

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/034/2017
(Present: A.S. Dasappan)
Dated: 29th 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.,
Kundara, 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 three phase service connection is 18942 under LT VI F tariff and is under the jurisdiction of Electrical Section, Kundara. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 27-07-2016 directed the appellant to remit an amount of Rs.52980/- being the short assessment based on the findings that the meter was faulty during the period from 07/2014 to 11/2014. An objection against the demand was filed before the Assistant Engineer on 16-08-2016. He rejected the petition without quoting any valid reason or regulations, and suggested to approach the concerned Forum or Authority after remitting

half of the amount assessed or to remit the amount vide letter dated 23-09-2016. So the appellant had approached the Hon'ble CGRF (SR) by filing a petition in OP No. 250/2016. The Forum quashed the impugned bill and directed the respondent to issue a revised bill for the meter faulty period from 09/2014 to 10/2014. 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 K.SEB supply, among that one site under Electrical section, Kundara with cons no. 1145814018942 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. 52,980 /-on 27/07/2016 (Copy attached and marked as A1) for the period from 07/2014 to 11/2014. The short assessment bill was issued based on the sluggishness of the meter for the period from 07/2014 to 08/2014. The meter of the above service connection was declared as faulty during the month of 09/2014 and replaced on 23/10/2014. The faulty meter period was assessed for the previous six months average consumption prior to the meter declared as faulty. Hence the short assessment bill issued is totally illegal. The appellant had filed an objection against the bill before the Assistant Engineer, Electrical section, Kundara vide letter dated 16/08/2016 (copy attached and marked as Exhibit (A2)). But the Assistant Engineer rejected the objection and directed to remit the illegal short assessment bill and also suggested to approach the concerned Forum or Authority after remitting half of the amount assessed or to remit the assessed amount within seven days of receipt of his letter dated 23/09/2016. (Copy attached and marked as Exhibit A3). The direction of the Assistant Engineer was not proper as per the rules in force. Then the appellant had approached the Hon. CGRF Southern Region, Kottarakkara by filing OP N0.250/2016.

The CGRF by its erroneous order dated 28/02/2017 directed to quash the impugned bill and issue a revised bill for the meter faulty period of two billing cycles from 09/2014 to 10/2014 with the average consumption of three billing cycles after the meter replacement.

1) The meter of the above service connection was declared as faulty during the month of 09/2014 and monthly bills were issued for the faulty meter period for the previous six months average consumption instead of previous three months average up to the change of the faulty meter on 23/10/2015. The average consumption taken for the monthly bills from 09/2014 to 10/2014 was 4921 units instead of 4526 units $(2880+4704+5994/3)$. 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. The meter reported as faulty only during the month of 09/2014 and the average consumption to be charged for the faulty period was 4526 units. Hence the excess amount collected during the meter faulty period by applying wrong average (six months average instead of three months) may be adjusted to the future bills.

2) The meter of the above service connection was declared as faulty during the month of 09/2014 and the monthly bills up to 08/2014 were issued for the actual consumption recorded in the meter and the bill amounts were remitted. The status of the meter was recorded in the bill as working up to the month of 08/2014. 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.

3) The licensee itself issued the monthly bills up to 08/2014 with the status of meter as working and based on the actual consumption recorded in the meter. Once the billing was done based on the consumption recorded in the meter and the status of the meter as working and after a long period of two years, the declaration of the meter as sluggish based on the dip in consumption without any support of the test report of the meter from an approved/ accredited laboratory is baseless and not sustainable before Law.

4) 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.

5) Please note that the opinion of the CGRF Central Region in a similar case that "a sluggish meter is not defined anywhere in the Act or Code and charging of the consumers based on the sluggishness of the meter without changing the meter then and there, as per rules, is illegal." The Honourable CGRF quashed the short assessment bill issued in similar cases of reassessment for the alleged meter sluggish period in the OP No. 64/2016-17 under the jurisdiction of Electrical Section, Thodupuzha No. 1.

6) In the erroneous order released by the CGRF Southern Region in this case, it is stated that "the petitioner not produced any documents to prove reduction in consumption during the meter faulty period. But no were in the Act or Code it is stated that the consumer to keep the record of the consumption in the whole period of usage. The billing is to be done based on the consumption recorded in a correct and accurate meter installed in the premises and not based on the proof submitted by the consumer.

In the statement of facts submitted by the respondent that since the consumer is a monthly billed consumer, monthly average has taken for the calculation. The meaning of the above statement is not known and the Hon. Forum not mentioned anything about it. The faulty period was assessed by the respondent for the previous six months average consumption of 4921 units instead of three months average consumption of 4526 units. The Hon. CGRF is also silent in its order about the above facts. The respondent mentioned nothing about this mistake except the above statement. Hence the excess amount collected during the meter faulty period by applying six months average instead of three months as per the Regulation 125(1) of Supply Code 2014 to be refunded.

Reliefs sought for:

1. To set aside the erroneous order of the Hon. CGRF (SR) and necessary direction may be given to the licensee for cancelling the short assessment bill issued illegally and
2. To refund the excess amount collected during the faulty meter period of 09/2014 to 10/2014 may be refunded.

Arguments of the respondent:

1. The appellant is a consumer under Electrical Section, Kundara with Consumer Number. 18942. The registered connected load of the premises is 38850 watts and the present tariff is LT VI F.

