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APPEAL PETITION No. P/023/2017  
(Present: A.S. Dasappan)  
Dated: 22<sup>nd</sup> June 2017

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

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

### **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 three phase service connection is 16008 under LT VI F tariff and is under the jurisdiction of Electrical Section, Pallikunnu. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 17-06-2016 directed the appellant to remit an amount of Rs. 3,74,003/- being the short assessment based on the findings that the meter was faulty during the period from 30-04-2014 to 12-11-2014. An objection against the demand was filed before the Assistant Engineer on 23-06-2016. The Assistant Engineer had disconnected the service connection on 30/09/2016 and also rejected the petition vide his letter dated 30-09-2016.

So the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 111/2016. The Forum ordered to dismiss the petition and directed to remit the short assessment bill. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

**Arguments of the appellant:**

The appellant have more than 6000 own Tower sites all over Kerala with KSEB supply, among that one site under Electrical section, Pallikkunnu with cons no: 16008 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. 3,74,003/- on 17-06-2016 for the period from 30-04-2014 to 12-11-2014. The short assessment bill is issued only by imagination and totally illegal. The appellant had filed an objection against the bill before the Assistant Engineer, Electrical section, Pallikkunnu vide letter dated 23-06-2016. But the Assistant Engineer not responded to the petition filed against the short assessment bill up to 30-09-2016 and instead they had disconnected the service connection without any intimation to the consumer on 30-09-2016 at around 11 am. Even after many request to reconnect the service connection to the Asst. Engineer and the Asst. Executive Engineer they had not turned to effect the reconnection. Due to the disconnection of the service connection, the service from the mobile tower was broken and hence the appellant had filed a complaint before this Honourable Electricity Ombudsman to issue an interim direction to reconnect the service connection. The Honourable Electricity Ombudsman gone through the complaint and directed to reconnect the service as the petition against the short assessment bill is pending with the Asst. Engineer, Electrical Section, Pallikkunnu. As per the direction from the Ombudsman, the service connection was reconnected on the same day at around 5pm. This action of the Assistant Engineer that the disconnection of the service connection without finalizing the petition filed against the illegal short assessment and without any intimation is totally irregular and against the existing rules. The Asst. Engineer vide his letter dated 30-09-2016 rejected our petition and directed to remit the short assessment amount within 15 days from the receipt of the letter without considering any of our objections against the penal bill.

Then the appellant had approached the Hon. CGRF (NR) by filing the petition with OP No. 111/2016. In the petition, the Forum observed serious laxity on the part of the licensee in checking the meter whenever the meter showing less consumption compared to the earlier average consumption and in replacing the meter in time. Also the Forum observed that the replacement of the meter on 30-04-2014 was without checking the correctness of the new meter, which is not proper. The third member of the Forum recorded that, he suspect some foul play in replacing the meter with a "used meter" on 30-04-2014 and hence it has to be viewed seriously by the concerned authority of the licensee. But the Forum under the above observations the Forum simply ordered to dismiss the petition without considering any of the contentions.

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 said consumer number was replaced on 30-04-2014 with a remark "damaged" and the bill for the month of 05/2014 was issued with the previous average consumption. Then again the meter was declared as faulty during the month of 11/2014 and the same was replaced on 12-11-2014. The bill for the month of 11/2014 was also issued for the previous average consumption. Accordingly the monthly bills were paid by the appellant. The status of the meter was recorded in the 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. Since the meter was found faulty and reported only during the month of 11/2014, the short assessment made for the previous period is not sustainable as per the rules.

2) The status of the meter was recorded in the bills as working up to the month of 10/2014. Any rules or regulations in the electricity Act or Electricity Supply code is not supporting to reassess a consumer merely due to the dip in consumption in a previous billing period by declaring the meter as sluggish/faulty after a long period. When the recorded consumption was came to low as compared to the average consumption, it could be checked by the reading authority, whether the meter was faulty or not by testing the status of the same as per the Regulation 116(1 & 2). Without made any test in the meter, after a period of more than 1 year, the assessment made merely based on the dip in consumption as the meter was declared as sluggish is only by imagination and not sustainable according to the prevailing Rules and Regulations. Any regulations in the KESC 2014 permit the licensee to reassess a consumer by declaring the meter as sluggish/faulty based only on the dip in consumption for a previous period in a later stage.

3) As per regulation 116(2) of Electricity Supply Code 2014, if the meter is found defective, the licensee may test at site, if feasible, and if not feasible, the meter shall be replaced with a correct meter and the defective meter shall be got tested in an accredited laboratory or in an approved laboratory. But in the instant case, the licensee failed to do so. Hence the short assessment bill is not sustainable.

