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APPEAL PETITION No. P/048/2017
(Present: A.S. Dasappan)
Dated: 26th 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.,
Nedumangadu.

ORDER

Background of the case:

The appellant represents M/s Indus Towers Ltd., a company providing passive infrastructure service to telecommunication providers. The consumer number of the three phase service connection is 32313 under LT VI F tariff and is under the jurisdiction of Electrical Section, Nedumangad. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 30-08-2016 directed the appellant to remit an amount of Rs. 2,35,224/- based on the site mahazar prepared consequent to the inspection of APTS on 29-08-2016, being the short assessment for not recording one phase of the meter from 01/2016 to 08/2016. An objection against the demand was filed before the Assistant Engineer on 26-09-2016. He rejected the petition without quoting any valid reason or regulations and directed the appellant to remit the short assessed amount. So the appellant had approached the Hon'ble CGRF (SR) by filing a petition in No. 291/2016. The Forum dismissed the petition due to lack of merit, vide order dated 29-03-2017. 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 Kerala State Electricity Board supply, among that one site under Electrical section, Nedumangad with cons no. 1145474032313 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. 2,35,224/- on 30/08/2016 for the period from 01/2016 to 08/2016. The short assessment bill was issued based on an inspection conducted in the premises on 29/08/2016. During the inspection it was noticed that one phase of the meter was not recording consumption due to the missing of current from that phase to the meter. On detailed inspection, it was detected that the failure was due to the loose contact of one CT Terminal connected to the energy meter. A site mahazar has been prepared by the inspection authority at the site and the same was witnessed by the appellant's representative presented in the site. The appellant have not disputed the facts recorded in the "site mahazar.

Subsequently the Asst. Engineer, Electrical Section, Nedumangad issued a short assessment bill amounting to Rs. 2,35,224/- from Jan-16 to Aug-16. The bill was prepared by taken 50% of the recorded consumption from 1/2016 to 08/2016 on the assumption that the recorded consumption is only 2/3 of the actual consumption due to the loose contact of one CT Terminal in the energy meter.

The assumption that the recorded consumption was only 2/3 of the actual consumption is totally baseless and the period of assessment was fixed by merely depending on the dip in consumption without any other authentic records. Hence the short assessment made accordingly cannot be admitted.

It could be possible to assess the actual quantity of the energy escaped without metering and the period from which the anomaly was existed by downloading the memory of the meter. But it was not seen done by the responsible persons. Due to the loose connection of the CT Terminal as said by the Asst. Engineer in his letter dated 10/11/2016, missing of one phase current might not be for the whole time of the functioning of the meter. It can be confirmed by verifying the recorded consumption pattern from 01/2016 to 08/2016. Any Rules or Regulations in the Act for Supply Code is not permitting to reassess a consumer only based on the dip in consumption by assumption or imagination without any record or evidence.

In the above circumstances, the appellant had filed an objection against the erroneous short assessment bill before the Assistant Engineer, Electrical Section, Nedumangad. But the Assistant Engineer didn't consider any of the objections and directed to remit the bill. Aggrieved by this, the appellant had filed a petition before the Hon. CGRF Southern Region with OP No. 291/2016. But the Hon. Forum dismissed the case without considering the facts and grounds submitted by the appellant.

An inspection has been conducted in our premises on 29/08/2016 and a site mahazar was prepared. In the site mahazar, it is clearly recorded that the consumption symbol of two phases-are blinking and one star symbol was there in the display of the meter during the inspection time. Also recorded that the current in the first phase of the meter was seen as zero Amps and hence one phase of the three phase CT energy meter was not recording consumption. If the failure of the CT connection was from 01/2016 as assumed by the licensee, it could be easily found out by the Sub Engineer who had taken the monthly meter readings regularly. Since it was not reported by the Sub Engineer during the meter reading during the month of 08/2016 or before, the failure was between the date of meter reading for the month of 08/2016 and the inspection date of 29/08/2016. The meter reading is also designated as a primary inspection of the meter. Hence the missing or the failure of the one phase current was only between the last reading date and the inspection date. This fact was submitted before the Hon. CGRF, but the Hon. Forum was silent and not mentioned anything in the order released by them. So the appellant has requested to issue an order to revise the short assessment bill limiting the period for one month by taking the previous average consumption instead of taking the 50% of the recorded consumption.

