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APPEAL PETITION NO. P/069/2017
(Present: A.S. Dasappan)
Dated: 21st 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, Kongad,
Palakkad

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 28074 having 40420 Watts connected load under LT VI F tariff and is under the jurisdiction of Electrical Section, Kongad. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 23-12-2016 directed the appellant to remit an amount of Rs. 73,161/- being the short assessment based on the findings that the meter was sluggish during the period from 06/2015 to 01/2016. An objection against the demand was filed before the Assistant Engineer and he did not allow the petition and rejected without quoting any valid reason or regulations.

So the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 171/2016-17. The Forum quashed the short assessment bill for Rs. 73,161/- and directed the respondent to reassess based on an average consumption of 3840 units for the period from 01-06-2015 to 20-10-2015 and 4541 units from 21-10-2015 to 21-01-2016 vide order dated 10-05-2017. 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, Kongad with cons no: 1165238028074 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. 73,161/- on 23-12-2016 (Exhibit A1) for the period from 01-06-2015 to 01-02-2016. Since the short assessment bill was issued only by imagination and totally illegal, the appellant had filed an objection against the bill before the Assistant Engineer, Electrical Section, Kongad vide letter dated 10-01-2017(Exhibit A2). But the Assistant Engineer not considered the petition and directed to remit the short assessment made illegally without mentioning anything about the objections vide letter dated 25-01/2017. (Exhibit A3). Then the appellant had approached the Hon. CGRF (NR) by filing the petition with OP No. 171/2016-17. (Exhibit A4). In the review of the petition, the Forum observed serious laxity from the part of the licensee in testing the meter whenever the meter showed less consumption compared to the earlier average consumption and in replacing the meter in time. Also the Forum observed that the licensee is permitted to issue bill on the basis of average consumption after changing the meter only if the particulars of previous consumption are not available. But the Hon. Forum by its erroneous order, the short assessment bill issued for Rs. 73,161/- is quashed and directed to issue a revised short assessment bill with an average consumption of 3840 units for the periods from 01-06-2015 to 20-10-2015 and 4541 units from 21-10-2015 to 21-01-2016 without any basis.

1) On verification of the records, the meter of the above service connection was declared as faulty during the month of 08/2015 and monthly bills were issued for the faulty meter period based on the previous six months average consumption instead of previous three months average up to the change of the faulty meter on 21-01-2016. The average consumption taken for the monthly bills from 08/2015 to 01/2016 was 3972 units instead of 3053 units ($2156+3158+3844/3 = 3053$) and the bills issued were paid. Since the regulation 125(1) of Supply Code, 2014 says that 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. Provided that the average shall be computed from the three billing cycles after the meter is replaced, if required

details pertaining to previous billing cycles are not available. The excess amount collected during the meter faulty period by applying wrong average (six months average instead of three months) may be refunded. The consumption recorded for the six months before the meter declared as faulty is as follows.

Month	Consumption		
07/2015	-	2156	
06/2015	-	3158	- Avg. 3053
05/2015	-	3844	
04/2015	-	4519	
03/2015	-	5142	
02/2015	-	5010	

2) The meter of the above service connection was declared as faulty during the month of 08/2015 and the monthly bill for the month up to 07/2015 were issued for the actual consumption recorded in the meter and the bill amount was remitted. The status of the meter was recorded in the bill as working. Copy of the bills for the month of 07/2015, 08/2015 and 09/2015 are attached (Exhibit A5 a/b & c). 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) 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.

4) The licensee has not followed the steps as per the regulations in the case of faulty meter. 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.

Provided that the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to the previous billing cycles are not available.

Regulation 125(2) says that 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 defective or damaged meter.

In the present case previous average of faulty meter period is available and already billed based on the average consumption in the faulty meter

period. Hence the assessment as per the average of the succeeding months after the replacement of the faulty meter is against the regulations and not sustainable. In any case it is not known that the licensee revised the average bills in the case of low consumption recorded after the replacement of the faulty meter. The licensee is not permitted to reassess a consumer for the faulty meter period based on the changes in the consumption pattern after the replacement of the faulty meter.

5) The Assistant Engineer himself admitted in his reply letter dated 25-01-17 (Exhibit A3) that the meter was declared as faulty only during the month of 08/2015. Hence the re assessment for the period previous to the meter declared as faulty is baseless and not sustainable.

6) The KSEB Limited itself vide circular dated 25-02-2016 directed to follow the regulations concerned for the assessment of faulty meter period (Exhibit A6). In the above circular it is directed to assess a consumer for the faulty meter period as per the previous three months average consumption immediately preceding the date of the meter detected or reported faulty. The assessment as per the average fixed as above shall be continued only for a maximum period of two billing cycles during which time the faulty meter shall replace with a correct meter. In the present case the meter declared as faulty during the month of 08/2015 and replaced on 21-10-2015 with a defective meter and again the meter was replaced on 21-10-2016.

