

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/023/2018
(Present: A.S. Dasappan)
Dated: 13th June 2018

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Iritty,
Kannur

ORDER

Background of the case:

The appellant represents M/s Indus Towers Ltd., a company providing passive infra structure service to telecommunication providers. The appellant's three phase service connection no. 7772 under tariff LT VII A was effected on 23-07-2008 under the jurisdiction of Electrical Section, Edoor. Now the tariff of the appellant is under LT VIF. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the invoice dated 28-06-2016 directed the appellant to remit an amount of Rs. 29,866/- being the short assessment for the period from 05/2009 to 08/2009 based on the findings of Regional Audit report. Against the short assessment bill, the appellant had approached the CGRF, Kozhikode by filing a petition No. 160/2017-18. The Forum dismissed the petition vide order dated 17-03-2018. Aggrieved against this, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant:

The appellant has more than 6000 own Tower sites all over Kerala with KSEB supply, among that, one site under Electrical Section, Edoor with cons no. 7772 and paying current charges as per their bills regularly without any dues or delay. The appellant had filed an objection before the Assistant

Engineer, Electrical Section, Edoor vide letter dated 26/07/2016 against the short assessment bill amounting to Rs. 29,886/- dated 28/06/2016 for the period from 05/2009 to 08/2009. But the Assistant Engineer not considered the objections and directed to pay the bill issued illegally vide letter dated 07/11/2017. Aggrieved by this, the appellant had filed petition no. 160/2017-18 before the CGRF, Northern Region, Kozhikode which was not allowed by the CGRF.

Since the case pertains to the period of 05/2009 to 08/2009 and more than 8 years back, the appellant has no details to verify the consumption details and the billing details for that period and hence with the available records, the following facts were revealed.

The service connection was effected on 23/07/2008 and the billing was continued up to 03/2009 based on the actual meter reading and consumption recorded in the meter. The meter was declared as faulty during the month of 05/2009 and seen replaced on 27/07/2009. The faulty meter period was assessed for the previous average consumption as per the concerned regulations in the terms and Conditions of Supply 2005 and the bills issued were remitted without any objection. Then after 8 years of time, the assessment on the basis that the meter might have been faulty or sluggish without any test report of the meter is totally baseless and not sustainable before the Law. On further verification, an illegal short assessment was seen issued during the month of 04/2009 for the period from 01/2009 to 03/2009 based on the above stated imagination and the bill was already remitted. Since the short assessment issued was illegal the amount paid towards the illegal short assessment bill should be refunded.

As per the section 56(2) of the Indian Electricity Act 2003 and the connected regulation 136(3) in the Supply Code 2014, the assessment prior to the period of two years is not sustainable. The section 56(2) of the act says, "notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after a period of two years, from the date when such sum first due unless such sum has been shown continuously as recoverable as arrear for electricity supplied and the licensee shall be cut off the supply of the electricity.

Any rules or regulations in the Electricity Act or Code is not supporting to re assess 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 of 8 years without any evidence or test report of the meter.

The consumption pattern of the above service connection from the date of connection 07/2008 to 07/2010 is as follows.

Month	Consumption	Remarks
09/2008	2715	
11/2008	3129	
01/2009	923	
03/2009	6	
05/2009	0	Meter faulty - Average 1352
07/2009	1352	Average
09/2009	2698	Meter changed on 27/07/2009
11/2009	3086	
01/2010	3628	
04/2010	693	
05/2010	1452	
06/2010	1271	
07/2010	1530	

From the above consumption pattern, the low consumption record is repeated for the month of 04/2010 also. Since the assessment period is 05/2009 to 08/2009, the appellant have no records to verify the reason for the variation of the consumption.

The meter was declared as faulty only during the month of 05/2009 and the billing up to the month of 03/2009 (Bi-monthly bill) were done based on the actual consumption recorded in the meter with the status of the meter as working. The short assessment made based on the average of the period of two billing cycles of 09/2008 and 11/2008 without considering the consumption for the period of 01/2009 and 03/2009. But the Regulation 19(2) of the Terms and conditions of Supply 2005, in the case of non recording and malfunctioning of the meter, supplier is authorized to issue bill on the basis of previous 6 months' average consumption. Hence the short assessment made without any basis for the above period is illegal.