On detailed inspection, it was detected that the failure of one phase current was due to the loose contact of the CT terminal connected to the energy meter. Due to the loose connection of the CT Terminal as said by the Assistant Engineer in his letter dated 10/11/2016, missing of one phase current might not be for the whole time of the functioning of the meter. It can be confirmed by verifying the recorded consumption pattern for the period of assessment made by the licensee from 01/2016 to 08/2016. The Hon. CGRF considered the above fact and the Forum noted in the order as "the Forum views that the short assessment bill issued during the period from 01/2016 to 08/2016 based on the consumption of previous three billing cycles". The meaning of the above statement of the Forum is not known from the above.

Since the failure of the one phase current in the meter was due to the loose connection of the terminal connection and the missing might not be for the whole time of functioning of the meter, the method of short assessment made by taking 50% of the recorded consumption in the meter is baseless, erroneous and hence to be cancelled.

It could be possible to assess the actual quantity of the energy escaped without metering and the period from which the anomaly was existed by downloading the memory of the meter. But it was not seen done by the responsible persons of the licensee and the period was fixed by assumption and imagination based on the consumption pattern. The recorded consumption from 01/2016 to 08/2016 varies from 4440 Units to 7162 Units. The recorded consumption from 1/2016 to 08/2016 is as follows:

01-16	4440
02-16	6472
03-16	5446
04-16	7162
05-16	6320
06-16	5780
07-16	5720
08-16	6180

From the above consumption pattern, it is very clear that the assumption of the licensee that only 2/3 of the consumption was recorded for the period from 01/2016 to 08/2016 is totally wrong. As stated by the Hon. CGRF in the order, the service connection is using for mobile tower with an almost steady consumption pattern. But the recorded consumption for the above period was varies from 4440 units to 7162 units.

Since the recorded consumption for the above period is varies from 4440 units to 7162 units, the method of short assessment made by the licensee by taking the 50% of the recorded consumption and the period of short assessment fixed based on the consumption pattern is erroneous and to be cancelled.

As per the regulation 152 of Kerala Electricity Supply code 2014 – 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 or 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 the provisions of section 126 of the Act or of 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.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest.

Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of Regulation 155 shall be considered. The regulation 155(8) says that for assessing the period of unauthorized use of electricity the following factors or any other evidence may be given due consideration.

- (i) Actual period from the date of commencement of supply to the date of inspection;
- (ii) Actual period from the date of replacement of component of metering system in which the evidence is detected to the date of inspection;
- (iii) Actual period from the date of previous checking of installation to date of inspection;
- (iv) Data recorded in the energy meter memory wherever available.

As per the above regulations, the period of assessment should be limited to the period of last checking of installation that is, the previous meter reading date to the date of inspection or based on the data recorded in the energy meter. In this case, the licensee failed to download the data recorded in the energy meter which was readily available and hence the period of assessment should be limited to the previous date of meter reading to the inspection date.

As per the Regulation 116 (1) and (2) of Supply Code, 2014, the licensee shall periodically inspect and check the meter and associated apparatus. If the meter is found defective, the licensee shall test it 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 present case, no abnormalities are recorded during the time of monthly meter reading and hence 'it can be easily proved that the failure of one phase current was only between the last reading date and the date of inspection.

Serious lapses and negligence are noticed in the above case from the part of the licensee people and the consumer is not liable for the same.

The Hon'ble CGRF not considered any of the above facts in the order released by them and hence it is hereby requested to the Hon. Electricity Ombudsman to cancel the erroneous order released by the Hon. CGRF and the short assessment made by assumption and imagination without taken necessary steps as per the Act and Code may be cancelled. Please issue necessary directions to the licensee to issue a new\ short assessment bill by limiting the period from the date of last meter reading to the date of inspection.

Arguments of the respondent:

Appellant is a Non-domestic Consumer bearing Consumer No. 1145474032313, and Tariff 6-F, providing passive infrastructure service to Telecommunication Service providers connected load is 39.7 kW. A short assessment bill amounting to Rs. 2,35,224/- has been issued to the Appellant towards the balance of current charge for the period from 1/2016 to 8/2016, since one phase of the Energy Meter was not recording

consumption due to loose contact of one terminal of C.T. connected to the Energy Meter, but the Energy Meter has been properly working.

