

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/020/2019
(Present: A.S. Dasappan)
Dated: 8th May 2019

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

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd, Peyad,
Thiruvananthapuram

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 is a 3 phase LT VI F consumer bearing number 1011 under Electrical Section, Vellanad, with a connected load of 18 KW. The appellant is paying the current charges regularly without any dues or delay. As per the observations of the Regional Audit Officer, a short assessment bill amounting to Rs. 2,02,277/- due to meter faulty period from 12/2016 to 02/2017 has been issued to the consumer on 02.05.2018. An objection against the demand was filed before the Assistant Engineer on 22-06-2018. 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 (SR) Kottarakkara by filing a petition No. OP No. 138/2018. The Forum disposed of the petition by quashing the short assessment bill for Rs. 2,02,277/- and directed the respondent to revise the bill for two billing cycles based on the average consumption after meter change, vide order dated 08-02-2019. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

Appellant is an electricity consumer under Electrical Section, Vellanad with cons no.1011 and paying current charges as per their bills regularly without any dues or delay. The meter of this connection was replaced on 04/02/2017 and again on 14/04/2017 without any remarks and the respondent had given a short assessment bill amounting to Rs. 2,02,277/- dated 02/05/2018 for the period from 12/2016 to 02/2017 based on the average consumption of 6 months after the second replacement of the meter. The short assessment bill is seen prepared merely due to the dip in consumption for the above period compared to the previous period. The appellant had filed an objection against the bill before the Assistant Engineer, Electrical section, Vellanad vide letter dated 22/06/2018 through Email and hard copy sent by courier service. But the Assistant Engineer not received the hard copy of the complaint and the same was returned by the courier service with the comment ("party will not collect").

Again the copy of the complaint was submitted before the Assistant Engineer by the field staff of the appellant. The Assistant Engineer not responded against the complaint even after four months of time and instead the service connection was disconnected without any notice on 25/10/2018 at around 6pm. Since the site is a Base Station Controller and the outage of this site will affect the working of around 10 or above surrounding mobile towers, the disconnection of the service connection affected very adversely to the service. At this stage, the appellant explained the illegal activities of the Assistant Engineer to the Deputy Chief Engineer, Electrical Circle, Kattakkada and requested to reconnect the service connection. The Deputy Chief Engineer responded very positively and directed to reconnect the service connection and the same was reconnected on the same day at around 09.30 PM. The action taken by the Assistant Engineer to disconnect the service connection illegally was against the regulation and to be explained.

Since the short assessment bill is purely illegal, imaginary, the appellant has filed OP No.138/2018 before the CGRF (SR). But the CGRF by its erroneous order, directed to revise the illegal short assessment for two months based on the average consumption after the replacement of the meter. Aggrieved by this, the appellant is filing this Appeal Petition before this Authority under the following grounds.

1. On verification of the records, the meter of the above service connection was seen replaced on 04/02/2017 without any remarks. The meter was not declared as faulty/damaged at any time during the above short assessment period. The reason for the replacement of the meter is not known from the available billing records. Again the meter was replaced on 11/04/2017 without any remarks. The monthly bills for the above short assessment period were issued for the actual consumption recorded in the meter and the bill amount

were remitted. It could be easily possible to check the accuracy of the meter when the dip in consumption compared to the previous period was noticed by testing the meter in an accredited laboratory.

But no one bothered to check the correctness of the meter as per the regulation 116 of KESC 2014. The preparation of the short assessment bill is simply based on the dip in consumption in a previous period without any reason is totally baseless and not sustainable as per the regulations of Supply Code 2014. The fault of the meter is only one among the many reasons for dip in consumption. In the previous period also low consumption was recorded (09/2016-213 units). Regulation 115(9) says that "In the case of meter is found to be faulty, revision of bill on the basis of the 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 revisions shall be adjusted in the two subsequent bills. In the present case the meter was not tested for declaring the same as sluggish/faulty and the licensee declared arbitrarily that the meter was sluggish after a long time without any support of test certificate of the meter.

Any rules or regulations in the Electricity Act or Electricity Supply Code is not supporting to reassess a consumer merely based on the dip in consumption in a previous billing period without any other reasons. Once the billing was done based on the consumption recorded in the meter with the status as working and after a long period short assessment made by declaring the meter was sluggish is not sustainable as per regulations.

The reading and consumption details of the above consumer no. from 06/2016 to 07/2017 is as follows.