The CGRF observed that the licensee issued the short assessment bill after a lapse of 8 years and the Forum also found that the short assessment bill prepared is based on the average consumption of two spot bills instead of 3 spot bills. Accordingly, the average unit to be billed for the meter faulty period is 2256 units. Hence, it is also against the Regulations prevailed at that period. But the Forum by its erroneous order, the short assessment bill made based on the average consumption of two bimonthly spot bills is upheld.

Considering all the above facts, the appellant requests to admit the appeal petition, to set aside the erroneous order of the Consumer Grievance Redressal Forum and to cancel the short assessment bill issued illegally by the

licensee and to refund of excess amount collected during the month of 04/2009 towards illegal short assessment.

Arguments of the respondent:

A short assessment bill for Rs.29886/-was served to the consumer for the period 5/2009 to 8/2009 during energy meter faulty period, on 28.06.2016 as per the audit report of Regional Audit Officer.

Soon after effecting service connection to M/s Indus Towers Ltd., meter started recording lower than actual consumption and finally it became faulty. From the consumption pattern of consumer no. 7772, it is clearly evident that the meter has started recording lower than the actual consumption.

Month &	Consumption	Remarks
09-2008	2715	
11-2008	3129	
01-2009	923	
03-2009	6	
05-2009	0	Meter declared faulty and billed for average of 1352 units (2715+3129+923+0)/5= 1352
07-2009	1352	Av
09-2009	2698	Meter changed on 27.07.2009 with IR=7. Reading as on 4.8.2009 was 203 for 8 days

The following is the consumption details after the meter replacement

11-2009	3086	
01-2010	3628	
03-2010	3047	Switched to monthly billing
04-2010	693	Connected load changed from 7420 W to 22,000 W on 24.3.2010
05-2010	1452	
06-2010	1271	
07-2010	1530	
09-2010	1493	
10-2010	1552	
11-2010	1530	
12-2010	1547	
01-2011	1533	
02-2011	1677	
03-2011	1613	
05-2011	1460	
06-2011	1578	
07-2011	1339	

08-2011	1482	
09-2011	1772	
10-2011	1600	
11-2011	2456	
12-2011	1913	
01-2012	2778	
02-2012	1941	
03-2012	1884	

From the consumption pattern of the consumer, it is clearly evident that average consumption assessed is not right. Average consumption during the meter faulty period was taken 1352 Units from 3/2009 to 8/2009 till the meter replacement on 27.7.2009 with IR as 7. Reading on 4.8.2009 was 203 Units for eight days. It is clearly evident from the above facts and from the consumption pattern of the petitioner after replacement of the meter that the meter was faulty during the period 12/2008 to 7/2009. The same can be justified from the connected load of the consumer also. It may be recalled that the consumer is engaged in providing passive infra structure service to telecommunication service providers. Consumer base of telecommunication service providers are increasing day by day.

The petitioner was served with a short assessment bill from the month of 1/2009 to 3/2009 based on average consumption. Average consumption for the meter faulty period was taken from healthy average consumption (i.e., $(2715+3129)/2=2922$) for 5/2009 to 7/2009 billing cycle.

The Rules pertain to this assessment period is Kerala Electricity Supply Code 2005 and KSEB Terms and Conditions of Supply 2005. As per regulation 19(2) of the Supply Code 2005 and 33(2) of Terms and Conditions of Supply, in the case of non-recording or malfunctioning of meter, supplier (KSEBL) is authorized to issue bill on the basis of average consumption. The consumer has enhanced the load from 7420 to 22000W on 24.3.2010 and for load enhancement, shutdown is essential hence a dip in consumption for 4/2010. Hence this short assessment is genuine and justifiable.