This short assessment bill is issued on the basis of the inspection of the APTS wing on 29/08/2016 at the premises of the consumer no 1145474032313 under this Section and found that one phase of the energy meter was not recording consumption due to loose contact of CT terminal, but the energy meter has been properly working. This bill has been issued to the appellant by virtue of Rule 134(1), 152(1) and 152(3) of Kerala Electricity Supply Code, 2014.

During the inspection of the APTS wing loose contact in one phase of the Current Transformer attached to the Energy meter rectified by the qualified employee of the KSEB Ltd. in the presence of the staff of appellant's firm and thereafter the consumption of the Consumer is enhanced considerably. The Energy meter installed in appellant's premises is recorded only 2/3 of appellant's consumption from 01/2016 to 08/2016 is clearly proved beyond any doubt on the meter reading for the period from 08/2015 to 05/2017.

The short assessment bill is issued as per section 134(1), 152(1) & 152(3) of the Kerala Electricity Supply Code, 2014. This section provided that when the assessment of a consumer is shorter than the actual eligible amount payable by him and latter it is found out by audit or other modes the said amount shall be realised from the consumer by issuing short assessment bill with 30 days notice.

Hence the short assessment bill issued as per the provisions of law and it is just fair and reasonable and the appellant's contention is not maintainable. Monthly consumption of the consumer for the period from 08/2015 to 05/2017 is furnished below.

month	units	months	units	month	units	month	units
08-2015	8200	01-2016	4440	09-2016	7660	05-2017	8080
09-2015	9560	02-2016	6472	10-2016	8560		
10-2015	7660	03-2016	5446	11-2016	10760		
11-2015	8860	04-2016	7162	12-2016	8660		
12-2015	8147	05-2016	6320	01-2017	10400		
		06-2016	5780	02-2017	10800		
		07-2016	5720	03-2017	8240		
		08-2016	6180	04-2017	11260		

The appellant highlighted only one month consumption, i.e., 7162 units on 4/2016 but most of the consumption range during this period is from 4440 Units to 6472 units except that one month and the average consumption during the period is only 5940 units. Before 1/2016, the consumption is 8147 units on 12/2015 and 8860 units on 11/2015. After

rectification of the loose contact of the terminal of the C.T. Meter the consumption of the appellant enhanced to 7660 units on 9/2016, and 8560 units on 10/2016 and 10760 units on 11/2016. From all these consumptions of the appellant it is crystal clear that the consumption recorded during 1/16 to 8/16 is the 2/3 of the appellant's actual consumption. It means 1/3 of the consumption was not recorded for the said period and hence the short assessment bill issued by virtue of rule 134(1), 152(1) and 152(3) of the supply code 2014. Hence the short assessment bill is issued as per provisions of law and it is just fair and reasonable and the appellant's contention is not maintainable.

The Sub Engineer of the Section took the reading of every monthly consumer as his normal duty and he did not inspect the premises of the appellant at this time. The appellant's premises inspected only by the APTS on 29/08/2016 and the defect found out by them using equipments for checking power consumptions. The squad tried to download the memory of the meter but it was failed due to some technical problems. Hence the could not produce the details in the memory of the meter at the time of inspection.

The average monthly consumption of the consumer before disputed period is 8485 units and after disputed period is 9380 units. Hence the consumption of the appellant prior and after the period of defect (i.e. 1/16 to 8/16) was always more than 8400 units per month. The meter readings furnished in the table is the clear evidence of the actual consumption of the consumer except the disputed period of 1/16 to 8/16. From readings 1/16 to 8/16 it was convinced that only 2/3 of the actual consumption during undisputed period (i.e. prior and after the period of 1/16 to 8/16) was recorded on 1/16 to 8/16.

Hence the consumer actually paid only for the 2/3 of their actual consumption and they are liable to pay 1/3rd of the energy charges paid by them as they actually consumed the energy. Hence the contention of the appellant that missing of one phase current might not be for the whole time of the functioning of the meter is not correct and not maintainable.