2. The appellant is providing passive infrastructure to different mobile operators. Their business is of a constant nature and not a seasonal one. Their consumption pattern is almost of uniform nature. The consumer has around 5500 units as monthly consumption. Appellant's consumption was drastically dipped during the month from 07/2014. On verifying no change in the connected load or mode of business was noticed in the premises. In 08/2014, the consumption was further reduced to nearly half of the consumption during 08/2014.

Accordingly the meter was declared faulty and the same was changed on 23.10.2014. After changing the meter the consumption pattern was as follows:-

07/14	4704units
08/14	2880units
09/14	4921units.(average)

10/14	4921Units(Av)
11/2014	4528Units
12/2014	5180Units

The Internal Audit Wing of the licensee had conducted an audit and reported that the consumer was under charged during 07/14 to 23.10.2014. Based on the report, a short assessment bill of '52.980/- was issue to the consumer. (Exhibit R1).

3. Aggrieved by the same, the consumer approached the Hon'ble Consumer Grievance Redressal Forum (South) vide OP No. 250/2016 and after conducting hearing, the Forum had issued its order on 25.02.2017, directing to quash the bill and to issue bill for the meter faulty period of two billing cycles from 09/2014 to 10/2014 with the average consumption of past three billing cycles after the meter replacement (Exhibit R2). Aggrieved by the same, the consumer had filed this appeal.

4. If any considerable dip in consumption they have to explain the reason for the same. The appellant had not reduced any load or any equipment and hadn't made any change in the mode of business. In this case, it is not a mere dip, there was a considerable dip in consumption, that is, almost 50% dip in consumption. They had failed in producing any substantial evidences for the dip in consumption and never made any complaint in changing the meter after declaring faulty. Reading pattern of the consumer before and after changing the meter is submitting as Exhibit R3.

5. Regional Audit Wing, an Internal Audit Wing is constituted by Kerala State Electricity Board Limited for checking and auditing all the activities under the offices of the licensee. If any defects are noted it should be corrected. Regulation 134 (1) of the Kerala Electricity Supply Code 2014, states that 'if the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so under charged from the consumer by issuing a bill'. Here the issued bill is only an undercharged one and not a fresh bill. No penalization was done. Only the actual amount due from the appellant is demanded. The appellant had enjoyed the benefit much earlier and the amount was demand without any interest.

6. The licensee had checked the meter at site, and on realizing the meter was faulty, the same was changed with a correct meter. The reading pattern before and after changing the meter clarifies that the meter was faulty and the consumer hadn't raised any objection on the faultiness of the meter. As it is well known to the appellant that they had consumed the energy and all these arguments are raised only to escape from remitting the amount actually due to the licensee.

7. The licensee has revised the short assessment bill issued as per Exhibit R1 vide the order of the Hon'ble CGRF (South) and is submitting as Exhibit R4.

8. The appellant argued that the word 'sluggish' is nowhere mentioned in the Act or Code by referring an order of the Hon'ble CGRF (Central). Clause 58 v (d) Terms & Conditions of Supply 2005 (Revised 2007) describes as "if the consumer fails to get the faulty or sluggish meter replaced" hence the appellant's argument regarding sluggishness is worthless.

Hence it is humbly prayed to dismiss this petition and to set aside the order of the Hon'ble Consumer Grievance Redressal Forum (South) and to direct the appellant to remit the entire short assessment amount as the same is actually due to this licensee.

Analysis and findings:

The hearing of the case was conducted on 20-06-2017 in the Court Hall of CGRF, Kozhikode and Sri. M.Y. George represented for the appellant's side and Smt. Daisy Jose, Assistant Executive Engineer of Electrical Sub Division, Kundara, 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 07/2014 to 11/2014 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 July 2014 itself. So, average energy consumption was arrived as per Regulation 125(1) of the Kerala Electricity Supply Code, 2014 and issued demand as contemplated in Regulation 125(3) of Supply Code, 2014. Further, the appellant could not produce any evidence to show that there was variation in the consumption pattern in their premises.

The point to be decided in this case is as to whether the issuance of short assessment bill dated 19-04-2017 for Rs. 12494/-to the appellant after reassessing on the basis of average consumption of 5552 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 07/2014 to 11/2014 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 23-10-2014.

On taking the meter reading on 5-08-2014, the FR status in the Reading Register is shown as working and the reading is 117197. The reading as on 04-09-2014 is shown as 0 and FR status as SF and the reading is shown as 122490 on 04-10-2014. The consumer was billed for average consumption of 4921 units for the period from 05-08-2014 to 04-09-2014 and 04-09-2014 to 04-10-2014 and 2953 units from 04-10-2014 to 23-10-2014 (meter changed on 23-10-2014).

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. 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. There is no justification for issuing such a demand for a previous period from 07/2014 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.

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 27-07-2016. 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 07/2014 and it was replaced only on 23-10-2014 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 07/2014 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 07/2014 onwards and hence is not sustainable. There is no material like a site mahazar 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 for Rs. 12,494/- is hereby quashed. The order dated 28-02-2017 of CGRF (SR) in OP No. 250/2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/034/2017/ _____ /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., Kundara, Kollam 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, Kottarakkara