Month	FR	IR	Consumption	Remarks
06-16	464424	462350	2074	meter working
07-16	467141	464424	2717	meter working
08-16	469751	467141	2610	meter working
09-16	469964	469751	213	meter working
10-16	472769	469964	2805	meter working
11-16	475060	472769	2291	meter working
12-16	475429	475060	369	meter working
01-17	475736	475429	307	meter working
02-17	476137	475736	401	meter working
03-17	6357		6357	MC on 04/02/17, FR 476137
04-17	6357	6357	359	
05-17	5317		5437	MC on 11/04/17, FR 6357
06-17	13270	5317	7953	MW
07-17	21628	13270	8358	MW

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 meter is not tested or declared faulty at any period of time of short assessment. Hence the short assessment bill is prepared only due to the dip in consumption is not sustainable.

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 during the period of short assessment. Hence the short assessment based on the 6 months' average after the replacement of the meter is not legal and sustainable.

The CGRF (SR) not considered any of the above facts for releasing their order in the above OP. The appellant requests to set aside the erroneous order of the CGRF (SR) and necessary directions may be given to the licensee for cancelling the short assessment bill issued illegally.

Arguments of the respondent:

While analyzing the meter reading during 09/2016 the meter reading was only 213 units and that of 12/2016, 01/2017 and 02/2017 were 369 units, 307 units and 401 units respectively. Since the meter was sluggish the meter was replaced on 04.02.2017. Again, the newly installed meter showed a consumption of 395 units during 04/2017. The meter replaced on 04.02.2017 was detected sluggish. Hence, the meter was again replaced with a new meter on 11.04.2017. After the replacement of the meter it showed a consumption of 7953 units during 06/2017 and thereafter maintaining the actual consumption.

The short assessment bill was issued in accordance with the provisions contained as per Regulation 125 of the Kerala Electricity 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 cycle after the meter is replaced, if required details pertaining to previous billing cycles are not available.

As per Regulation 134 (1) of the Kerala Electricity Supply Code, 2014, 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.

As per Regulation 152 (2) of the Kerala Electricity Supply Code, 2014 the amount of electricity charges short collected by the licensee, if any shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted. Regulation 152 (3) of the Supply Code, 2014 envisages that the amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest.

It is explicit from the consumption pattern that the meter is sluggish from 09/2016 onwards and recorded correct reading from 06/2017, i.e., after replacement of the meter on 11.04.2017. After replacement of meter on 11.04.2017 it reveals the correct consumption pattern. Hence, it is apparent that the dip in consumption of consumer number 1101 having a connected load of 18 KW is due to sluggishness of the meter and the short assessment bill issued to the consumer is as per prevailing regulations.

The petition is without any bonafides. Hence, it is requested to accept the above mentioned statement and prayed to dismiss the petition.

Analysis and Findings

The hearing of the case was conducted on 25-04-2019, in the office of the Vydhyuthi Bhavan, and the appellant was represented by Sri. M.Y. George, and the respondent by Sri. Sivakumar S., Assistant Executive Engineer, Peyad 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 12/2016 to 02/2017 after a period of fifteen months 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 12/2016 onwards. So, average energy consumption was arrived at based on the healthy average consumption for six months after the replacement of the energy meter in second time on 11-04-2017 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 02-05-2018 for Rs. 202277/- to the appellant after reassessing on the basis of average consumption of 7834 units 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/average consumption and the appellant remitted the same without any fail. It is to be noted that the Regional Audit Officer has observed that the meter was faulty for the period from 12/2016 to 02/2017. It is the responsibility of the respondent that he had to test the meter when the dip in consumption detected and confirmed the sluggishness if any.

In this case, the respondent suspected the meter as faulty and the meter was replaced on 04-02-2017 and further on 11-04-2017 without conducting an inspection or testing of the alleged faulty meter in an accredited lab when the meter starts recording low consumption. The respondent assumed that the meter is sluggish from the month of 12/2016 onwards. It is here relevant to note that the status of the meter was recorded in the bills as working up in the disputed months. 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 12/2016 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 during the disputed period from 12/2016 to 02/2017. 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 findings of the Regional Audit Officer that the sluggishness of the meter for the period from 12/2016 is not based on any conclusive proof and without giving an opportunity for hearing and hence not acceptable and justifiable.

Decision

From the conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 202277/- issued to the appellant.

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. 138/2018 dated 08-02-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/020/2019/ _____ /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, Peyad, Thiruvananthapuram

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, Kottarakkara - 691 506.