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APPEAL PETITION No. P/020/2017
(Present: A.S. Dasappan)
Dated: 22nd 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.,
Pulamanthole,
Malappuram 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 22010 under LT VI F tariff and is under the jurisdiction of Electrical Section, Kolathur. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 15-03-2016 directed the appellant to remit an amount of Rs. 1,06,726/- being the short assessment based on the findings that the meter was faulty during the period from 10/2013 to 02/2014. An objection against the demand was filed before the Assistant Engineer on 17-03-2016. He rejected the petition without quoting any valid reason or regulations, and directed to remit the amount vide letter dated 17-03-2016. So the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 71/2016-17. 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 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, Kolathur with cons: no: 22010 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. 1,06,726/- towards the short assessment for the period from 10/2013 to 02/2014. An objection had been filed before the Asst. Engineer against the short assessment and the Asst. Engineer did not consider any of our objections and directed to remit the short assessment made illegally vide letter dated 17-03-2016.

Then the appellant had approached the Hon. CGRF (NR) by filing the petition with OP No. 71/2016-17 against the illegal short assessment bill. But the Forum dismissed the petition without considering the facts and concerned regulations in the KESC 2014.

1) The meter of the above said consumer number was declared as faulty during the month of 02/2014 and replaced on 06/02/2014. The billing for the month of 02/2014 was made by taking the previous average consumption as per the regulations and payments were done accordingly. The billing for the period of 10/2013 to 01/2014 were done for the actual consumption recorded in the meter and the status of the meter was recorded in the bills as working. Then after a period of more than two years, the short assessment bill prepared with a statement that, since the consumption was less compared to the previous period, the meter might have been faulty is not sustainable. The billing done for 10/2013 to 01/2014 was based on the actual consumption recorded in the meter and not based on any average. Hence the findings that the meter was faulty for the month of 09/2013 to 01/2014 is baseless and without evidence or test certificate of the meter. Hence the short assessment as per the previous average for the low consumption period is against the regulation 125 of Supply Code 2014. Please note that the rules or regulations in the Electricity Act or Electricity Supply Code are 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.

2) 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.

3) As per the section 56(2) of the Indian Electricity Act 2003, and the connected regulation 136(3) in the supply code 2014, the assessment prior to the period of two years is not sustainable. The section 56(2) of the act says, "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 a period of two years, from the date when such sum first due unless such sum has been shown continuously as recoverable as arrear for electricity supplied and the licensee shall be cut off the supply of the electricity.

4) Regulation 152(3) Para 4 says that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months. Hence this short assessment is not sustainable as per the above regulations.

5) In the order of the Honourable CGRF, the Forum observed that, the premises remained in "door locked condition for a period of three months. But as per Regulation 111:

- (1) If the meter is rendered inaccessible on two consecutive meter reading dates of two billing cycles, a notice shall be issued to a consumer to keep the meter accessible for reading and to get the meter read by the licensee after payment of penal charge as approved by the Commission, on a date which shall be at least seven days after the date of notice and at the time specified in the notice.
- (2) If the meter is not accessible even on the date specified in the notice, a disconnection notice shall be served on the consumer or affixed near the main entrance of the premises, if the consumer is not available.
- (3) If the consumer fails to comply with the notice, the supply shall be disconnected and reconnection of supply shall be affected only after the reading is taken and all the dues are realised. The licensee did not comply with the above regulation and the remark door lock is a fake one. Our premises are easily accessible at any reasonable time for reading and inspection. The Forum keeps silence in the above fact and commented that "if the respondents had issued door locked notice for the first time itself to the consumer and take further steps, the faulty meter could have been replaced later. The Forum considered that since the consumption during the period from 10/2013 to 01/2014 were low compared to the previous period, the meter might had been slow running and the Forum simply agreed with the monthly average consumption taken by the respondents for

five months from 09/2013 to 01/2014 for the short assessment without any support of the Act or Regulations.

The KSE Board Limited itself vide its circular dated 25-02-2016 directed to comply the steps to assess the consumer during the faulty meter period as per the regulation 125 of Supply Code, 2014.

Arguments of the respondent:

The plaintiff has availed electricity connection on 27-09-2008 under Electrical Section, Kolathur. The consumer was in door locked condition (10/2013, 11/2013, 12/2013, 01/2014 & 02/2014) and bill served after taking average of previous three months when first door locked was noticed as per regulation 125 of supply code 2014. But when the respondent get entry to the consumer and inspected the premises and found that meter become faulty and changed the meter on 6-2-2014 with informing the site in-charge employed by plaintiff and no objection was raised at that time. Also by studying the meter reading register, it is clear that the short fall in meter reading due to meter faulty from 10/2013 to 02/2014. After changing the meter on 6-2-14, correct meter reading as per consumption were recorded. The same can view in the meter reading register from 3/2014 to 11/2015. Hence it is clear that the meter was faulty from 10/2013 to 2/2014. Hence the short assessment is in order as per regulation 125 of Electricity Supply Code 2014 for the loss sustained to KSEB ltd. due to slow reading of energy meter.

