

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/044/2018
(Present: A.S. Dasappan)
Dated: 27th September 2018

Appellant : Sri. Narayanan K.,
Energy Head,
Indus Towers Ltd.,
Palarivattom,
Ernakulam

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd, Vandiperiyar,
Idukki

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 9882 with tariff LT VI F which is coming under the jurisdiction of Electrical Section, Kumili, Idukki. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the invoice dated 16-08-2017 directed the appellant to remit an amount of Rs. 59192/- being the short assessment based on the findings that the meter was faulty for the period from 08/2016 to 12/2016. An objection against the demand was filed before the Assistant Engineer on 17-11-2017. He rejected the petition without quoting any valid reason or regulations and directed the appellant to remit the short assessed amount. Against the short assessment bill, the appellant had approached the CGRF (CR) Ernakulam by filing a petition No. 130/2017-18. The Forum disposed of the petition directing to revise the bill based on the average of the 3 billing cycles after the meter replacement, vide order dated 19-06-2018. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

1. The meter of the service connection was declared as faulty during the month of 12/2016 and the monthly bill for the period from 12/2016 to 1/2017 were issued for the previous average consumption and the bills were paid by the appellant. The faulty meter was seen replaced on 16/12/2016.

2. The bill for the month of 11/2016 was issued for zero consumption and the bill for the period of 12/2016 to 01/2017 was issued for the previous average consumption by declaring the meter as faulty. The billing up to the month of 10/2016 was issued as per the actual consumption recorded in the meter with the status of the meter as working. Once the billing was done for the actual consumption recorded in the meter with status of the meter as working and after a long period, short assessment made by declaring the meter was sluggish without any test report of the meter is not sustainable as per the prevailing regulations. If there was any sluggishness of the meter, it could be identified by the meter readers by testing the meter at the proper time when the consumption was shown low as compared to the previous period. But no one bothered to check the conditions of the meter even recorded zero consumption during the month of 11/2016 and after a long time, the short assessment made by imagination and assumption that the meter might had been sluggish for that period is not sustainable.

The meter reading and consumption of the above connection from 04/2016 to 04/2017 is as follows.

Month	FR	IR	Consumption	Remarks	
04-16	130440	128650	1790	Average 1108 Units	meter working
05-16	131750	130440	1310		"
06-16	132940	131750	1190		"
07-16	134925	132940	1985		"
08-16	135441	134925	516		"
09-16	136106	135441	665		"
10-16	136412	136106	306		"
11-16	136412	136412	0		"
12-16	136412	136412	324		Mf Avg.
01-17	340		502		Mc-16/12/16
02-17	1480	340	1140	Average after MC 1122 units	Meter working
03-17	2655	1480	1175		"
04-17	3705	2655	1050		"

From the above meter reading and consumption statement, the average consumption before and after the meter replacement is more or less same. The

consumption from 04/2016 to 10/2016 varies from 306 units to 1985 units with an average of 1108 units. The so called healthy period also the consumption is varying from 1190 units to 1985 units. The CGRF found out in its erroneous order that the monthly consumption pattern for the operation of the mobile towers is more or less same. But from the above meter reading statement this finding is not factual. But the finding of the forum that the average consumption is always more than 1000 units is correct and agreed.

3. Any rules or regulations in the Electricity Act or Electricity Supply Code is not permitting to declare a meter as faulty/sluggish based on dip in consumption in a previous period without testing the meter in an accredited or approved laboratory and the reassessment. In this case, the licensee issued the short assessment bill on 16/08/2017 with the assumption that, since the dip in consumption from 08/2016 to 12/2016, the meter might had been sluggish. This is not legal and sustainable as per the regulations. .

4. The Regulation 116(2) of Electricity Supply Code 2014 says that, 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.

5. 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. 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. In the instant case, the meter was not declared as faulty for the period of short assessment and hence the short assessment is not sustainable.

The appellant prays to set aside the erroneous order of the Consumer Grievance Redressal Forum and to cancel the illegal short assessment bill.

Arguments of the respondent:

The appellant is a Cellular Tower under Electrical Section, Kumily having connected Load of 21680 watts. The date of connection of the consumer is 17.03.2006. The Audit team of Kerala State Electricity Board, Regional Audit Office, Thodupuzha has verified the consumption pattern of the Consumer No.1157087009017 and found that the energy meter of the consumer was declared faulty on 1/12/2016 but sluggish reading during 08/2016 to 12/2016.

As per the findings of the Regional Audit Officer, Thodupuzha a short assessment bill was issued as per Regulations 134 of Kerala Electricity Supply Code, 2014 to the consumer based on the average consumption of the previous period of sluggish reading and meter faulty. Hence short assessment bill had been issued as under: - Con. No 1157087009017 for Rs 59192/- vide Letter No, DB/17- 18/ dated 16.08.2017.

The appellant's firm is maintaining a good relationship with the KSEBL office at Kumily. The short assessment bills were issued through the agent of the appellant after narrating all the details, accepted on 26.08.2017. Disconnection Notice as per sec.56 of the Electricity Act,2003 has been issued from this office vide No. BB/KUMULY/17-18 dated 24.10.2017 which was accepted by the agent of the consumer on 30 10 2017.

Furthermore it is submitted that the bill so issued is not a penal bill, but it is a short assessment bill. As the meter of the connection is faulty it is billed with average consumption. The energy charges already remitted by the consumer have been deducted from the assessment bill. The bill amount is a loss for KSEBL that has to be paid by the consumer.

Analysis and findings:

The hearing of the case was conducted on 18-09-2018 in the office of the Electricity Ombudsman, Edappally, Kochi and Sri. M.Y. George represented for the appellant's side and Sri Biju C.M., Assistant Engineer, Electrical Section, Kumily 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 from 08/2016 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 08/2016 itself. So, average energy consumption was arrived and issued demand as contemplated in Regulations. 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.59192.00 to the appellant on the basis of average consumption of 1502 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 08/2016 and a lesser consumption was recorded during that period and average 1502 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 period of 08/2016 to 12/2016 as there is no allegation of any wilful 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 1502 units for the months in dispute. Hence the argument of sluggishness from 08/2016

can not be proved conclusively without conducting testing of the meter. It is noted that the disputed energy meter of the appellant was not 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. 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. When the test is undertaken by KSEBL 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 08/2016 and it was replaced on 16-12-2016 without conducting testing of the alleged faulty meter in an accredited lab. According to the respondent the monthly consumption shows enormous decrease from 08/2016. 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 08/2016 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. There is no consumption recorded in the meter for the months of 10/2016, 11/2016 and up to 16/12/2016 and hence the appellant shall be billed for the above period based on the average consumption for the months of 01/2017, 02/2017 and 03/2017.

Decision

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 59192/- issued to the appellant. The respondent is directed to revise the bills for the period of unrecorded consumption for 10/2016, 11/2016 and up to 16/12/2016 by taking an average consumption of 1122 units i.e. the average consumption of 01/2017, 02/2017 and 03/2017 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 appellant is found having some merits and is allowed to the extent ordered. The order of CGRF, Central Range in Petition No. OP/130/2017-18/dated 19-06-2018 is modified to this extent. No order on costs.

ELECTRICITY OMBUDSMAN

P/044/2018/ _____ /Dated: _____

Delivered to:

1. Sri Narayanan K., Energy Head, Indus Towers Ltd., Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Vandiperiyar, Idukki

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.