

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/045/2018
(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, Kumily, 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. 27856/- being the short assessment based on the findings that the meter was faulty for the period from 04/2014 to 05/2014 and 07/2015 to 12/2015. 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. 131/2017-18. The Forum disposed of the petition by quashing the bill for the month of 04/2014 and 05/2014 and also directed the respondent to issue the revised bill for the period from 07/3015 to 12/2015 for the actual energy consumption

of @ 2777 units/month, vide order dated 30-06-2018. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant has submitted the following contentions in his appeal petition.

The monthly bills for the period of 04/2014 to 05/2014 were issued for an average consumption of 2307 units without any remarks and the billing was done for the month of 06/2014 based on the final reading of the meter with the status of the meter as working. The reason for "the average billing for the period 04/2015 to 05/2015 is not known from the meter readings and the meter was seen replaced without any remarks on 23/06/2014 with final reading as 90850.

2) The meter reading and consumption details for the period from 01/2014 to 10/2014 are as follows.

Month	Final Reading	Initial Reading	Units	Remarks
01-14	77160	71970	2595	DL 12/2013
02-14	80030	77160	2860	
03-14	85562	80030	5532	Abnormal consumption, reading may be erroneous
04-14	58590	85562	2307	Reading mistake avg. billed
05-14	87990	58590	2307	Avg with out any remarks.
06-14	90850	87990	2937	Billed based on the final reading.
07-14	440		1670	MC on 23/06/14 without any remarks
08-14	2760	440	2320	
09-14	5760	2760	3000	
10-14	8930	5760	3170	

From the above meter reading records, it can be ascertained that the meter readings from the month of 03/2014 onwards was not correct. The consumption recorded in the meter for the period from 03/2014 to 06/2014 in the meter was 10820 units (90850-80030=10820), with an average consumption of 2705 units, but the billing was done for the same period was for 13083 units (5532+2307+2307+2937=13083). Hence, the short assessment for the period of 04/2014 to 05/2014 done without any basis should be cancelled and excess amount collected by erroneous billing for the above period of 03/2014 to 06/2014 should be refunded as per regulation 134(3) of Supply Code 2014.

Again the meter was declared as faulty during the month of 08/2015 and average billing was continued up to 12/2015 and the billing for the month of 01/2016 onwards was done for the actual consumption recorded in the same meter with the status of the meter as working. The meter reading and consumption details from 05/2015 to 04/2016 based on the monthly bills issued are as follows.

Month	PR	IR	Actual Consumption	Billed Units	Remarks
05-15	28100	25210	2890	2890	MW
06-15	30420	28100	2320	2320	MW
07-15	32430	30420	2010	2010	MW
08-15	32430	32430		2633	DL
09-15	32430	32430		2633	DL
10-15	32430	32430		2633	DL
11-15	32430	32430		2633	SF
12-15	46315	32430	13885/5	2633	SF
01-16	48600	46315	2285	2633	SF
02-16	52080	48600	3480	3480	MW (same meter)
03-16	54200	52080	2120	2120	MW'
04-16	58040	54200	3840	3840	MW

From the above meter reading and consumption statement, it can be seen that the billing was done from 08/2015 to 10/2015 for the previous average with the status as Door lock and from the month of 11/2015 onwards, the readings were taken, but the meter was declared as SF and average billing continued up to 01/2016. From 02/2016 onwards, the billing was continued for the actual consumption recorded in the meter with the status of the same meter as working. For the period from 08/2015 to 01/2016, the actual consumption recorded in the meter was 16170 units (48600-32430) with an average of 2695 units and the total consumption billed for the above period was for 15798 units. Hence the short assessment made from 07/2015 to 12/2015 is not legal and sustainable.

The CGRF in its erroneous order, directed to revise the short assessment made for the period 07/2015 to 12/2015 based on the actual reading recorded in the meter, but at the same time, this pattern is not applied for the period of 03/2014 to 06/2014. For the above both periods, the meter was working and the Forum applied dual justice for the same false in different periods. Hence the appellant requests to grant the following reliefs.

1. Cancel the short assessment bill issued illegally.

2. Refund the excess amount collected from 03/2014 to 06/2014 due to the erroneous reading and billing with interest as per regulation 134(3) of Supply Code 2014.

