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APPEAL PETITION No. P/036/2019  
(Present: A.S. Dasappan)  
Dated: 24<sup>th</sup> 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 East,  
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 18918 under Electrical Section, Thodupuzha No. II, with a connected load of 22 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. 2,46,206/- due to meter faulty period from 07/2014 to 06/2016 has been issued to the consumer on 15-09-2018. 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 the letter dated 15-10-2018. Against the short assessment bill, the appellant had approached the CGRF, Ernakulam by filing a petition No. OP No. 74/2018-19. The Forum disposed of the petition by directing the respondent to revise the bill on the basis of the average of three billing cycles after meter replacement as per regulation 125 (2) of Supply Code 2014, vide order dated 30-03-2019. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

**Arguments of the appellant:**

The appellant's contentions in the appeal petition are the following.

1. On verifying the records, it is found that, the meter of the service connection was replaced on 27/06/2016 with FR 68789. The reason for the replacement of the meter was not mentioned anywhere in the bill issued. The bills for the period of short assessment, from 07/2014 to 06/2016 were issued based on the actual consumption recorded in the meter with status of the meter as working and also before and after the replacement of the meter. Once the bills were issued based on the consumption recorded in the meter with the status of the meter as working and after more than two years of time, short assessment bill issued by the meter declared as sluggish without testing the same and based only on the dip in consumption compared to previous periods is not legal and sustainable before the law. The monthly bills issued were remitted by the appellant without any disputes. Hence the short assessment bill issued on the assumption that the meter might had been sluggish for the period of 24 months from 07/ 2014 to 06/2016 is baseless and not sustainable as per the regulations in the Supply Code 2014.

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. In this case, the meter was not declared as faulty for the period of short assessment. Hence the short assessment is baseless and not sustainable.

The respondent itself admitted in their statement of facts filed before the CGRF that "Regulation 125(1) of Supply Code, 2014 is not applicable since the billing does not pertain to defective or faulty period". The Forum in its order viewed that "The consumer is a mobile tower service provider and the energy consumption of the consumer is almost same in every month. In this case admittedly there is a dip in the energy consumption of the consumer. The petitioner has not submitted any documents to substantiate his argument that they had used less energy during the disputed period. The connected load of the petitioner's firm is 22 kW hence the energy consumption may be the range of 528 units per day. But it is found that the energy consumption per month was decreased up to 180 units in 08/2014 which is not possible if the firm operate around 24 hours per day. On analyzing the consumption pattern the meter ceased to record consumption occasionally and the meter gradually recording i.e. during 01/2014 to 05/2014 from which it is seen that the meter was faulty during the assessed meter faulty period".

The above statements of the Forum are totally baseless. The connected load of the mobile tower with consumer No.18918 is 22 kW and it means that the appellant can consume energy from 0 to 528 units per day and hence the calculation of the consumption based on the connected load is totally baseless. As per the regulation 104 of Supply Code, 2014, 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. And the bills should be issued based on the consumption recorded in the meter and not based on any other parameters like connected load, type of operation etc. As per the views of the Forum, the meter is not a necessary equipment for the measurement of the consumption and the bills can be issued based on the connected load and type of operations. This is totally erroneous and cannot be admitted.

The document for the consumption for a particular period is the meter reading statements issued by the licensee itself and no further documents to be submitted by the consumer for the any other period as per the Regulations in the Supply Code 2014. Hence the statement of the Forum in its order that "the petitioner have not submitted any document to substantiate his argument that they had used less energy during the disputed period" is baseless. The contention of the appellant is, the bills were issued for the disputed short assessment period, based on the consumption recorded in the meter with the status of the meter as working. Hence the short assessment bill issued by declaring the meter as sluggish without any documents is baseless and against the regulations.

The appellant prays to admit the appeal petition and set aside the erroneous order of the CGRF and to cancel the short assessment bill issued illegally.

**Arguments of the respondent:**

The complaint is not maintainable either under laws or on facts. The complaint is filed on an experimental basis suppressing all the materials facts.