4) As per regulation 125 (2), charges based on the average consumption shall be levied to only for a maximum period of two billing cycles and during which the time the licensee shall be replaced the defective or damaged meter with a correct meter . In the present case, the short assessment was done for the period of 06/2014 to 12/2014 by declaring the meter was sluggish from 30-04-2014 to 12-11-2014. Hence the short assessment bill is not sustainable and to be cancelled.

5) The licensee stated in their statement of facts, the recording in the meter was reduced for the period from 05/2014 to 11/2014 only due to the sluggishness of the meter in that period. But a sluggish meter is not defined anywhere in the Act or Code. The Honourable CGRF (Central Region) observed in a similar case of complaint against the short assessment during the meter sluggish period with OP No. 64/2016 under the jurisdiction of Thodupuzha No.1 that "charging of consumer based on the sluggishness of the meter without changing the faulty meter then and there, as per rules, is illegal" and the Forum ordered to quash the short assessment bill issued.

Considering all the above, the appellant requests to quash the order of the Honourable CGRF, Northern Region and direction may be given to cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section Pallikkunnu.

**Arguments of the respondent:**

It is true that a Consumer No 16008 is owned by M/s Indus Towers, Cochin for the operation of a telecommunication tower with -a connected load of 35670 Watts. The date of connection is 25-10-2007. The energy meter of the connection is found faulty during 4/2014 and was replaced by another one on 30-04-2014. The average consumption of the consumer for the last 6 month before the meter faulty was 6722 units. After changing the meter, the consumption was reduced to 1422 units during 5/2014. The consumption details from 5/2014 to 11/2014 is detailed below.

Month	Initial Reading	Final Reading	Consumption
05-14	1321	2743	1422
06-14	2743	4091	1348
07-14	4091	5533	1442
08-14	5533	6692	1159
09-14	6692	7715	1023
10-14	7715	8132	417
11-14	8132	8244	112
Total			6923
Average			989 Unit

It is noticed that the average consumption during this period is reduced to 989 units. On enquiry with the representatives of the consumer, it is revealed that there is no change in the consumption during this period and is same as before 4/2014. On analysing the consumption pattern of the consumer, it is noticed that the average consumption of the consumer had

never come down below 5500 units per month. It is clear that the reduction of consumption recorded in the meter from 5/2014 to 11/2014 was only due to the sluggishness of the meter.

Section 134 (1) of Kerala Electricity Supply code 2014, gives the licensee, every right to collect the short assessment of the amount from the consumer who was undercharged in the previous periods.

Here the consumer has not claimed any dip in the consumption during the period from 5/2014 to 11/2014. As per their version also, it is as usual before 5/2014. The recording in the meter was reduced only due to the sluggishness of the meter in that period. The appellant himself is saying that he was running more than 6000 tower sites using the KSEB supply. Hence he definitely knows the consumption pattern of each and every tower and also knows that he is paying the current charge which is very less than the actual in respect of the particular tower. In this context, the short assessment bill issued for the above period is correct, realistic, genuine and hence the consumer has to pay the amount.

Regarding the replacement of the faulty meter with a used meter, it is to point out that, it is the normal procedure of the licensee, that whenever a connection is dismantled, its meter if good one will be utilised for giving a new service connection or changing a faulty meter. Hence suspecting foul play in this regards is not correct.

In the light of the above, it is clear that the respondent had only acted as per the relevant provisions of the acts and rules in force.

### **Analysis and findings:**

The hearing of the case was conducted on 08-06-2017 in the Court Hall of CGRF, Kozhikode and Sri. M.Y. George represented for the appellant's side and Sri T Sasi, Assistant Engineer of Electrical Section, Pallikunnu, 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 11/2014 after a period of one and half years 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 based on the consumption for the last 6 months

before the meter faulty period and a short assessment bill was issued for the period of lesser consumption as per Regulation 134 (1) of Electricity 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 17-06-2016 for Rs. 3,74,003/- to the appellant after reassessing on the basis of average consumption of 6722 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 the meter was faulty for the period from 05/2014 to 11/2014 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 30-04-2014.

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 05/2014 to 11/2014 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.

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 on 30-04-2014 without conducting an inspection or testing of the alleged faulty meter in an accredited lab. The replaced meter was declared as faulty during the month of 11/2014 and the same was replaced on 12-11-2014, without conducting an inspection or testing. According to the respondent the monthly consumption shows enormous decrease from 5/2014 onwards, i.e., after replacement of the alleged faulty meter. It is here relevant to note that the status of the meter was recorded in the bills as working up to the month of 10/2014. 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 5/2014 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.

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.

### **Decision**

In view of the above discussions, the issuance of short assessment for an amount of Rs. 3,74,003/- is not sustainable and hence it is hereby quashed.

The order of CGRF in OP No. 111/2016-17 dated 16-01-2017 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/023/2017/ \_\_\_\_\_ /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, Kannur, Kannur District

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