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APPEAL PETITION No. P/077/2019
(Present: A.S. Dasappan)
Dated:12th December 2019

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

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd, Kanjikode,
Palakkad

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 12208 under Electrical Section, Marutha Road, with a connected load of 46880 watts and later enhanced to 90 kW from 01-04-2019. The premises of the appellant was inspected on 13-05-2019 by a team of KSEB Limited led by the Anti Power Theft Squad (APTS) of Palakkad unit. An irregularity of metering was detected as the missing of B phase current in the CT secondary and resulted in inaccurate metering. So as to compensate revenue loss to the Board for the unrecorded portion of energy, the Assistant Engineer, Electrical Section, Marutha Road, issued short assessment bill by directing the appellant to pay Rs 81566/-. Against the short assessment bill, the appellant had approached the CGRF, Kozhikode by filing a petition No. OP No. 031/2019-20. The Forum dismissed the petition vide order dated 05-09-2019. Aggrieved against this, the appellant has submitted this appeal petition before this Authority On 10-10-2019.

Arguments of the appellant:

An inspection was conducted in appellant's site on 13/05/2019 and in the site mahazar prepared during the inspection, it is recorded that the current from B phase is not recording correctly in the meter from 03/04/2019. The instantaneous error at the time of inspection measured by

using standard meter parallel to the existing meter is 30.65%. As the outcome of the inspection, a short assessment notice dated 17/05/2019 is issued for Rs. 81,566/- with a calculation. Based on the downloaded data from the meter, the current in the B phase was missing from 03/04/2019. But the short assessment was prepared from 01/03/2019 based on the percentage error measured at the time of inspection by using standard meter as parallel meter. Since the short assessment calculation is totally erroneous, the appellant had filed a petition with OP No.31/2019-20 before the CGRF. The CGRF by its erroneous order, the petition was dismissed by the order dated 05/09/2019, received by appellant on 16/09/2019 and justified the erroneous short assessment bill.

During the inspection, the inspecting authority clearly recorded that in the inspection report (site mahazar) that, the current from the B phase was not recording clearly due to loose connection in the meter terminal. Moreover, based on the data down loaded through the optical port of the meter, it was clearly recorded in the site mahazar that the current from B phase was not recording correctly from 03/04/2019 due to the oxidization of the connecting wire at the meter terminal. But the short assessment bill was prepared from 01/03/2019 and it is not correct and the short assessment bill to be revised for the period from 03/04/2019.

The non-recording of the current from the B phase was due to the oxidization of the CT secondary wire at meter terminal. It is not recorded in the site mahazar that the B phase current was totally absent from 03/04/2019 but it is recorded that B phase current is not recording correctly from 03/04/2019.

This fact can be ascertained from the consumption pattern of the above connection from 01/2019 onwards. The consumption recorded from 01/2019 is as follows.

01/2019	12960 units	
02/2019	12620 units	} Avg. 13260 units
03/2019	13460 units	
04/2019	13700 units	
05/2019	13180 units	
06/2019	13800 units	
07/2019	12120 units	
08/2019	8860 units	
09/2019	20900 units	

From the above, it can be seen that the average consumption before the fault in the CT connection is 13260 units and the consumption for the month of 04/2019 based on the monthly reading taken on 01/05/2019 is 13180 units even after the enhancement of the connected load to 90Kw from 46.88 Kw with effect from 01/04/2019. Hence it can be ascertained that the non-recording of B phase current and unrecorded consumption is only partially from 03/04/2019 due to the loose connection in the meter terminal by the oxidization of the CT wire at the meter terminal. The percentage error measured by applying parallel meter is based on the consumption from 3

phases at the time of inspection only. It will vary as per the usage of the equipment's connected to 3 phases and the rate of loose connection. Hence the short assessment calculation based on the instantaneous percentage error measured is erroneous and not sustainable before the law of the land.

In the statement of facts submitted by the respondent before the CGRF, it is recorded that "in the type of meter installed in the premises, the data will be saved for maximum period of 45 days only". Admitting this fact, the data was downloaded on 13/05/2019 and as per the data, the error occurred from 03/04/2019 that is for 41 days and it is within the 45 days' memory period of the meter. Hence the statement of the respondent that the consumer has enjoyed the under recorded reading for a previous unknown period is baseless. The Forum also erroneously stated in the order that, under recording actually started before 03/04/2019 (start date of available downloaded data). From 03/4/2019 to the date of inspection on 13/5/2019, it is only 41 days and as per the statement of facts of the respondent, the memory period of the meter is 45 days and hence it can be clearly ascertained that the error of the metering in the recording of the consumption started only from 03/04/2019.

