

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/048/2018
(Present: A.S. Dasappan)
Dated: 8th October 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 6679 with tariff LT VI F which is coming under the jurisdiction of Electrical Section, Rajakkad, Idukki. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the invoice dated 28-12-2017 directed the appellant to remit an amount of Rs. 1,74,637/- being the short assessment based on the findings that the meter was faulty for the period from 12/2012 to 11/2013. An objection against the demand was filed before the Assistant Engineer on 19-01-2018. 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. 152/2017-18. The Forum

dismissed the petition due to lack of merit, vide order dated 30-06-2018. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

1. Since the case pertains to the period of 12/2012 to 11/2013 and more than 4 years back, the appellant have no records to depend the consumption details and reason for the low consumption of that period except the meter readings recorded in the monthly bills issued for the above period. On verification of monthly bills, it is seen that the billing was done for the above referred period based on the consumption recorded in the meter with the status of the meter as working. Once the billing was done based on the consumption recorded in the meter and after a long period, the short assessment made on the assumption that the meter might had been sluggish is baseless and not sustainable as per the regulations in the Terms and Conditions of Supply 2005/Supply Code 2014. A sluggish meter is not defined anywhere in the Act or Code. Hence the illegal short assessment made after a period of more than 4 years without any basis is not sustainable and should be cancelled.

2. The licensee issued the short assessment based on the fact that, "since the energy consumed is for a mobile tower and the consumption pattern of a mobile tower will be always same for the same load". This is illegal and not sustainable. As per the regulation 104(1), the licensee shall not supply electricity except through a correct meter installed in accordance with the provisions of the Central Electricity Authority (installation and operation of Meters) Regulations/2006, as amended from time to time. The billing also to be done based on the reading recorded in the meter and not based on any approximation and assumption. In the present case, the billing was already done accordingly with the status of the meter as working. So the short assessment made based on the assumption and approximation is not sustainable before the law.

3. As per the statement of the Respondent, the short assessment was made based on the Regulation 152(3) of the Supply Code 2014. But this regulation is concerned for the Anomalies attributable to the licensee which are detected in the premises of the consumer during inspection. Also, as per the regulation 152(3), third proviso, the realization of electricity charges short collected shall be limited for a maximum period of 24 months, even if the period during which such anomaly persisted is found to be more than 24 months. In the present case, the short collection of electricity charges was extended to more than five years. That is from 12/2017 to 12/2012 and is not sustainable based on the above regulation itself.

4. The section 56(2) of the Indian Electricity Act 2003, and the connected regulation 136(3) in the Supply Code 2014, says that 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.

The meter reading and consumption of the above connection from 04/2012 to 03/2014 is as follows.

Month	FR	IR	Consumption	Remarks
04-04-2012	124126	122485	1641	Meter working
04-05-2012	125928	124126	1802	-Do-
01-06-2012	127906	125928	1978	-Do-
07-12	129383	127906	1477	-Do-
08-12	131100	129383	1717	-Do-
09-12	132936	131100	1836	-Do-
07-10-2012	134932	132936	1996	-Do-
11-12	135225	134932	293	-Do-
12-12	135820	135225	595	-Do-
01-01-2013	136350	135820	530	-Do-
06-02-2013	136746	136350	396	-Do-
03-13	137206	136746	460	-Do-
04-04-2013	137474	137206	268	-Do-
04-05-2013	137505	137474	31	-Do-
06-13	137527	137505	22	-Do-
07-13	137608	137527	81	-Do-
01-08-2013	137767	137608	159	-Do-
06-09-2013	137767	137767	170	DL Avg
07-10-2013	137767	137767	170	-Do-
05-11-2013	137767	137767	170	-Do-
06-12-2013	2972		3057	MC on 20-11-2013 with FR 138568 (abnormal reading, 2972units for 16 days)
06-01-2014	4336	2972	1364	
05-02-2014	6176	4336	1840	
05-03-2014	7745	6176	1569	

5. 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 28/12/2017 with the assumption that, since the dip in consumption from 12/2012 to 11/2013, the meter might had been sluggish. This is not legal and sustainable as per the regulations. It could be easily verified the accuracy of the meter by the licensee people when the dip in consumption was noticed by testing the meter with a standard meter. But no one is bothered to check the meter and the billing was done for the actual consumption recorded in the meter with the status of the meter as working.

6. 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.

7. 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.

8. The CGRF in its erroneous order stated that "the petitioner failed to submit any evidence about the functioning status of the mobile tower during that period" and the Forum declared the meter as faulty during that period without any evidence other than the dip in consumption. The forum dismissed the petition due to lack of merit. This is totally erroneous, partial and not sustainable as per the KESC 2014.

Considering all the above facts, the appellant requests 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 three phase consumer under Electrical Section Rajakkadu with Consumer no 6679. The connection is used for providing one mobile phone tower under VI F tariff. As per the inspection report of Regional Audit Officer Thodupuzha from 1/2012 to 6/2013 the meter reading was very low and is found changed on 6/2013.

As per the above meter reading register or by verifying the bill remitted by the consumer in which the consumption is recorded can be checked by the consumer. The consumption pattern of the above tower can be checked either in the office or by personnel reading register or in Oruma Net software. The consumer is always well aware about billing system in KSEB Ltd. The average consumption pattern of the consumer is about 1500unit per month. In that time, the recorded reading is only 838 to 22 units. The consumer is a mobile tower, hence their consumption pattern are same for the same load.

As per the section 56(2) of the Indian Electricity Act 2003 and connected Regulation 136(3) in the Supply Code 2014, no such sum due from any consumer on account of default in payment shall be recoverable after a period of two years from the date when such sum becomes first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supply. The bill amounting to Rs.174634/- is due only from 01/2018 onwards and is also shown in next bill onwards as recoverable amount. The first due date is only on 27/01/2018.