The meter reading register of this consumer clearly says that the meter was defective, slow running and the site in-charge employed by plaintiff has not raised any objection in meter changing and thus changed the meter on 6-2-14. Hence the plaintiff allegation as per regulation section 116(2) is baseless as licence informed the site in-charge employed by plaintiff and he has not raised any objection in changing the meter.

The allegation of plaintiff that short assessment bill as per Section 56(2) of Indian Electricity Act, 2003 and Regulation 136(3) in the Supply Code, 2014 were not true as the short assessment bill is in order as per the above relevant clauses. The allegation of the plaintiff that the short assessment bills raised against Section 152(3) were not true as the short assessment bill is in order as per the above relevant clauses.

The case were heard before CGRF Kozhikode and ordered to collect the short assessment bill.

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 Khaleel Rehman, Assistant Executive Engineer of Electrical Sub Division, Pulamanthol 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 10/2013 to 02/2014 after a period of 2 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 September 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 respondent has contended that the consumer was in door locked condition (10/2013, 11/2013, 12/2013, 01/2014 & 02/2014) and bill served after taking average of previous three months when first door locked was noticed as per Regulation 125 of Supply Code 2014. The procedure to be followed as in the cases of door locked condition is specified in Regulations 5 & 6 of the Supply Code, 2005 and Regulation 111 of the Supply Code 2014. It is found that the respondent has not taken timely action against the consumer in such a case of door locked condition as per the above provisions. It is also revealed that the KSE Board Limited itself vide its circular dated 25-02-2016, has issued guidelines in cases when a meter is found to be inaccurate or variation in consumption of 20% or above is noticed from the previous bill. But this circular is issued in a subsequent date of the issue of the instant case. On taking the meter reading on 5-10-2013, the FR status in the Reading Register is shown as DL and the initial reading on 5-9-2013 is 212098. The next two reading date on 5-11-2013 and 5-12-2013, the FR status is shown as DL. The reading as on 6-1-2014, the reading is 218074 and the consumption for the above periods was 5976 units and the meter was found working and the consumer was billed accordingly based on the actual consumption.

The point to be decided in this case is as to whether the issuance of short assessment bill dated 10-03-2016 for Rs. 1,06,726/-to the

appellant after reassessing on the basis of average consumption of 4205 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 09/2013 to 01/2014 and a lesser consumption was recorded during that period, based on the consumption pattern of the appellant. 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 06-02-2014.

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 09/2013 to 01/2014 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.

The assessment made in this case is relying on succeeding months consumption which was made after a lapse of 2 years, i.e., only on 10-03-2016. 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 09/2013 and it was replaced only on 06-02-2014 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 09/2013 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.

Another contention of the Appellant is based on the Limitation of the bills, under Sec. 56(2) of Electricity Act, 2003, which reads “The licensee shall not recover any arrears after a period of two years from the date when such sum become first ‘due’ unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied”. This ‘due date’ is an important date for both consumer and KSEB (Licensee). This is because after a period of two years from the ‘due date’, the arrear bills are time barred and the consumer is not liable to pay the sum even if it is a legitimate claim otherwise. Therefore it is a boon to the consumer and a loss to the Licensee. For an upright and bonafide consumer, he need not worry of ‘Bills’ of long pending dues after a period of 2 years, if it is not shown continuously in the regular bills of the consumer. On the other hand, in the case of Licensee he should be more vigilant and smart in preferring the bills in time, otherwise he has to suffer the loss for the laxities and omissions occurred on his part.

Since this issue has been dealt with, analyzed and given a firm opinion by the Upper Courts of Law/Jurists, we may follow the same. As such, I have before me the Judgment in the Petition filed, before the Hon: High Court, Bombay, vide No: 3784/2007, which has dealt the 'due date' issue in detail and pronounced its considered opinion. In this, it was 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 the 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 that 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'.

Thus 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 and have become due for payment only after that demand has been raised. In the same Case it was further clarified by Hon: High Court that;

"Amount of charges would become due and payable only with the submission of the bill and not earlier. Word 'due' in this context must mean due and payable after a valid bill has been sent to the consumer", (Brihatmumbai Municipal Corporation Vs Yatish Sharma etc-2007 KHC 3784:2007.

In this case, the bill is seen raised in 03/2016 and has become due thereafter and time period of two years start from 03/2016 only and hence the appellant's argument is not maintainable under the bar of limitation. As per the Agreement executed by the consumer with KSEB, the consumer is bound to pay the charges for the true electricity he has consumed. As the bill was issued in 03/2016 only, I am of the view that Section 56(2) of Electricity Act 2003 and Regulation 136(3) in the Supply Code 2014 is not attracted in this case.

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 09/2013 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 short assessment for Rs. 1,06,726/- is hereby quashed. The order dated 20-12-2016 of CGRF (NR) in OP No. 71/2016-17 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/020/2017/ _____ /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., Pulamanthole, Malappuram 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