As per section 155(8) (II), the assessing period can be considered as the actual period from which the instant meter installed to the date of inspection of the squad. Here the present meter installed on 10/12/2015 and the inspection was conducted by the squad on 29/08/2016, Hence the short assessment done for the period from 1/16 to 8/16 is just, fair and reasonable as per section 155(8) (ii). The connected load of the appellant is 39.7 kW and it provides infrastructure service to telecommunication service providers. Hence actual consumption of the appellant can be arrived as $39.7 \times 24 \times 30$ units at maximum level.

The appellant did not raise any petition or complaint about the working of the energy meter at any time as per rule 116(4), 120(1) of the Electricity Supply Code, 2014. After the rectification of CT meter appellant's consumption increased to 1720 units, 2620 units and 4820 units during

09/2016,10/2016 and 11/2016 respectively to that of the average consumption of the disputed period (5940 units). From aforesaid facts and circumstances it is crystal clear and convincing that the appellant's consumption recorded was only 2/3 of his actual consumption and 1/3 rd portion of their consumption was not recorded in the meter. Hence the short assessment bill amounting to Rs.235224/- issued for the same portion of consumed energy by the appellant. The APTS tried to download the memory of the meter at the time of inspection, but it was failed due to some technical problems. Then the meter data is downloaded after the inspection. The consumption pattern of other two consumers of the same firm showed that the consumption of the mobile towers are in constant.

Regulation 116(1) specified that the meter and allied equipments should be inspected by the licensee. And as per permission the APTS inspected the premises of the consumer with adequate equipments for inspection. And found that there was non-recording of consumption in one phase due to loose contact of one CT terminal connected to the Energy meter, but the Energy meter has been properly working. The sub engineer who normally taking reading, has not provided with equipments for inspection and he noted only the present reading in the PDA. Hence the contention of the appellant is baseless and not maintainable.

There is no negligence as the part of the licensee and as per the provisions of the Kerala Electricity supply code 2014 Sections 134(1), 152(1) and 152(23), the short assessment bill was given. By nature of Indian Contract Act 1872 " Doctrine of Quantum meruit" is a settled position in law. It means payment of value of service rendered. Hence the appellant is liable to pay the amount.

The Hon'ble C.G.R.F considered all the facts and circumstances of the case and dismissed the petition of the appellant. The order of the CGRF is just and fair. The contention of the appellant is not sustainable on materials. Hence it is prayed to set aside the appeal.

Analysis and Findings: -

The hearing of the case was conducted on 11-07-2017, in the Court hall of Kottarakkara, and the appellant was represented by Sri. M.Y. George and the respondent by the Assistant Engineer in charge of the Nedumangad Sub Division, Sri Vinod S.R. 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.

The appellant was served with a short assessment bill for Rs. 2,35,224/- towards the non recording of consumption in one phase of the 3 phase meter due to loose contact of the CT terminal for the period from 01/2016 to 08/2016, as per Regulations 134 (1), 152 (1) and 152 (3) of the Kerala Electricity Supply Code, 2014. The CGRF has observed that the error happened in metering due to the loose contact of the terminal and the consumer is liable to pay the amount as per the Regulation 152 of Kerala Electricity Supply Code 2014.

The appellant has contended that if the failure of the CT connection was from 01/2016 as assumed by the licensee, it could be easily find out by the Sub Engineer who had taken the monthly readings regularly. Since it was not reported by the Sub Engineer during the meter reading of 08/2016 or before, the failure was between the date of meter reading for the month of 08/2016 and the inspection date of 29/08/2016. Further the appellant has also argued that since the failure of one phase was due to loose contact of the CT terminal connected to the terminal, the missing of one phase current might not be for the whole time of the functioning of the meter. Another point of objection raised by the appellant is that it could be possible to assess the actual quantity of energy escaped without metering and the period from which the anomaly was existed by downloading the data from the memory of the meter. It was not done by the licensee and the period was fixed by assumption and imagination based on the consumption pattern.

Refuting the above contentions, the respondent has averred that the Sub Engineer of the Section took the reading of every monthly consumer as his normal duty and he did not inspect the premises of the appellant at this time, since he has not provided with equipments for inspection and he noted only the present reading in the PDA.

It is contended by the respondent that the APTS tried to download the memory of the meter at the time of inspection, but it was failed due to some technical problems.

