

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/052/2017
(Present: A.S. Dasappan)
Dated: 14th August 2017

Appellant : Sri. Arun R Chandran,
Energy Head,
Indus Towers Ltd.,
Palarivattom,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Parassala,
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 consumer number of the appellant's three phase service connection is 23195 with tariff LT VI F which is coming under the jurisdiction of Electrical Section, Parassala, Thiruvananthapuram. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the invoice dated 08-11-2016 directed the appellant to remit an amount of Rs. 43,256/- being the short assessment based on the findings that the meter was faulty for the period from 05/2014 to 12-01-2015. An objection against the demand was filed before the Assistant Engineer on 18-11-2016. 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 Hon'ble CGRF (SR) by filing a petition No. 330/2016. The Forum quashed the short assessment bill dated 08-11-2016 and directed the respondent to revise the bill for two billing cycles based on the average of succeeding three billing cycles after the meter replacement. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The respondent had given a short assessment bill amounting to Rs. 43,256 /-on 08-11-2016 for the period from 05/2014 to 12-01-2015. The meter of the above service connection was declared as faulty during the month of 04/2014 and replaced on 12-01-2015.

The faulty meter period was assessed for the previous six months average consumption of 957 units prior to the meter declared as faulty and the appellant had remitted the bills. The short assessment bill was prepared for the two billing cycles based on the average consumption of 3527 units for the succeeding months after the replacement of the faulty meter. The Assistant Engineer in his reply letter to the objection, it is stated that, the energy meter connected in the premises may run sluggish from Nov 2013 and only technically declared faulty as 01-04-2014 and hence the short assessment bill. The short assessment bill was prepared with the above assumption and imagination.

The status of the meter installed for the above service connection was declared as faulty during the process of preparation of the bill in the month of 05/2014 and replaced on 12-01-2015. The monthly bills for the faulty meter period were issued for the previous average consumption and the bills were remitted by the appellant and the appellant have not any dispute on this. The licensee had already followed the steps as per the regulations in the case of faulty meter and bills were issued during the faulty meter period.

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 the present case, previous readings of faulty meter period are available and it is seen that all the formalities for the billing of faulty meter period was done as per the above regulation and after a long period the short assessment done based on the three months average consumption after the replacement of faulty meter is not sustainable before the law. The copy of the bills issued before the declaration of meter as faulty with the status as "meter working" are attached herewith (Exhibit A5).

The assessment as per the average after replacing the faulty meter is allowed only in the case of previous readings are not available. In the case in hand, previous readings are available and the licensee had issued the bills as per the average and the appellant paid the bill amount accordingly. Hence the illegal short assessment as per the average after the replacement of faulty meter may be cancelled.

Any Rules or Regulations in the act or Supply Code is not permitting to reassess a consumer based on the difference in the consumption pattern after the replacement of the faulty meter. The Honourable Ombudsman may please be noted that, in any case, KSEB had not revised the assessment of the faulty meter period in the case of low consumption after the replacement of the faulty meter.

As per the regulation 125 (2) supply code 2014, charges based on the average consumption as computed for the previous average consumption shall be levied only for a maximum period of two billing cycles during this time the licensee shall replace the defective or damaged meter with a correct meter. In the present case, the licensee has failed to do so.

The licensee itself issued the monthly bills up to 04/2014 with the status of the meter as working and based on the actual consumption recorded in the meter. Once the billing was done based on the consumption recorded in the meter and the status of the meter as working and after a long period of around two years, the declaration of the meter as sluggish based on the dip in consumption without any support of the test report of the meter from an approved/ accredited laboratory is baseless and not sustainable before Law.

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.

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 2 years of time.

The opinion of the CGRF Central Region in a similar case that "a sluggish meter is not defined anywhere in the Act or Code and charging of the consumers based on the sluggishness of the meter without changing the meter then and there, as per rules, is illegal." The Honourable CGRF quashed the short assessment bill issued in a similar case of reassessment for the alleged meter sluggish period in the OP No.64/2016-17 under the jurisdiction of Electrical Section, Thodupuzha No. 1.

In the erroneous order released by the Hon. CGRF (Southern region) in this case, it is directed to reassess the faulty meter period for two months based on the average consumption after the replacement of the faulty meter. The assessment of the faulty meter period based on the average consumption after the replacement of the faulty meter is permitted only in the case of previous readings of the faulty meter is not available. In this case, the previous readings are available and the licensee issued bills as per the average consumption prior to the faulty meter period. Hence the order of the Hon. CGRF is erroneous and to be quashed.