As per section 152(3), the amount of electricity charges short collected for the entire period during which such anomalies are persisted may be realised by the licensee. In the meter reading register itself it can be noted that the charges are short collected because in a mobile tower no load reduction or reduction in consumption occurred. The loss sustained for the license is clear. The working hrs of a tower is 24hrs and connected load is 22KW and is not a reduction in load or working hrs. Hence their average consumption pattern is the same as mentioned in bill. In some months the consumption is only 22 units, but the same tower is working in full load and full time.

Analysis and findings:

The hearing of the case was conducted on 18-09-2018 in the Office of the State Electricity Ombudsman, Edappally, Kochi, and Sri. M.Y. George represented for the appellant's side and Smt. K.M.Shaila, Assistant Executive Engineer of Electrical Sub Division, Chithirapuram 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 argument put forward by the appellant is that the period of assessment pertains to 12/2012 to 11/2013 and around 4 years back and the meter of the above service connection was seen changed on 20/11/2013 without mentioning any reason for the meter replacement and testing of the meter. The monthly bills were issued according to the consumption recorded in the old and the replaced new meter. The consumption recorded for the month

of 11/2013 based on the meter reading on 06/12/2013 was 3057 units and this reading is found abnormally high. The meter changed on 20/11/2013 and the consumption shown for 16 days was 2972 units. The meter was not declared as faulty for the above period and the billing was done based on the actual consumption recorded in the meter. The short assessment made only based on the dip in consumption for the month of 11/2012. But at the same time the licensee have not considered the erroneous abnormal high consumption for 11/2013, after the change of the meter. 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. On the other hand the respondent argued that the consumption pattern confirmed that the meter became faulty during November 2012 itself. So, average energy consumption was arrived based on previous six months average 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.

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. In this case on detecting a dip in the consumption i.e., 293 units in 11/2012, replaced the meter on 20-11-2013 only. It would have been proper, had the respondent made a site mahazar of the above actions taken, in the presence of the consumer or his representative.

From 11/2012 onwards, it is found that the energy consumption is not consistent and the respondent continued to issue the regular monthly bills and the same was paid by the consumer. But KSEBL did not opt to prefer any claim due to alleged defective readings of the period prior to 11/2012 to 10/2013, based on any test report or site mahazar. That is to say though the defect was rectified in 11/2013 the respondents failed to reassess the consumer, for the alleged meter faulty period causing less energy recordings than the actual. Later, based on the report of the audit party of KSEBL regarding the same omission, the short assessment bill was issued to the consumer on 28-12-2017. But the respondent has failed to take proper and timely action as per the procedure stipulated in Supply Code 2005 existed at that time.

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 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. Without complying with the statutory formalities, the assessment made in this case is not sustainable before law and liable to be quashed.

Another contention of the Appellant is based on the Limitation of the bills, under Sec. 56(2) of Electricity Act, 2003, which reads "The licensee shall not recover any arrears after a period of two years from the date when such sum become first 'due' unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied". This 'due date' is an important date for both consumer and KSEBL (Licensee). This is because after a period of two years from the 'due date', the arrear bills are time barred and the consumer is not liable to pay the sum even if it is a legitimate claim otherwise. Therefore it is a boon to the consumer and a loss to the Licensee. For an upright and bonafide consumer, he need not worry of 'Bills' of long pending dues after a period of 2 years, if it is not shown continuously in the regular bills of the consumer. On the other hand, in the case of Licensee they should be more vigilant and smart in preferring the bills in time, otherwise they have to suffer the loss for the laxities and omissions occurred on their part.

Since this issue has been dealt with, analyzed and given a firm opinion by the Upper Courts of Law/Jurists, we may follow the same. As such, I have before me the Judgment in the Petition filed, before the Hon: High Court, Bombay, vide No: 3784/2007, which has dealt the 'due date' issue in detail and pronounced its considered opinion. In this, it was spelt by Hon: Judge as follows;

'In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1) & (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer.

Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of Section 56, a sum can be regarded as "due" from the consumer only after a bill on account of the electricity charges is served upon him'.

Thus the period of two years as mentioned in Section 56 (2) of Electricity Act, 2003, would run from the date when such a bill is raised by the Board and have become due for payment only after that demand has been raised.

In this case, the bill is seen raised in 28-12-2017 and has become due thereafter and time period of two years start from 28-12-2017 only and hence the appellant's argument is not maintainable under the bar of limitation. As per the Agreement executed by the consumer with KSEBL, the consumer is bound to pay the charges for the true electricity he has consumed. As the bill was issued in 12/2017 only, I am of the view that Section 56(2) of Electricity Act 2003 and Regulation 136(3) in the Supply Code 2014 are not attracted in this case.

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 faulty in 11/2012 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. It is the liability of the respondent that to prove the faultiness of meter and the appellant consumed the energy as claimed by the respondent during the disputed period by substantiating with evidences. The consumer was issued bills as per the readings recorded in the meter by the Sub Engineer during the disputed period and the same was paid. KSEBL preferred the short assessment bill for the period in dispute based on audit report only. An Audit Officer is not competent to arrive in such an assumption based on a dip in consumption, without testing the meter. There may be many reasons for reduction/excess in the consumption of a consumer. The negligence of the respondent to take timely action is the cause for the present dispute. Hence the charge against the consumer is not proved conclusively. 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 findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 1,74,637/- issued to the appellant.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed.

The order of CGRF, Central Range in Petition No. OP/152/2017-18/dated 30-06-2018 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/048/2018/_____ /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.