Analysis and Findings

The hearing of the case was conducted on 29-05-2018, in the office of the State Electricity Ombudsman, Kochi 24, and the appellant was represented by Sri. M.Y. George, and the respondent by Sri. Biju M.T., Assistant Executive Engineer, Iritty Electrical Sub Division 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 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 Regional Audit Officer that the meter was sluggish during the period from 12/2008 to 07/2009 after a period of eight years are only an imagination and hence the short assessment bill is not sustainable. On the other hand the respondent argued that the consumption pattern confirmed that the meter became sluggish from 12/2008 onwards. So, average energy consumption was arrived based on the healthy average consumption for two bi-months before the meter faulty period and a short assessment bill was issued, on the basis of audit report.

The point to be decided in this case is as to whether the issuance of short assessment bill dated 28-06-2016 for Rs. 29886/- to the appellant after reassessing on the basis of average consumption of 2922 units bimonthly is in order or not?

On going through the records it can be seen that the respondent has issued bimonthly bills based on the recorded consumption/average 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 01-01-2009 to 27-07-2009. It is the responsibility of the respondent that he had to test the meter when the consumption became 923 units and confirmed the sluggishness if any.

In this case, the respondent declared the meter as faulty in 05/2009 and billed for average of 1352 units for the period from 01-01-2009 to 27-07-2009 and the meter was replaced on 27-07-2009 without conducting an inspection or testing of the alleged faulty meter in an accredited lab when the meter starts recording low consumption. Even the meter starts recording 'zero', the billing is seen done declaring the meter as 'SF' (suspected faulty). Later a short assessment bill issued for the months from 01/2009 to 03/2009 taking the average as 2922 units and the appellant remitted the revised amount. The respondent assumed that the meter is sluggish from the month of 11/2008 onwards and not taken 923 units for computing the previous average. It is here relevant to note that the status of the meter was recorded in the bills as working up to the month of 03/2009. During the periods from 24-01-2009 to 18-03-2009, 18-03-2009 to 19-05-2009 and 19-05-2009 to 27-07-2009, the consumption recorded in the meter was 6 units and zero units respectively. As per the rules existed during the period, in the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the previous six months immediately preceding 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.

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 11/2008 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 during the disputed period from 11/2008 to 12/2008. But it is found from the consumption pattern of the appellant after 03/2010, his consumption was not increased highly even though the connected load changed from 7420 W to 22,000 W. 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. The respondent's version is that the bills of 05/2009 and 07/2009 were prepared in the wrong average of 1352 units. The appellant argues that the bills were issued during the faulty period from 01/2009 based on the previous four months' average consumption is illegal as per regulation 19(2) of the Supply Code 2005 and 33(2) of Terms and Conditions of Supply.

The date of connection to the premises is 23-07-2008 and consumption up to 24-01-2009 is 6778 units deducting IR of the energy meter when the connection is given the IR is 11 units and hence the consumption is 6767 for 6 months from 23-07-2008 to 24-01-2009. The bimonthly average from 23-07-2008 to 24-01-2009 (for 6 months) is 2255 units. The consumption 923 units from 22-11-2008 to 24-01-2009 can not be exempted for arriving the above average as the meter was not declared as faulty after conducting any inspection or testing. Hence it is proper to revise the bills for 1/2009 to 27-07-2009 taking the bimonthly average of 2255 units.

The findings of the Regional Audit Officer that the sluggishness of the meter for the period from 11/2008 is not based on any conclusive proof and hence not acceptable and justifiable. The appellant was already billed taking an average of 1352 units. Further a short assessment bill was seen issued after a period of 8 years. The CGRF has ordered to take the average consumption of the previous 4 months prior to 11/2008 and this will come to 2922 units per bi-month. But as per rules, the average of previous six months has to be taken to arrive at the true average. Hence I conclude that the consumption upto 01/09 shall also be reckoned for arriving at the true average consumption. Incorporating the said consumption up to 01/09, the true average energy consumption, taking the previous six months shall be 2255 units. These findings corroborate the method of assessment of 2255 units bimonthly as reasonable and justifiable.

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. 29866/- issued to the appellant is set aside. The respondent is directed to reassess the consumption for the period from 24-01-2009 to 27-07-2009 based on the average consumption of 2255 units bimonthly 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/023/2018/ _____ /Dated: _____

Delivered to:

1. Sri Arun R Chandran, Energy Head, Indus Towers Ltd., Palarivattom, Ernakulum
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Iritty, Kannur

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