Considering all the above facts the appellant requests to this Authority to set aside the erroneous order of the Hon. CGRF (SR) and necessary directions may be given to the licensee for cancelling the short assessment bill issued illegally.

Arguments of the respondent:

A three Phase connection was given to Sri. Biju T. Nair, Indus Towers. Vankarath Building, NH Bypass, Palarivattom. Cochin having Consumer No: 23195 with a connected load of 14.3 KW under VI F Tariff and date of connection was 05-08-2011. From the consumption pattern and amount remitted by the consumer from 10/2011 to 1/2017 it is clear that the three phase meter is sluggish from 11/2013. Due to the shortage of three phase meter, the meter was changed only on 12-01-2015.

The short Assessment was made based on the Audit Report of the Regional Audit Officer vide letter No: RAO/NDD/Audit/2016-17/5 dated 07-05-2016. Here the average consumption of the past 3 billing cycles immediately preceding the date of the meter change was not done, because of the correct reading is not available. Hence short assessment bill for Rs. 43,256/- dated 08-11-2016 was issued after the replacement of faulty meter as per Regulation 125(1) and (2) of the Supply Code 2014.

As per the order No OP No: 330/2016 dated 30-03-2017 from the Honourable CGRF (South). Kottarakkara the bill was revised which amounts to Rs. 43,559/- dated 26-04-2017 was issued. The short assessment bill for Rs 43,256/- dated 08-11-2016 was issued as per Regulation 125(1) and (2) and the revised bill of Rs. 43,559/- dated 26-04-2017 was issued as per the order of Honourable CGRF (South). All the actions taken by KSEB Limited officials are as per existing rule, hence it is humbly requested to dismiss the case.

Analysis and findings:

The hearing of the case was conducted on 27-07-2017 in the Court Hall of CGRF, Kottarakkara and Sri. M.Y. George represented for the appellant's side and Sri R. Sajikumar, Assistant Engineer, Electrical Section, Parassala

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 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 Assessing Officer that the meter was sluggish during the period from 05/2014 to 12-01-2015 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 November 2011 onwards. So, average energy consumption was arrived based on the consumption for the past 3 billing cycles before the meter faulty period and a short assessment bill was issued for the period of lesser consumption as per Regulation 134 (1) of Electricity Supply Code, 2014. Further, the appellant could not produce any evidence to show that there was variation in the consumption pattern in their premises.

The point to be decided in this case is as to whether the issuance of short assessment bill dated 26-04-2017 for Rs. 43,559/- to the appellant after reassessing on the basis of average consumption of 3527 units per month 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 and the appellant remitted the same without any fail. It is to be noted that the respondent has detected that the meter was faulty for the period from 05/2014 to 01/2015 and a lesser consumption was recorded during that period. It is pertinent to note that even without conducting any inspection or checking the appellant's meter, the respondent declared the meter as faulty and replaced the same on 12-01-2015.

Regulation 125 of Supply Code, 2014 stipulates the procedure for billing in the case of defective or damaged meter. **In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of meter being found or reported defective.**

Provided that the average shall be computed from the 3 billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. **Regulation 115 (9) says that in the case the meter is found to be faulty,**

revision of bill on the basis of 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 revision shall be adjusted in two subsequent bills. Here in this case, the respondent declared the meter as faulty that too even without conducting any checking. There is no justification for issuing such a demand for a previous period from 05/2014 to 01/2015 as there is no allegation of any willful misuse by the appellant.

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.

As per Regulation 118 of the Supply Code, 2014, ***“If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall be immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid future damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee.”***

In this case, the respondent assumed that the meter is sluggish from 11/2013 onwards and it was replaced on 12-01-2015 without conducting an inspection or testing of the alleged faulty meter in an accredited lab. It is here relevant to note that the status of the meter was recorded in the bills as working up to the month of 05/2014. In the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately succeeding the date of meter being found or reported defective. If there is an omission or error on the part of respondent, it has to be set right in time with a notice to the appellant giving him an opportunity for being heard. The appellant is bound to pay the electricity charges for his actual consumption.

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 sluggish from 5/2014 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. 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 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.

Decision

In view of the above findings, the revised short assessment dated 26-04-2017 for Rs. 43,559/- is hereby quashed. The order dated 30-03-2017 of CGRF (SR) in OP No. 330/2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/052/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Arun R Chandran, Energy Head, Indus Towers Ltd., Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Parassala, 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.