

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

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APPEAL PETITION No. P/032/2017  
(Present: A.S. Dasappan)  
Dated: 20<sup>th</sup> July 2017

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

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd.,  
Vadakkancherry, Thrissur.

### **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 10480 under LT VI F tariff and is under the jurisdiction of Electrical Section, Medical College, Thrissur. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 01-10-2014 directed the appellant to remit an amount of Rs. 58,058/- based on the site mahazar prepared consequent to the inspection of APTS unit Thrissur on 26-09-2014, being the short assessment for not recording one phase of the meter from 31-05-2014 to 26-09-2014. An objection against the demand was filed before the Assistant Engineer on 13-10-2014. Later another revised bill dated 02-03-2015 amounting to Rs.133748/- was issued to the consumer based on the average

consumption after the replacement of the meter. Another objection against the demand was filed before the Assistant Engineer on 10-03-2015. After a personal hearing conducted, a final revised short assessment bill dated 21/04/2015 for Rs.74,830/- was issued. So the appellant had approached the Hon'ble CGRF (CR) by filing a petition in No. 26/2015-16. The Forum directed the respondent to revise the bill with the percentage error mentioned in the mahazar for 24 months preceding the date of inspection, vide order dated 30-06-2016. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

### **Arguments of the appellant:**

An inspection had been conducted in the premises of the above service connection with consumer no. 10480 on 26/09/2014 and a site mahazar was prepared by the Assistant Engineer Electrical section, Medical College, Trichur in the presence of APTS unit Trichur of KSEB.

Subsequent to the inspection, a short assessment bill amounting to Rs. 58,058/- was prepared and issued with the assessment that, 32% of negative error of the meter from 31/05/2014, 11:35 hrs to the inspection date. An objection had been filed against the short assessment bill before the Assistant Engineer Electrical Section, Medical College, Trichur pointing out the wrong method of testing adopted for arriving at the error of the meter and requested to cancel the short assessment bill issued illegally.

The Assistant Engineer surprisingly made an upward revision and issued a bill for an exaggerated amount of Rs. 1,33,748/- based on the average consumption after the replacement of the meter. Again the appellant had filed objection against this exaggerated bill amount on 10/03/2015.

Then the Assistant Engineer again revised the short assessment bill to Rs.74,830/- dated 21/04/2015 after a personal hearing conducted on 26/03/2015. Then the appellant had filed a complaint before the Hon. CGRE Central Region with no. 26/2015-16. During the hearing, the respondent submitted a Tamper report of the meter signed by the Assistant Engineer of the Licensee without any authority. The respondent prompted that, in the tamper report, the voltage failure in the meter was for the previous 1005 days. But, the appellant don't know anything about the tamper report such as, where from the tamper report received and what is the authority of the same. The same Authority of the licensee stated in the site mahazar prepared during the inspection itself, the failure of the voltage in one phase of the meter was from 31/05/2014, 11:35 hrs. The Hon'ble CGRF surprisingly depended on the tamper report simply submitted by the licensee and directed to issue revised short assessment bill for the last two years even the request of the respondent

was only to dismiss the petition. Accordingly, the respondent issued a revised bill for Rs.3,66,798/- on 26/08/2015 as per the direction of the Hon. CGRF and the order dated 30/06/2015. In the above circumstances, the appellant strongly believe that the order of the Hon. CGRF (CR) is a partial one.

In the site mahazar it is recorded that, in the display of the meter, the voltages of the three phases are shown as V1 -198 v, V2- 199.5v, V3- 00v, A1- 9.787A, A2-7.056A, A3- 7.0A. Further it is recorded that the full data of the meter was downloaded to the computer and analyzed. Then it is revealed that missing of the voltage of one phase was 31/05/2014, 11:35 hrs and it was recorded in the site mahazar by the Inspecting Authority itself. Also it was seen recorded in the site mahazar that, by comparing the readings of the meter by the so called standard meter LT Accucheck, the meter is recording only 62% of the actual consumption (less than 38 of the actual consumption). Further it is recorded that by the detailed checking the voltage is correctly recording in the incoming and outgoing terminals of the meter. In the above circumstances, the following three points to be noted by this Honourable Authority.