The appellant prays to set aside the order of the CGRF and to issue necessary orders to cancel the short assessment bill issued illegally by the respondent/ revise the short assessment for the period from 03/04/2019 based on the previous average consumption.

Arguments of the respondent:

The power connection was given on 14/03//2012 for running mobile tower. The connected load is 90 kW. The power connection is being used for running mobile tower which continuously consumes electricity on a 24X7 basis.

On 13/05/2019, an inspection was conducted by the officials of Electrical Section, Marutha Road along with ATTS team, Palakkad in which it was found that the 'B' phase current CT secondary, was missing. On visually examining, the CT secondary wire, it was found that the end of the wire connecting the CT to the meter was in a rusted condition which may be the reason for non-recording of the 'B' phase current in the meter. Immediately thereupon, the Standard meter was put in parallel with the consumer meter. The standard meter recorded a consumption of 5.7674 units whereas, the consumer meter recorded 4 units in the same duration. Hence it was ascertained that the consumer meter was under recording energy by 30.65%.

In order to ascertain the period from which this under recording started, the data from the meter was downloaded. In the case of meter of the type present in the consumer premises (L&T make 2500 impulse/kwh/5A), this data will be saved for a maximum period of 41 days only. On each passing day, the data of the new day is recorded and at the same time the previously recorded oldest data is deleted by the meter. Hence, at any point in time, the data for the last 41 days will only be available. In the instant case, since the data was downloaded on 13/05/2019, the saved data was available for a period of 41 days i.e. from 3/04/2019 only. In the data so downloaded, the

non-recording of one phase current is seen from day one, i.e., 03.04.2019. The data previous to this data has already been erased by the meter. Hence, with the data on hand, it can only conclude that the consumer has enjoyed the "under recorded reading" for a previous unknown period.

In the statement of facts submitted by this respondent before the CGRF, Kozhikode in OP 31/19-20 a typing error had occurred which had escaped the attention of this respondent. Instead of typing " 41 days" of data storage, it was incorrectly typed as "45 days". However, the fact that this was only a typing error is amply evident if anyone reads the entire paragraph. The entire paragraph is reproduced here for clarity (Para no: 6) "It is submitted that in the case of meter of the type present in the consumer premises (L&T make 2500 impulse/kWh/5A), the data will be saved for a maximum period of 45 days only. Since the data was downloaded 'on 13/05/2019. the saved data was available for a period of 45 days i.e. from 3/04/2019 only. (underscore added) It is submitted the consumer has enjoyed the "under recorded reading" for a previous unknown period. "

The duration between 13.05.2019 and 03.04.2019 is 41 days and not 45. Hence, the underscored 'sentence is more than sufficient to prove that what this respondent meant was 41 days and not 45 days. The appellant is now culling out a small part of the paragraph of that statement trying to take undue advantage of this error. This is not justifiable. Had the appellant pointed out this matter before the CGRF, this respondent had an opportunity to submit a revised statement of facts, correcting the error. The appellant did not raise this issue before the CGRF and kept quiet. That resulted in a loss of opportunity for this respondent to correct the error. The appellant therefore cannot be allowed to take advantage of this error now.

As per Regulation 152 and Regulation 134 of Supply Code 2014 this licensee has issued a short assessment bill to the consumer on 17/05/2019 as the anomaly was a result of reasons attributable to the licensee.

In the Case on hand, this licensee took the view that the consumer need not be taxed for the unknown period without concrete proof. Hence the short assessment was limited from 01.03.2019. The averments of the Appellant that the error is only from 03/04/2019 is per se wrong. The downloaded data available in the meter on 13.05.2019 is from 03/04/2019 i.e. for a period of 41 days prior to the data of inspection. This does not mean the current became missing from 03.04.2019 only.

The contention of the Appellant about the wordings of the site mahazar that "B phase current is not recording correctly from 03.04.2019" is not correct. As said earlier, the meter data is available from 03.04.2019 only. The wordings in the site mahazar " as per the data, the B phase current is not recorded correctly from 03.04.2019 is seen and understood" is ample proof that the inspecting officer meant that the under-recording is seen from day one of data. It did not mean that the under recording started from 03.04.2019 only.

It is true that the consumption recorded in the meter from 01/2019 is as furnished by the appellant in the petition is correct. The appellant, very cleverly, stopped at the fifth month, as the sixth previous month onwards the recorded consumption is in the vicinity of 18000 to 22000 units. This respondent took the data for the period of 24 months prior to 05/2019. The average consumption for this 24 months is touching 19000 units.

