

STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/051/2017
(Present: A.S. Dasappan)
Dated: 11th August 2017

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Anchal,
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 appellant's three phase service connection is 683 with tariff LT VI F which is coming under the jurisdiction of Electrical Section, Anchal West, Kollam. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the invoice dated 28-10-2016 directed the appellant to remit an amount of Rs. 18355/- being the short assessment based on the findings that the meter was faulty for the month of 02/2016. Against the short assessment bill, the appellant had approached the Hon'ble CGRF (SR) by filing a petition No. 300/2016. The Forum dismissed the petition due to lack of merit. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

- 1) The meter of the above said consumer number was declared as faulty during the month of 03/2016 and replaced on 04-04-2016. The monthly bill for the period of 03/2016 was issued for the previous six months average consumption of 3794 units instead of previous three months average consumption of 3273 units. As per the Regulation 125(1), 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. Hence the average billing done for the month of 03/2016 itself was excess and the excess amount to be refunded.
- 2) The meter of the above service connection was reported as faulty only during the month of 03/2016 and the monthly bills up to 02/2016 were issued for the actual consumption recorded in the meter and the bill amounts were remitted by the appellant. The status of the meter was recorded in the bill as working up to the month of 02/2016. Copies of the bills for the month of 02/2016 and 03/2016 are attached for perusal. Hence the short assessment bill issued by declaring the meter as faulty for the month of 02/2016 in a later stage without any support of the test report of the meter is baseless and hence not sustainable before the law.
- 3) 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 without testing the meter in an accredited or approved laboratory.
- 4) The licensee itself issued the monthly bills up to 02/2016 with the status of the 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 in a later stage, 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.
- 5) 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.

6) 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 bill on the basis of the 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 revisions shall be adjusted in the two subsequent bills. In the present case, the meter was not tested for declaring the same as sluggish/ faulty and the licensee declared arbitrarily that the meter was sluggish for the month of 02/2016 after around 8 months of time.

7) In the erroneous order released By the Hon. CGRF (Southern region) in this case, it is stated that the petitioner did not adduce any documents to prove reduction in consumption during 02/2016. But any regulations in the Supply Code demands to keep the records of the difference in consumption for the whole period of usage. The meter installed by the licensee is for measuring the actual consumption of the consumer and the billing is to be done based on the consumption recorded in the meter. Hence the order of the Hon. CGRF is erroneous and to be quashed.

Considering all the above facts the appellant requests to Electricity Ombudsman to set aside the erroneous order of the Hon. CGRF (South) and necessary directions may be given to the licensee for cancelling the short assessment bill issued illegally and for adjusting the excess amount collected during the month of 03/2016 by applying six months average consumption instead of three months average to the future bills.

Arguments of the respondent:

The service connection given vide con no- 683, under Electrical Section Anchal West is for a Mobile Communication Tower owned by M/s Indus Tower Ltd, with a connected load of 38900watts. The consumption details of consumer is as follows

Reading Date	Consumption Unit
01-09-2015	3390
10-10-2015	3719
01-11-2015	4268
01-12-2015	3509
01-01-2016	4362
01-02-2016	3516
01-03-2016	1940 - (50% dip in consumption)

01-04-2016	2197 (meter found faulty. Average 3794 unit charged. Meter changed on 04/04/2016)
01-05-2016	5646
01-06-2016	5811
01-07-2016	5271

On verification of the reading register it is seen that the consumption in 02/2016 was very low compared to the previous consumption (Around 50% decline in consumption is noticed during the month of 02/2016 when compared to the average consumption of the previous 3 billing cycles). The meter was tested with a test meter and found that the meter was not working properly. The meter declared faulty in 03/2016 and the faulty meter was changed on 04/04/2016. The consumption recorded in the test meter and in the existing meter from 01/04/2016 to 04/04/2016 are 400 units and 110 units respectively (Exhibit R1).