- (i) In the display of the meter one phase voltage is seen missing and current in the three phases are seen almost uniform and that is 9.787, 7.056 and 7.0 Ampere. Since the current is recording in all the phases, the missing of the voltage in the display might have been due to the failure of the recording in the display only. It might not be affected in the recording of the consumption.
- (ii) Accuracy of the so called standard meter of the LT Accucheck is not known and this type of comparing of accuracy is not an authoritative method and not approved anywhere in the Act or Code. As per the Regulation 115(1) of Supply Code 2014, the meter shall normally be tested in the laboratory of the licensee, approved by the Commission. Regulation 115(9) says that, in the case of meter is found to be faulty, revision of the bill on the basis of the test report shall be done for a maximum period of six 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 the two subsequent bills. In the present case the respondent is not followed the above regulation and depended a so called standard LT Accucheck without any authority of the same. It was against the Act and Code and hence the assessment made as per the above procedure is not sustainable and to be cancelled
- (iii) As per Regulation 116(1) of KESC, the licensee shall periodically inspect and check the meter and associated apparatus. As per Regulation 116(2), 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. In this case, the meter is not seen tested in any accredited or approved laboratory for assessing the accuracy of the meter.

The licensee had issued a bill for Rs.58,058/- and then the bill was revised to Rs. 1,33,748/- Again, the appellant had filed objections against the revised bill for the Assistant Engineer Electrical Section Medical College Trichur. The bill was again revised to Rs. 74,830/- without any support of the valid regulations. The method adopted for the short assessment and all the revisions of the bill is not proper and hence the short assessment bill is not sustainable as per the regulations.

The tamper report was prepared by the respondent itself and signed by the Assistant Engineer and the Assistant Executive Engineer as true copy. The report was prepared not by an approved or accredited laboratory after testing the meter and hence this tamper report have no authority and not to be admitted.

The consumption record of the above consumer no. from 01/2014 to the inspection date of 26/09/2014 reveals that no short fall of consumption during that period and hence the short assessment based on the comparison with the so called standard LT Accucheck is not to be admitted. The consumption record from 01/2014 to 10/2014 is shown below.

Month	Consumption
01/14	2304
02/14	2451
03/14	2338
04/14	2298
05/14	2746
06/14	2299
07/14	2382
08/14	2610
09/14	2085
10/14	2583

From the above, it can be ascertained that no consumption dip from 31/05/2014, 11:35hrs as recorded in the site mahazar prepared during the inspection by checking the meter in a non/ standard method and the analysis made by downloading the data from the memory of the meter to the computer by the respondent as per their will and wish.

Considering all the above, the appellant hereby prays before this Honourable Kerala Electricity Ombudsman to quash the order of the Honourable CGRF Central Region issued merely based on the Tamper report without any authority signed and submitted by the respondent itself and cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical section Medical College, Trichur.

**Arguments of the respondent:**

The counter statement of facts furnished by the respondent is as follows:

An inspection was conducted in the premises of the consumer on 26/9/2014 and a site mahazar was prepared by the Assistant Engineer in the presence of APTS Thrissur unit of KSEB Ltd. On inspection it was found that only 62% of the actual consumption was recorded by the meter installed when tested with Accucheck equipment. The consumption in one phase was not recorded by the meter. It was also found that there were also equal loads in all phases. So it was confirmed that there was financial loss to KSEB Ltd due to the short recording of the actual consumption.

So in order to make up the loss a provisional short assessment bill for Rs. 58,058/- was prepared and issued for the period from 31/05/2014 to the inspection date allowing the consumer to make objections if any before issuing the final bill. The bill was issued strictly in conformity with section 134 and section 152 of Kerala Electricity Supply Code 2014.

But the consumer refused to pay bill citing section 125 of the said Act. The content of his argument was that the short assessment should be done on the basis of the average consumption prior to date of detecting the meter defective and the short assessment shall be levied only for a maximum period of two billing cycle. In fact he wanted to get the bill revised at average consumption prior to 31/05/2014 limiting the period to two months.

Really, the consumer interprets the section 125 wrongly. The section 125 is not applicable in this case.