7) The licensee is permitted to recover the under charged bill as per Regulation 134 of KESC 2014 and it says that if the licensee establishes either by review or otherwise that it has undercharged the consumer, the licensee may recover the amount from the consumer by issuing a bill and such cases at least 30 days shall be given to the consumer for making payment of the bill. But for the above, assumption or imagination is not permitted to establish the under charged or over charged bills.

8) In the order of the Hon. CGRF for the above case, the Forum viewed that "testing of the meter is not seen conducted by the licensee when variation of consumption was occurred and testing of the defective meter was also not done as per regulation 116(2) of KESC 2014. But the Hon. Forum even viewed the above facts, order was issued in favour of the licensee and hence it is seems to be an erroneous order.

Considering all the above facts the appellant hereby prays to this Authority for the following reliefs.

1. To quash the erroneous order issued by the Hon. CGRF.
2. To cancel the short assessment bill issued illegally.
3. The excess amount collected during the faulty meter period of 08/2015 to 02/2016 by applying six months average consumption instead of three

months as per the regulation 125(1) of Supply Code, 2014 and KSEBL Circular dated 25-02-2016 may be refunded.

Arguments of the respondent:

Consumer No. 1165238028074 in the name of Arun R Chandran, Authorised Signatory, M/s. Indus Towers Ltd, Kochi is a three phase Low Tension consumer under the tariff LT VI F. The power connection is being used for mobile tower for which continuous supply of electricity is needed. The connection is under Electrical Section, Kongad. It is submitted that the meter of the consumer became faulty during the month of 7/2015. The faulty meter was replaced with a meter on 21-10-2015. But the replaced meter which was included in the "damaged meters" identified the company (SCM 35) became faulty immediately. This meter was replaced by a good meter on 21-01-2016. For the period from 7/2015 to 1/2016 the consumer was undercharged by an average amount obtained from taking the readings prior to 7/2015 which is a period when the meter was faulty and showed decreased reading.

Hence the appellant was undercharged for the above period and as per Regulation 134 of Kerala Electricity Supply Code, 2014, the licensee is authorised to collect the amount so undercharged. As per Section 134 as undercharged bill for an amount of Rs. 73,161/- was issued to the consumer on 23-12-.2016. Regulation 134 is reproduced below.

134. Under charged bills and over charged bills.- (1) If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.

(2) If, after payment of any bill, it is established that the licensee has overcharged the consumer, the excess amount shall be refunded to the consumer with interest at bank rate as on the date of remittance of such excess amount.

3) The licensee may refund such overcharged amount along with interest at bank rate as on the date of remittance of, such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque.

As per the Meter Reading Register, the consumption for the period from 1/2014 to 1/2017 is furnished below.

Month	Consumption	Month	Consumption
1/2014	4310	8/2015	3972
2/2014	4544	9/2015	3972
3/2014	4458	10/2015	3972
4/2014	4474	11/2015	3972
5/2014	4696	12/2015	3972
6/2014	4670	1/2016	3972
7/2014	4269	2/2016	4333
8/2014	4630	3/2016	4937
9/2014	5089	4/2016	4051
10/2014	3434	5/2016	4636
11/2014	4508	6/2016	4305
12/2014	4440	7/2016	4110
1/2015	3960	8/2016	5035
2/2015	5010	9/2016	4916
3/2015	5142	10/2016	6182
4/2015	4519	11/2016	5053
5/2015	3844	12/2016	5404
6/2015	3158	1/2017	6070
7/2015	2156		

The consumption for the preceding months (starting from 4/2015) to the replacement of meter showed decrease in consumption which might have been a result of meter becoming faulty. From the above table it can be seen that the consumption has never gone below the average value of 3972 used for billing for the period from 8/2015 to 1/2016 except on one or two occasions in a period of 37 months. The average of 3972 was obtained by taking average {of the months 2/2015 to 7/2015. This average is very less when the consumption for the period from 1/2014 to 1/2017 is taken into account. Hence the period from 6/2015 to 12/2015 was under charged. This can be assured from the above table that the consumption recorded in 7/2015 (for the month of 6/15) was only 2156 units i.e. 1000 units lesser than the immediate previous consumption. Hence an average taken on the basis of this reading is false and away from reality.

In order to prepare the short assessment bill under section 134 the average for the period from 3/2016 to 5/2016 was taken. The difference between the average thus obtained (only 4541 units) and the billed units were undercharged and hence issued as a short assessment bill. But the above table, it can be seen that the consumption has gone beyond this average on many of the occasions.

It is submitted further that no evidence, was furnished by the consumer about conditions of working and occupancy of the concerned premises during the said period which might have had a bearing on energy consumption for computing the average. Moreover, the power connection was given to a mobile tower for which continuous supply of electricity was needed and hence the Proviso regarding the occupancy of the premises has no effect on computing the average.