Arguments of the respondent:

The complainant is a Cellular Tower under Electrical Section, Kumily having connected Load of 21680 watts. The date of connection of the consumer is 24.07.2007. The Audit team of Kerala State Electricity Board, Regional Audit Office, Thodupuzha has verified the consumption pattern of the Consumer No. 1157081009882 and found that the energy meter of the consumer was declared faulty on 07/04/2014 and the meter was changed on 23/06/2014 with Initial reading zero.

The energy meter of the consumer was again declared faulty on 07/10/2015 but sluggish reading during 07/2015 to 09/2015. 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 6 months reading period to sluggish period and meter faulty period. Hence short assessment bill had been issued for Rs 27856/- on 16.08.2017.

The complainant's firm is maintaining a good relationship with the KSEBL office at Kumily. The short assessment bills were issued through the agent of the complainant after narrating all the details. Furthermore it is submitted that the bills so issued is not a penal bill but is only a short assessment bill. As the meter of the connection is faulty it is billed with average consumption. The Energy charge already remitted by the consumer has been deducted from the short assessment bill.

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 on 07/04/2014 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 04/2014 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.27856.00 to the appellant on the basis of average consumption of 2808 units and 2816 units per month for the periods of 04/2014 to 05/2014 and 07/2015 to 12/2015 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 suspected that the meter as faulty on 07-04-2014 and average 2307 units charged for 04/2014 and 05/2014. It is pertinent to note that even without conducting any testing the appellant's meter, the respondent declared the meter as suspected faulty and replaced the meter on 23-06-2014. The consumption of the appellant for the month of 01/2014 was 2870 units and for the month 02/2014, it was 5532 units. In the next two months consumption for 03/2014 and 04/2014, average bills issued for 2307 units. On going through the records, it is found that consumption recorded in the meter for the period from 02/2014 to 05/2014 was 10820 units ($90850-80030=10820$), with an average consumption of 2705 units, but the billing was done for the same period was for 13083 units ($5532+2307+2307+2937=13083$). Hence, there was an excess billing for 2263 units for this period. Though the appellant had requested to refund the excess amount collected by erroneous billing for the above period of 02/2014 to 05/2014, the CGRF only quashed the bill amount charged for 2808 units for the billing months of 04/2014 and 05/2014.

The appellant has alleged that the meter was declared as faulty during the month of 08/2015 and average billing was continued up to 12/2015 and the billing was done from 08/2015 to 10/2015 for the previous average with the status as Door lock and from the month of 11/2015 onwards, the readings were taken, but the meter was declared as suspected faulty and average billing continued up to 01/2016.

The records show that from 02/2016 onwards, the billing was continued for the actual consumption recorded in the meter with the status of the same meter as working. For the period from 07/2015 to 12/2015, the actual consumption recorded in the meter was 16170 units ($48600-32430$) and the total consumption billed for the above period was for 15798 units. Hence there was a short assessment of 372 units during this period. The respondent's contention is that the meter was faulty and therefore the appellant was billed with average consumption. It is found that the appellant was billed for an average consumption of 2307 units for the months of 03/2014 and 04/2014 and the appellant remitted the amount. During the months of 08/2015 to 10/2015, meter reading was not taken due to the reason of door locked. It is

found that for the period from 07/2015 to 12/2015, there is an average consumption of 2695 units in the appellant's premises which matches the consumption pattern of the appellant. The argument of sluggishness cannot be proved conclusively without conducting testing of the meter.

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 suspected the meter as faulty that too even without conducting any testing. There is no justification for issuing such a demand for the previous months of 07/2015 to 12/2015 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.

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 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 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 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 short assessment bill preferred for the period in dispute based on presumption only that the meter was sluggish from 08/2015 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. The finding of the Regional Audit Officer is not based on ant material evidences. In this background, the issuance of short assessment bill on the appellant merely on the basis of presumption cannot be justified before law and liable to be quashed. The appellant was found overcharged 2263 units for the period from 02/2014 to 05/2014 and short assessed for 372 units for the period from 07/2015 to 12/2015.

Decision

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 27856/- issued to the appellant. The respondent is directed to revise the bills for the consumption period of 02/2014 to 05/2014 and for the period from 07/2015 to 12/2015 as

stated above. The excess amount collected shall be refunded by adjusting it in consumer's future bills. Applicable interest, for the excess amount so collected, shall also be refunded to the consumer.

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/131/2017-18/dated 30-06-2018 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/045/2018/ _____ /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.