As the consumer was still dissatisfied with the method of the short assessment billing, it became a duty and responsibility of the Assistant Engineer to convince him the accuracy of the short assessment billing. So the Assistant Engineer decided to examine and show the consumer the pattern of the consumption after meter changing. The meter was changed on 29/10/2014. On lapse of three months time the consumption was examined and it was found that after meter change average consumption was 5009 units. Bases on this average a revised provisional bill was issued for Rs. 1,33,748/-

allowing the consumer to raise complaints if any. This bill too was not acceptable to the consumer. So the Assistant Engineer decided to give a chance for hearing before the final bill was issued. A hearing was conducted on 26/03/2015. After taking in to consideration of the points raised by the consumer the final bill for Rs. 74,830/-.

The CGRF was convinced that the meter had been short recording the consumption for 1005 days. And there was huge financial loss to KSEB Ltd. So the CGRF issued order to revise short assessment bill limiting the period to two years (No. CGRF/CR/Comp.26/2015/16 dated 30/6/2015 of Hon. CGRF EKM.).

Hence the bill amounting to Rs. 3,66,798/- was issued. It is prayed that as the order of the CGRF is strictly in conformity with relevant sections of Kerala Electricity Supply Code 2014 and is allowing to recover the loss of the KSEB Ltd partly the order of the CGRF EKM may not be quashed.

### **Analysis and Findings: -**

The hearing of the case was conducted on 23-06-2017, in my Chamber at Edappally, Kochi, and the appellant was represented by Sri. M.Y. George, and the respondent by the Assistant Executive Engineer of the Vadakkancherry Sub Division, Sri N.V. Sunil and they have argued the case, mainly on the lines stated above.

On examining the Petition and argument notes filed by the appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

It is revealed that short assessment bill for Rs.58058/- issued to the appellant towards the unrecorded portion of the consumption @ 32% from 31-05-2014 to 26-09-2014, the date of inspection, following the detection of failure of voltage in one phase of the meter from 11.35 hrs on 31-05-2014 onwards. This bill was revised to Rs. 1,33,748/- and further it was revised to Rs. 74,830/- based on the average consumption after replacing the faulty meter on 29-10-2014 towards the non recording of consumption in one phase of the 3 phase meter due to voltage failure for the period from 31-05-2014 to 29-10-2014, as per Regulations 130, 134 (1) and 152 of the Kerala Electricity Supply Code, 2014. But it was ordered by the CGRF that the short assessment be limited to 24 months preceding the date of inspection though voltage failure and thereby non recording of consumption in one phase exist for 1005 days on the strength of

the meter tamper report and accordingly the respondent revised the short assessment bill to Rs. 3,66,798/-.

The appellant has contended that in the display of the meter voltage in one phase is seen missing and current in the three phases are seen almost uniform and that is 9.787, 7.056 and 7.0 Ampere. Since the current is recording in all the phases, the missing of the voltage in the display might had been due to the failure of the recording in the display only and not be affected in the recording of the consumption. Accuracy of the so called standard meter of the LT Accucheck is not known and this type of comparing of accuracy is not an authoritative method and not approved anywhere in the Act or Code. As per the Regulation 115(1) of Supply Code 2014, the meter shall normally be tested in the laboratory of the licensee, approved by the Commission. In the present case the respondent is not followed the above regulation and depended a so called standard LT Accucheck without any authority of the same. It was against the Act and Code and hence the assessment made as per the above procedure is not sustainable and to be cancelled. As per Regulation 116(1) of KESC, the licensee shall periodically inspect and check the meter and associated apparatus. In this case, the meter is not seen tested in any accredited or approved laboratory for assessing the accuracy of the meter.

The respondent's version is that the as per the CGRF's observation the short recording in the meter was 1005 days and hence the Forum issued the orders limiting the period of short assessment to two years strictly in conformity with relevant regulations of Kerala Electricity Supply Code, 2014.

The main point to be decided is on the matter of non recording of consumption in one phase and its assessment.

