conditions of Supply, 2005, was in force at that time. The full Para is reproduced below.

On hearing the parties and perusing the documents, it is seen that based up on the consumption pattern, the meter faulty period was assessed from 4/2013 to 7/ 2013 .The above period was assessed based on the average meter reading prior to the fault of the meter. In this case the meter was gradually recording lesser consumption and the meter was declared faulty on 12-06-2013. In such a situation, the average meter reading before the fault of the meter cannot be taken for assessing the meter faulty period. The appellant did not produce any documents to prove reduction in consumption during the meter faulty period. Therefore it is just and proper to revise the bill as per Regulation 33(2) of the Terms and Conditions of Supply 2005, under which the consumption for the meter faulty period will be determined based on the meter reading of the succeeding three months after the meter was replaced, the Kerala State Electricity Board Terms and Conditions of Supply 2005 was in force at that time.'

2) In the appeal petition before this Honourable Ombudsman the appellant clearly stated that they have no dispute in the declaration of meter as faulty,

3) On going through the meter reading it can be seen that the consumption never went below 2000 units.

4) It can also be seen that the consumption increased above three thousand units after the changing of meter and the consumer has not till today complained about the accuracy of the changed meter.

In the above circumstances this Hon'ble Ombudsman may be pleased to dismiss the complaint.

Analysis and findings:

The hearing of the case was conducted on 11-04-2017 in my chamber at Edappally and Sri. M.Y. George represented the appellant's side and Sri G. Soni, Assistant Executive Engineer, Electrical Sub Division, Kottarakkara 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 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 04/2013 to 07/2013 after a period of 3 years 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 April 2013 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 for Rs. 14,950.00 to the appellant after reassessing on the basis of average consumption of 2618 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 04/2013 to 07/2013 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 sluggish for the previous period due to the reduction in consumption. 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 testing. There is no justification for issuing such a demand for a previous period from 04/2013 to 07/2013 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 3 years. 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 4/2013 was 1796 units and the consumption for 8/2013 was 3365 units. On going through the consumption pattern of the appellant from 06/2012 to 03/2014, the consumption varies considerably in every month. It was 2029 units for 11/2012 and 3745 units for 01/2014. It is found that the appellant was billed for an average consumption of 2618 units for the months of 05/2013, 06/2013 and 07/2013 and the appellant remitted the amount. Hence the argument of sluggishness can not 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 01/2013 to 03/2013 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 04/2013 and it was replaced only on 12-06-2013 without conducting testing of the alleged faulty meter in an accredited lab. According to the respondent the monthly consumption shows enormous decrease from 04/2013 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 04/2013 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. In this background, the issuance of short assessment bill on the appellant merely on the basis of presumption and succeeding consumption pattern 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. 14,950.00 is hereby quashed. The order of CGRF in OP No. 156/2016 dated 30-12-2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/004/2017/ _____ /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, Kottarakkara, 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.