Further the respondent argued that the average monthly consumption of the consumer before disputed period is 8485 units and after disputed period is 9380 units. Hence the consumption of the appellant prior and after the period of defect (i.e. 1/16 to 8/16) was always more than 8400 units per month and that of the average consumption of the disputed period is 5940 units. According to respondent, as per section 155(8) (II), the assessing period can be considered as the actual period from which the instant meter installed to the date of inspection of the squad. Here the present meter installed on 10/12/2015 and the inspection was conducted by the squad on 29/08/2016, hence the short assessment done for the period from 1/16 to 8/16 is just, fair and reasonable as per section 155(8) (ii).

The issue arising for consideration in this appeal is whether the period assessed and the quantum of current loss computed are in order and the

appellant is liable for the payment of short assessment for Rs. 2,35,224/- as per Regulation 152 of Supply Code, 2014.

Here in this case, the respondent declared the decrease in consumption during the months of dispute on the basis of the inspection conducted in the premises and based on the preceding and succeeding periods consumption. But he has admitted that the APTS failed to download the data from the meter. Though the consumption of the appellant for the month of 01/2016 was 4440 units, it was 6472 units, 7162 units and 6320 units for the months of 02/2016, 04/2016 and 05/2016 respectively. It is also found that the consumption of the appellant before and after the disputed period and during the disputed period is not in a consistent pattern.

From the site mahazar, it is revealed that the failure of one phase current was due to loose contact of the CT terminal connected to the terminal. It is an admitted fact that the missing of one phase current due to loose contact of the CT terminal might not be for the whole time of the functioning of the meter. The meter will record the time and date of tampers, and the same can be downloaded using MRI/Laptop and can be analyzed. Date of occurrence of CT open/bypass/short, voltage missing/low voltage/unbalance etc can easily be found out using downloaded data. Considering these facts, an assumption of missing of 1/3 consumption during the disputed period cannot be sustained.

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.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:

The Regulation 155 (8) says that for assessing the period the following factors or any other evidence may be given due consideration.

- (i) actual period from the date of commencement of supply to the date of inspection;
- (ii) actual period from the date of replacement of component of metering system in which the evidence is detected to the date of inspection;
- (iii) actual period from the date of previous checking of installation to date of inspection;
- (iv) data recorded in the energy meter memory wherever available.

Regulation 152 (2) of Supply Code, 2014 stipulates the procedure for billing in the case of inaccuracy of metering. 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 missing of current in one phase of the appellant's metering equipment in the appellant's premises was detected by the licensee during the inspection conducted on 29-08-2016 and the site mahazar 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 on the inspection date of 29-08-2016, but not confirmed the missing of one phase current at the rate of 1/3 from 01/2016 onwards.

Further this Authority is of the opinion that if the data was downloaded during the inspection of the metering system on 29-08-2016, the period of inaccuracy could have been detected. Moreover, if the respondent had to inspect the metering system soon after the recorded consumption falls to 4440 units for the month of January 2016, it can be easily detected the inaccuracy in the metering and to avoid the loss if any occurred to the licensee.

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.

There is no material to show that the respondent has conducted any detailed checking of the appellant's meter during the disputed period. The duration of non recording consumption due to 'loose contact' cannot be predicted and hence the period and method of assessment done is not sustained. 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. Considering the above facts, I am of the opinion that the short assessment bill is to be limited from the date of last meter reading to the date of inspection.

Decision

From the analysis done above and the conclusions arrived at, I take the following decisions.

From the conclusions arrived at as detailed above, I am fully convinced that the request of the appellant is reasonable and hence admitted. I decide that the order of the CGRF stands quashed. The short assessment bill amounting to Rs. 2,35,224/- issued to the appellant is set aside. The respondent is directed to reassess the consumption for the period in between the last meter reading date and the date of inspection on 29-08-2016 based on the average consumption from the three billing cycles from 09/2016 onwards and to revise the bill accordingly. The respondent shall issue the revised bill to the consumer with fifteen days time (due date) given for making the payment.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed as ordered and stands disposed of as such. No order on costs.

ELECTRICITY OMBUDSMAN

P/048/2017/_____ /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, Nedumangadu, Thiruvananthapuram

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.