In L & T meter a star (\*) indication at the top side of the display is an anomaly indication. If noting the anomaly indications, it is the responsibility of the officer concerned to go through all the display parameters to find out the reasons. It is essential to conduct periodical inspection of meters for ensuring whether meters are recording actual consumption of energy in the premises. The failure of the respondent to detect the missing of voltage in one phase for a period of three years is not justifiable. There is no ground to suspect the accuracy of the Accucheck available with the APTS, as alleged by the appellant.

I find appreciable difference in the quantum of energy recorded in the Meter on the energy consumed, after to the meter faulty period and during the alleged meter faulty period. That is, to say, the meter was seen recorded an average monthly energy consumption of 5009 units from 11/2014 to 01/2015, after the meter replacement.

The issue arising for consideration in this appeal is whether the appellant is liable for the payment of short assessment for Rs. 3,66,798/- as per Regulation 152 of Supply Code, 2014.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Here in this case, the respondent declared the meter as faulty that on the basis of the inspection conducted in the premises and tamper report down loaded. The site mahazar prepared on 26-09-2014, at the time of inspection, acknowledged by the appellant. It is stated in the site mahazar that as per the down loaded data, the missing of the voltage of one phase was from 31-05-2014, 11.35 hrs. The appellant neither had raised any objection against the findings in the site mahazar nor requested for testing of the meter in an accredited lab. But on going through the tamper report, the voltage failure in B phase of the energy meter was from 25-10-2011 and persisted for 1005 days till 26-09-2014. Though the appellant was aware of the downloading of meter data on 26-09-2014, but unaware of the tamper report prepared by the respondent.

Regulation 115(9) of Supply Code reads as *“In 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 six 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 the two subsequent bills”*.

Regulation 152 of the Supply Code, 2014 deals with *Anomalies attributable to the licensee which are detected at the premises of the consumer.*

*(1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or Section 135 of the Act.*

*(2) In such cases the amount of electricity charges short collected by the licensee if any shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.*

Upon a plain reading, the mark differences in the contents of Regulation 115 and 152 of the Supply Code, 2014 are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. Regulation 152 gives liberty to the licensee to realize the amount of electricity charges short collected by the licensee from the consumer under normal tariff applicable to the period during such anomalies persisted. The non recording of one phase of the appellant's metering equipment in the appellant's premises was detected by the licensee during the inspection conducted on 26-09-2014 and the downloaded data also justifies these facts.



In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording in two phases of actual consumption.

*As per Regulation 134 (1) if the licensee establishes either by review or otherwise, that it has undercharged the consumer, licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given to the consumer for making payment of the bill.*

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.*

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

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

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

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

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

*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.*

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.

One of the main averment of the appellant is that the tamper report was prepared not by an approved or accredited laboratory after testing the meter and hence this tamper report have no authority and not to be admitted. I find that the downloaded tamper report for the period from 25-10-2011 was not got convinced by the appellant. There is no allegation of any willful misuse by the appellant.

As per Regulation 109(20) of Supply Code, it shall be the responsibility of the licensee to maintain the meter and keep it in good working conditions at all times. Hence the respondent is duty bound to inspect the meter display of the consumer and make sure that no anomaly exists in the meter.

The inaccuracy of the metering system as stated by the respondent on the strength of site mahazar and tamper report prepared following inspection by the APTS on 26-09-2014 is accepted, but the further tamper report downloaded for a period of 1005 days is not admissible on the grounds stated above and hence rejected. Considering the above facts, I decide that the short assessment bills issued to the appellant are to be revised for the period from 31-05-2014 to 29-10-2014 by taking the average computed from the 3 billing cycles after the meter is replaced on 29-10-2014.

### **Decision**

In view of the above facts, the revised bill for Rs. 3,66,798/- towards the short assessment during the alleged faulty meter period is hereby quashed. The respondent is directed to reassess the consumption from 31-05-2014 to 29-10-2014 based on the average consumption from the three billing cycles after the replacement of the meter on 29-10-2014 and to revise the bill

accordingly. The respondent shall issue the revised bill to the consumer with thirty days time (due date) given for making the payment.

The order of CGRF in Petition No. 26/2015-16 dated 30-06-2016 is hereby set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/032/2017/ \_\_\_\_\_ /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., Vadakkancherry, Thrissur.

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.