It is further submitted that after the meter was replaced, the consumption of the consumer has gone high again. The connected load of the consumer always remained constant from the date of connection. Without increase in load, the consumption would not change and hence the contention of these Respondents that the low consumption during the period before the meter was found faulty is due to defect in meter.

Besides, as per Regulation 152 of the Kerala Electricity Supply Code 2014, the inaccuracy in metering can be short assessed and realised from the consumer under normal tariff applicable to the period during which such anomalies persisted Regulation 152 is reproduced below:

152. 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 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 realised 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 realised 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:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.

(4) The consumer may be given instalment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of instalment.

Hence as per Regulation 152 also, this Respondents are authorised to collect the amount short assessed due to anomalies attributable to the licensee including inaccuracy in metering.

It is submitted that the short assessment was made only at a single rate and there is no penalisation. The assessment was made for the energy which was escaped recording in the meter through the defect of the meter. From the consumption pattern of the consumer, it can be understood that the meter was sluggish before becoming faulty. The billing was done as per the Statutory Provisions i.e. Regulation 134 and 152 of Supply Code, 2014 of the Kerala State Electricity Regulatory Commission.

Aggrieved by the short assessment bill, the appellant approached the Hon'ble CGRF, Northern Region, Kozhikode by filing OP No. 171/2016-17. The Hon'ble Forum on analysis found that the bill has to be revised by taking an average consumption of 3840 units for the period from 01-06-2015 to 20-10-2015 and 4541 units from 21-10-2015 to 21-01-2016. Aggrieved by the orders of the Hon'ble Forum, this Appeal is filed.

The contention of the appellant is false, fictitious and frivolous. The argument of the appellant that averages taken for assessment as not correct is not sustainable. The period preceding the date of changing meter is the faulty period and hence average cannot be calculated using the said period. This is quite evident from the reading taken from the replaced meter. Even though the meter showed lesser reading during the preceding months, replaced one showed good reading during the succeeding months. From this pattern, it is clear that the meter was faulty during the preceding months and perfectly working after the meter is replaced.

Hence it is submitted that in the light of the above and other pleadings which may be submitted at the time of hearing, the Honourable Forum may dismiss the Petition in toto with costs to these Respondents.

Analysis and findings:

The hearing of the case was conducted on 08-08-2017 in the Court Hall of CGRF, Kozhikode and Sri. M.Y. George represented for the appellant's side and Sri M. Muralidharan, Assistant Executive Engineer of Electrical Sub Division, Kongad and Sri Vipin M, Nodal Officer (Litigation), Palakkad 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 01-06-2015 to 01-02-2016 after a period of 1 year 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 June 2015 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 Regulations 125(3), 134 and 152 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. 73,161/-to the appellant after reassessing on the basis of average consumption of 4541 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 06/2015 to 02/2016 and a lesser consumption was recorded during that period. 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 21-10-2015 and further on 21-01-2016.

Regulation 125 of Supply Code, 2014 stipulates the procedure for billing in the case of defective or damaged meter. **In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of meter being found or reported defective.**

Provided that the average shall be computed from the 3 billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. **Regulation 115 (9) says that in the case the meter is found to be faulty, revision of bill on the basis of test report shall be done for a maximum period of 6 months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in two subsequent bills.** Here in this case, the respondent declared the meter as faulty that too even without conducting any checking. There is no justification for issuing such a demand for a previous period from 06/2015 to 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 assessment made in this case is relying on succeeding month's consumption which was made after a lapse of 1 year. The respondent's contention is that the meter showed decrease in consumption which might have been a result of meter becoming sluggish. The argument of sluggishness cannot be proved conclusively without conducting testing of the meter. 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. It is pertinent to note that average of the previous billing period from 12/2013 to 5/2014 were fixed, bills were issued and payments made accordingly for the meter faulty period by 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 from 06/2015 and it was replaced only on 21-10-2015 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 06/2015 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.

The appellant has argued that the meter of the above service connection was declared as faulty during the month of 08/2015 and monthly bills were issued for the faulty meter period based on the previous six months average consumption instead of previous three months average up to the change of the faulty meter on 21-01-2016 and the excess amount collected during the meter faulty period by applying wrong average (six months average instead of three months) may be refunded. The average consumption for the period from 01-06-2015 to 21-01-2016 has to be reassessed with an average consumption of 3840 units instead of average of 3972 units assessed.

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 06/2015 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 conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 73,161/- issued to the appellant. The respondent is directed to revise the bills for the consumption of the period from 01-06-2015 to 21-01-2016 by taking an average consumption of 3840 units and issue the revised bill to the consumer within fifteen days.

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. The order of CGRF in OP No. 171/2016-17 dated 10-05-2017 is modified to this extent. No order on costs.

ELECTRICITY OMBUDSMAN

P/069/2017/ _____ /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, Kongad, Palakkad.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Gandhi Road, Kozhikode