

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/037/2019
(Present: A.S. Dasappan)
Dated: 20th June 2019

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

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd, Thodupuzha,
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 appellant is a 3 phase LT VI F consumer bearing number 23866 under Electrical Section No.2, Thodupuzha, with a connected load of 16260 watts. A short assessment bill amounting to Rs. 17305/- was issued to the consumer on recording of below normal consumption for the period from 10/2015 to 12/2015. An objection against the demand was filed before the Assistant Engineer on 25-09-2018. He rejected the petition without quoting any valid reason or regulations and directed the appellant to remit the short assessed amount vide letter dated 15-10-2018. Against the short assessment bill, the appellant had approached the CGRF, Ernakulam by filing a petition No. OP No. 72/2018-19 dated 30-03-2019. The Forum disposed of the petition by quashing the short assessment bill for Rs. 17305/- . The CGRF has not issued an order regarding the refund of the excess amount collected during the faulty meter period. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The short assessment bill is seen prepared merely due to the dip in consumption for the period compared to the previous period by declaring the meter as sluggish without testing.

On verifying the records, it is found that, the meter of the above service connection was declared as faulty during the month of 01/2016 and replaced on 02/11/2016. The faulty meter period was assessed for 2534 units. As per the Regulation 125 (1) of Supply Code 2014, the faulty meter period to be assessed for the previous 3 months' average consumption. Accordingly, the faulty period to be assessed for 1951 units but the bills were issued for 2534 units for the entire faulty meter period. Hence the excess amount remitted during the faulty meter period is to be refunded. The meter reading and consumption details from 04/2015 to 12/2016 is as follows.

Month	FR	IR	Consumption	Remarks		
04-15	40096	37310	2786		Working	
05-15	42146	40096	2050	}	Working	
06-15	42146	42146	2534		Working	
07-15	47035	42146	2445			
08-15	49356	47035	2321		Avg. 2383	
09-15	51738	49356	2383		Avg. 2420	
10-15	53706	51738	1968		Avg. 1951	
11-15	55432	53706	1726			
12-15	57592	-	2160			Meter Faulty
01-16	-	57592	2534			"
02-16	69851	-	2534			"
03-16	-	69851	2534		"	
04-16	114500	-	2534		"	
05-16	144573	114500	2534		"	
06-16	-	144573	2534		"	
07-16	202826	-	2534		"	
08-16	-	202826	2534		"	
09-16	-	-	2534		"	
10-16	-	-	2534		"	
11-16	-	-	2534		"	
12-16	4019	-	4019	MC 02-11-2016		

The billing was done up to 12/2015 based on the actual consumption recorded in the meter with status as working. The previous average immediately before the declaration of the meter as faulty is 1951 units but the faulty meter period was assessed for 2534 units without any basis. The faulty meter was replaced only after 10 months of time. Hence excess amount

collected by applying erroneous average should be refunded. Even admitting the version of the licensee that the meter was sluggish from 10/2015, the previous average before 10/2015 is only 2383 units (2383+2321+2445/3-2383).

A sluggish meter is not defined anywhere in the Act or Code and the short assessment made only based on the dip in consumption in a previous billing period with the assumption that the meter was sluggish without testing is not sustainable and hence to be cancelled.

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 licensee failed to do so. Hence the short assessment bill is not sustainable. Any rules or regulations in the Electricity Act or Electricity Supply Code are not supporting to re-assess a consumer merely based on the dip in consumption in a previous billing period by declaring the meter as sluggish/faulty after a long period.

As per the Regulation 115(1) of Supply Code 2014 the meter shall normally be tested in the laboratory of the licensee, approved by the Commission. 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.

As per the Regulation 125 (1) of 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 cycles after the meter is replaced if required details pertaining to previous billing cycles are not available.

As per Regulation 125(2) of Electricity Supply Code 2014, if the meter is found defective, charges based on the average consumption shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter. In the present case the licensee failed to replace the faulty meter within the stipulated time and hence the short assessment bill is not sustainable.

The CGRF viewed in its order that "the regular bills were issued based on the recorded consumption during the months up to 01/12/2015 and thereafter the meter status is shown as "SF/AN" and issued average bill for 2534 units. As per the existing rules and regulations, the petitioner is liable to pay only for the energy consumption recorded in the meter and the meter is seen as working till 01 /12/2015 and cancelled the short assessment issued illegally. But the Forum is silent about the excess erroneous average billed for the faulty meter period and the request for the refund of the excess amount collected.

The appellants request is to admit the Appeal petition and to refund the excess amount collected during the faulty meter period.

Arguments of the respondent:

As to the contention of the petitioner that erroneous average of 2534 units was taken for billing during the meter faulty period instead of the rule based average of 1951 units, it is submitted that the diminished consumption of 1968, 1726 and 2160 indicated that the meter was becoming faulty gradually and if the average of 1951 had been taken for billing, the Board would have sustained considerable revenue loss. The consumption pattern from 01/2015 to 1/12/2017 is as follows:

Month & Date	Consumption	Month & Date	Consumption	Month & Date	Consumption
01-15	2631	01-16	2534	01-17	3794
02-15	2631	02-16	2534	02-17	4256
03-15	2632	03-16	2534	03-17	3941
04-15	2786	04-16	2534	04-17	4151
05-15	2050	05-16	2534	05-17	3514
06-15	2444	06-16	2534	06-17	2963
07-15	2445	07-16	2534	07-17	3730
08-15	2321	08-16	2534	08-17	3827
09-15	2382	09-16	2534	09-17	3931
10-15	1968	10-16	2534	10-17	4197
11-15	1726	11-16	2534	11-17	4822
12-15	2160	12-16	4103	12-17	3922

The meter was declared faulty by the licensee on 1.1.2016 and the consumer had been billed on an average monthly consumption of 2534 units till "the meter was changed on 2.11.2016 (i.e. for 11 months). The post meter change average is 4023 units/ month (4019+3794+4256) and this average is continuing till this month without any change in the connected load. This establishes, beyond doubt, that the consumer has a monthly average

consumption greater than 4000 units. It may be on the basis of this fact that the CGRF remained silent about the demand of the appellant for refund of the excess current charge.

The post meter change consumption could not have gone up overnight but must have started increasing during the meter faulty period itself. And this could be measured accurately and convincingly only after the meter was changed. In this context the licensee has the right to reassess the consumer on post meter change average for the entire meter faulty period as per Regulation 134).

Also regulation 120 (1) of Supply Code 2014 envisages the responsibility of the consumer to report the defect of the meter, if any to the licensee. Here, the consumer had not given any complaint against billing for the faulty meter period on a monthly average of 2534 units even after the meter was changed by the licensee on 2.11.2016; but raised his objection only after the short, assessment bill was issued on 15.10.2018.

Analysis and Findings

The hearing of the case was conducted on 14-06-2019, in the office of the State Electricity Ombudsman, Edappally, Kochi, and the appellant was represented by Sri. M.Y. George, and the respondent by Sri. Sajeev K, Assistant Executive Engineer, Thodupuzha 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 assessment done based on an assumption that the meter was sluggish during the period from 10/2015 to 12/2015 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 10/2015 onwards.

The point to be decided in this case is as to whether the appellant is eligible for refund of amount collected in excess on the basis of average consumption of 1951 units, for the period from 01/2016 to 11/2016.

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 respondent declared the meter faulty on 01-01-2016 and the appellant billed on an average monthly consumption of 2534 till the meter was changed on 2-11-2016. Later the respondent issued a short assessment bill for Rs.17305/- assuming that dip in consumption for the period from 10/2015 to 12/2015 was due to the sluggishness of the meter. 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 02-11-2016 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 10/2015 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 10/2015 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 during the disputed period from 10/2015 to 11/2016. The average taken as 2534 units is the reading for 6/2015 and not based on previous three months average as per rules. The meter was declared faulty in 01/2016 only. 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 hence the CGRF quashed the short assessment bill issued to the appellant. The rules not allows the licensee to claim arrears for dip in consumption for previous periods as in the case of increase in the consumption of the consumer occurred after replacement of meter, without testing the meter and establishing faultiness and this principle is also vice verse applicable to consumer also.

The findings of the respondent that the sluggishness of the meter for the period from 10/2015 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 uphold the decision of CGRF in OP No. 72/2018-19 dated 30-03-2019, in quashing the short assessment bill amounting to Rs. 17305/- issued to the appellant. The average consumption for 2534 units taken for billing from 01/2016 to 11/2016

is a bogus figure (not an average figure) and which could not be explained by the respondent. The disputed period 10/2015, 11/2015 and 12/2015 is not taken for calculating the average consumption from 01/2016 to 11/2016 and it is decided to take the average consumption from 07/2015, 08/2015 and 09/2015 (2383 units) for calculating average consumption and the respondent is directed to revise the bills for the consumption period of 01/2016 to 11/2016 as stated above. The excess amount collected shall be refunded by adjusting it in consumer's future bills.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is allowed as ordered and stands disposed of as such. No order on costs.

ELECTRICITY OMBUDSMAN

P/037/2019/ _____ /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, Thodupuzha, 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.