In this case it is very clear that the energy recorded in 02/2016 is seen less compared to the consumption recorded previously and after meter change. In this case the meter was gradually recording less consumption from 02/2016 and the meter was declared as faulty in 03/2016. It is seen that the actual consumption is not fully recorded in the meter in 02/2016. The petitioner did not produce any documents to prove reason for reduction in consumption during 02/2016.

Since the existing meter is declared as faulty, the bill for average consumption is demanded for the month 03/2016 as per regulation 125(1) of Kerala Electricity Supply Code 2014. The consumer has remitted the amount without any protest. After meter change good consumption is seen recorded. Copy of the meter reading register is attached (Exhibit R2). Therefore it is just and proper to revise the bill as per Regulation 125(1) of Kerala Electricity Supply Code 2014.

As per regulation 134(1) of Kerala Electricity Supply Code 2014, if it is established by review or otherwise, that it has undercharged the consumer, the licensee is allowed to recover the undercharged amount from the consumer by issuing a bill. Hence a short assessment bill for the month of 02/2016 was issued to the consumer. The bill details attached (Exhibit R3).

The short assessment bill is issued as per rules and regulations of Kerala Electricity Supply Code 2014.

Considering the above facts the Hon'ble State Electricity Ombudsman may dismiss this appeal.

Analysis and findings:

The hearing of the case was conducted on 27-07-2017 in the Court Hall of CGRF, Kottarakkara and Sri. M.Y. George represented for the appellant's side and Sri Anish K., Assistant Executive Engineer, Electrical Sub Division, Anchal and Sri. S. Kabeer, Senior Superintendent, Electrical Section, Anchal West 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 any testing of the meter was not done before declaring the meter as faulty. The finding of the Assessing Officer that the meter was faulty for the month of 02/2016 is 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 02/2016 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 for Rs.18355.00 to the appellant on the basis of average consumption of 3794 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 in 03/2016 and a lesser consumption was recorded during that period and average 3794 unit charged. It is pertinent to note that even without conducting any testing the appellant's meter, the respondent declared the meter as faulty for the previous period due to the reduction in consumption. 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 testing. There is no justification for issuing such a demand for a previous month of 02/2016 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 respondent's contention is that the meter showed decrease in consumption which might have been a result of meter becoming sluggish. It is found that the appellant was billed for an average consumption of 3794 units for the month in dispute and the appellant remitted the amount. Hence the argument of sluggishness for 02/2016 can not be proved conclusively without conducting testing of the meter. It is noted that the disputed energy meter of the appellant was tested, at the consumer's premises, by installing a good energy meter (Check meter) in tandem with the existing meter; so that both meters differs in the reading, consumed by the party. But the consumer has not convinced the 'test' done by the KSEB. The test being done on the consumer's premises and in his presence is more convincing than any other documentary evidence and would help the appellant to clear his doubts on the existing meter. However, in this case the test done by KSEB, did not convince the appellant, may be due to, carrying out the test by KSEB without insisting the presence of the consumer and preparation of a mahazar on the 'test' done. When the test is undertaken by KSEB on the consumer's meter, it is the best practice to prepare a mahazar, in the presence of the petitioner or his representative, recording the facts of, Check meter installed, the details of both meters with their seals, recording their initial reading etc on the first day and got it witnessed and then leave both meters in service for one weeks time, for joint working. Similarly, after informing the consumer, a final recording of

meter readings in his presence, would have cleared the doubts and the said mahazar so prepared will surely be a valid document before any Legal Forum. The statutory requirement of testing of the meter in an accredited lab 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 now 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 in 03/2016 and it was replaced on 04-04-2016 without conducting testing of the alleged faulty meter in an accredited lab. According to the respondent the monthly consumption shows enormous decrease in 02/2016. 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 02/2016 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

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. 18,355/- issued to the appellant is set aside. The respondent is directed to revise the bill for 3/2016 by taking the average consumption for 02/2016, 01/2016 and 12/2015 and 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

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P/051/2017/ _____ /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, Anchal, Kollam.

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.