The consumption pattern from 7/2014 to 2/2017 is as follows.

07-2014	314
08-2014	1100
09-2014	180
10-2014	228
11-2014	1020
12-2014	734
01-2015	860
02-2015	1285
03-2015	330
04-2015	1226
05-2015	1486
06-2015	1541
07-2015	1479
08-2015	1574
09-2015	1954
10-2015	1675
11-2015	1512
2-2015	1900

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01-2016	1792
02-2016	1613
03-2016	1576
04-2016	1889
05-2016	1717
06-2016	1659
07-2016	1220
	733
08-2016	4615
09-2016	4783
10-2016	4731
11-2016	5189
12-2016	4744
01-2017	4619
02-2017	5852
03-2017	4392
04-2017	4923
05-2017	6607
06-2017	5931
07-2017	4816
08-2017	5765

} Meter  
Changed

The pattern itself shows the dip in consumption. The average consumption after meter change is 4726 units. The connected load is 22000 watts and being a tower it is working continuously for 24 hours. The appellant's averment that "Calculation of consumption based on connected load is baseless" is denied.

The hike in meter reading after meter change may be viewed. On analyzing the pattern the meter ceased to record the consumption occasionally and meter gradually recording low reading from 7/14 from which it is seen that the meter was slow running and defective. The consumer had not justified or submitted any reason for their low consumption during the period 7/2014 to 6/2016, the said facts was observed by Consumer Grievance Redressal Forum and noted in the order. The dip in consumption from 07/2014 amply proves that it was the period from which meter being found/reported to be defective as specified in Regulation 125(1) of the Code. As misinterpreted by the appellant, Regulation 125(1) never mentions that the meter should be 'declared' faulty and 'declaration of faultiness' is not a precondition to invoke Regulation 152(2). By misconstruing the provision of the Code, the appellant is trying to circumvent the undue benefit enjoyed by them during the period in which meter was found to be defective. As per Reg. 152(3) "the amount of electricity

charges short collected for the entire period during such anomalies persisted, may be realized by the licensee without interest". So the short assessment bill was issued as per rules.

### **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 sluggish or faulty. The findings of the Regional Audit Officer that the meter was sluggish during the period from 07/2014 to 06/2016 after a period of two years 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 07/2014 onwards. So, average energy consumption was arrived at based on the healthy average consumption for previous six months of the month 07/2014 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 15-09-2018 for Rs. 246206/- to the appellant after reassessing on the basis of average consumption of 2306 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 07/2014 to 06/2016. 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.

A fault in the meter can lead to errors in measurement of power consumption. This error could result in a recording that is either more or

less than the actual electricity consumption of the consumer. If the licensee/consumer suspects a fault in the meter, they should get it tested. If the meter is found defective, charges based on the average consumption of the past three billing cycles immediately preceding the date of meter being found or reported defective shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter

In this case, the respondent suspected the meter as faulty and the meter was replaced on 27-06-2016 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 07/2014 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 07/2014 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 07/2014 to 06/2016. A site inspection was not done and site mahazar not prepared by the respondent. The connected load and tariff assigned to a consumer cannot be considered for measurement of consumption during a previous suspected faulty meter period or dip in consumption since the consumption depends on various aspects like conditions of working and occupancy of concerned premises. In this background, the issuance of short assessment bill, after lapse of a long period, on the appellant merely on the basis of presumption and succeeding consumption pattern cannot be justified before law.

Even at the time of changing the defective meter on 27-06-2016, the respondent had not tested the meter to ascertain the faultiness and if so the respondent had an opportunity to reassess the faulty period as per rules. Later the bill is seen issued by the respondent on the basis of the observation of the Regional Audit Officer noticing the dip in consumption which is not reliable. The findings of the Regional Audit Officer that the sluggishness of the meter for the period from 07/2014 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 quash the short assessment bill amounting to Rs. 246206/- issued to the appellant.

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. The order of CGRF in OP No. 74/2018-19 dated 30-03-2019 is set aside. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/036/2019/ \_\_\_\_\_ /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 East, 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.