The calculation of the Appellant based on the average of previous 5 months is misleading and for hiding the fact that the under recording started well before that period. Actually, the entire period having the same average was being under charged. This is evident from the consumption pattern of the consumer which is produced herewith. From the consumption pattern it is evident that the consumption was as high as 22,920 units in 8/2018 from where it started reducing. The consumer being a mobile tower with a constant load working for 24x7, there is no possibility of a reduced consumption unless there is a reduction in load.

From the downloaded data, it is seen that the 'B' current in almost all the times where the report was recorded shows a -zero' reading or approximately a zero value. The reason for this is clearly known to the appellant as is evident from their petition. Moreover, the consumer has already admitted the fact that non recording of the B phase current occurred in meter. The only dispute is regarding the period for which, such under-recording took place. These respondents have only tried to recover the loss sustained as per regulations.

Analysis and Findings:

The hearing of the case was conducted on 26-11-2019, 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. P.V. Sreeram, Assistant Executive Engineer, Electrical Sub Division, Kanjikode 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 APTS has inspected the consumer's premises on 13-05-2019 and found that one phase of the Current Transformer (CT is a device for measuring high values of electric Current on a proportionate reduced scale), was not feeding the 'current inputs' to the Meter, thus resulting in the recording of a lower consumption than what is actually consumed. Hence, the appellant was issued a short assessment bill to recover the energy escaped from billing due to CT's fault in one phase. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable and hence the consumer is liable to pay the amount.

The appellant's contention in the appeal is that though based on the downloaded data from the meter, the CT current in the B phase of the meter

was missing from 03/04/2019, the short assessment was prepared from 01/03/2019 based on the percentage error measured at the time of inspection by using standard meter as parallel meter. It was clearly recorded in the site mahazar that the current from B phase was not recording correctly from 03/04/2019 due to the oxidization of the connecting wire at the meter terminal. But the short assessment bill was prepared from 01/03/2019 and it is not correct and the short assessment bill to be revised for the period from 03/04/2019.

The respondent has averred that the total period of phase failure was obtained while downloading the meter. The respondent relied upon the downloaded data and consumption pattern for establishing the period of phase failure and missing of current in one phase. According to him, the dip in consumption is the result of the CT failure. The CT current in one phase was found missing (somehow) and Regulation 125 of Supply Code 2014 is not applicable in this case. Undercharging of prior bill is established due to an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 134(1) is applicable. It was also contended that the downloaded data was convinced by the CGRF.

The issue arising for consideration in this appeal is whether the period assessed and the quantum of the energy consumption loss computed are in order and the appellant is liable for the payment of short assessment for Rs. 81566/- as per Regulation 134(1) of Supply Code, 2014.

Here in this case, the respondent declared that the current in one of the CTs connected to the meter is detected as missing/abnormal on the basis of the inspection conducted in the premises on 13-05-2019. The data is downloaded by the APTS. From the site mahazar, it is revealed that the CT connected to one terminal of the meter was failed and thereby consumption by the load connected to that phase in the premises was not recorded by the meter. The meter will record the time and date of tampers, and the same can be downloaded using MRI/Laptop and can be analysed. Date of occurrence of CT open/bypass/short, voltage missing/low voltage/ unbalance etc can easily be found out using downloaded data.

Normally, the respondent is bound to rectify the defect of the CTs to the Meter or renew the CT's or the CT meter itself, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 81566/-, for non-recording of energy due to defect of the B phase CT, for the period from 04-2019 and 05/2019, by taking the lost energy as 30.65% of the recorded consumption.

As per the data downloaded from the energy meter the duration of defect is for 41 days from 03-04-2019 to 13-05-2019. The appellant was given short assessment bill for Rs. 81,566/- from 01-03-2019 to 02-05-2019 taking the unrecorded energy as 30.65% of the recorded consumption. This method of calculation is wrong, whereas correct method is 30.65/69.35 portion of the recorded consumption. The defect of the meter was rectified on 13-05-2019 and connected load enhanced from 47 kW to 90 kW on 01-04-2019. Hence the average consumption for three billing cycles (6/19, 7/19 & 8/19) after the

rectification of meter defect cannot be taken for reassessing the consumption in the defective period. The appellant has accepted the period of CT failure as 41 days as per the meter data. The contention of the respondent is that the defect started from earlier than 03-04-2019.

Ongoing through the consumption pattern for 24 months from 08/2016 to 07/2018 it can be seen that the monthly consumption exceeds 20,000 units for 10 months, between 18,000 and 20,000 units for 11 months and between 15,000 and 18,000 units for 3 months. But the monthly consumption for 8 months from 08/2018 to 03/2019 (from 04/2019 onwards connected load enhanced to 90 kW) varies between 12620 units and 15360 units for 7 months and 18360 units for one month.

The site mahazar also justifies missing of current in one phase of the appellant's metering equipment in the appellant's premises. In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording in two phases of actual consumption on the inspection date of 13-05-2019 and the missing of the consumption at the rate of 30.65% during the disputed period. On perusing the mahazar, this Forum feels that the contention regarding the one No. CT's defect noticed during inspection by KSEB was correct, since the mahazar was duly witnessed and the appellant has not disputed the mahazar.

Further this Authority is of the opinion that if the respondent had to inspect the metering system soon after the recorded consumption decreases considerably, it can be easily detected the defect in the metering and to avoid the loss if any occurred to the licensee. The respondent had to check the correctness of the metering system in 11/2018 or 12/2018 following the recording of lesser consumption than the previous period. As such a convincing previous consumption is not available. There is no need to wait for the service of Anti Power Theft Squad for detecting the defects of the metering system provided by the Licensee. Officials / competent staff of the offices can test the metering system whenever the consumption suddenly increased or decreased and which will enable both the licensee and consumer to prevent revenue loss and to avoid unnecessary litigation and thereby arise a consumer-friendly atmosphere. The respondent has not even inspected the premise while enhancing the connected load to 90 kW from 01-04-2019. Since the connected load in the premise was enhanced on 01-04-2019, the consumption after 13-05-2019 cannot be taken for the reassessment based on average consumption and there is no convincing consumption prior to 03-04-2019 based on any downloaded data and both methods as above will not be proper for the reassessment.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Hence revision of the bill on the basis of the test report is not possible in this case. Here in this case, the respondent confirmed the non recording of one phase on the basis of the inspection conducted in the premises and load survey/tamper report down loaded. There is no 3 phase load in the premises.

Details of the bill issued by the respondent

Month	Short billed units(30.65% of the recorded consumption)	Energy Charge plus duty billed	Energy charge plus duty to be billed	Differences
Apr-19	4199	135630	177200	41570
May-19	4040	130482	170478	39996
				Rs.81566

Actually the Bill to be prepared as follows:

Period of assessment	03-04-2019 to 13-05-2019	
	4/2019	28 days
	5/2019	13 days
	Total	41 days
I.	Consumption from 01-04-2019 to 02-05-2019 (Here 2 days consumption in healthy meter and 30 days consumption in defective meter.)	13180 Units (32 days)

Let x = actual consumption per day to be recorded in 4/2019
 $X \times 2 \text{ days} + X \times 69.35/100 \times 30 \text{ days} = 13180 \text{ units}$
 $X = 13180/22.805 = 577.94 \text{ units}$
 Actual consumption to be recorded for
 32 days from 01-04-2019 to 02-05-2019 = $577.94 \times 32 \text{ days} = 18494 \text{ units}$

Unrecorded portion of energy consumption in 04/2019
 $18494 \text{ units} - 13180 \text{ units} = 5314 \text{ units}$

II	Consumption from 02-05-2019 to 01-06-2019 = 13800 units (30 days) (Here 11 days consumption in defective meter and 19 days consumption in healthy meter)
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Let Y = actual consumption per day to be recorded in 5/2019
 $Y \times 19 \text{ days} + Y \times 69.35/100 \times 11 \text{ days} = 13800 \text{ units}$

$Y = 13800/26.629 = 518.24 \text{ units}$
 Actual consumption to be recorded from 02-05-2019 to 01-06-2019
 $= 518.24 \times 30 \text{ days} = 15547 \text{ units}$
 Unrecorded portion of energy consumption
 in 5/2019 = $15547 - 13800 = 1747 \text{ units}$

Total unrecorded consumption from 03-04-2019 to 13-05-2019 arrived as per the above method	5314 units + 1747 units 7061 units =====
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In the site mahazar it is seen that the load current in the primary side of all the three phases are more or less same and hence the CT current. Hence

it is decided to rely on the recorded consumption in the defective period and period of assessment as 03-04-2019 to 13-05-2019, the period of defect as per downloaded data.

Decision

From the findings and conclusions arrived at as detailed above, I decide to set aside the short assessment bill amounting to Rs. 81,566/- issued to the appellant. The respondent is directed to revise the bill for 7061 units towards the unrecorded portion of energy consumption for 41 days from 03-04-2019 to 13-05-2019 as stated above within a period of 15 days.

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, Northern Region, Kozhikode in Petition No. OP/031/2019-20 dated 05-09-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/077/2019/ _____ /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, Kanjikode, Palakkad

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode