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APPEAL PETITION No. P/054/2017
(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,
Ettumanoor,
Kottayam

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 10510 with tariff LT VI F which is coming under the jurisdiction of Electrical Section, Neendoor, Kottayam. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the invoice dated 31-08-2016 directed the appellant to remit an amount of Rs. 2,14,147/- being the short assessment based on the findings that the meter was faulty for the period from 03-08-2015 to 28-07-2016. An objection against the demand was filed before the Assistant Engineer on 21-09-2016. He rejected the petition without quoting any valid reason or regulations and directed the appellant to remit the short assessed amount. Another short assessment bill dated 27-06-2016 was seen issued by the licensee for the same period of the above short assessment and the bill amount was Rs. 17,414 which pertains the periods of 12/2014, 08/2015 and 09/2015. The appellant had filed an objection against the bill before the Assistant Engineer, Electrical-section Neendoor on 28-07-2016. The service connection was disconnected on 30-07-2016 due to the non-payment of the short assessment bill. Since the electrical connection in the site was

inevitable for the operation of the appellant's mobile tower, appellant had remitted the short assessment bill with protest and the service connection was reconnected on 03-08-2016.

Against the short assessment bills, the appellant had approached the Hon'ble CGRF (SR) by filing a petition No. 276/2016. The Forum dismissed the petition due to lack of merit, vide the order dated 28-03-2017. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

1. The respondent had given a short assessment bill amounting to Rs. 2,14,147 /- on 31-08-2016 (marked as A1) for the period from 03-08-2015 to 28-07-2016 based on the reading recorded in the meter declared as faulty by the licensee around 13 months back. The meter of the above service connection was declared as faulty during the month of 03-08-2015 and replaced on 01/08/2016 with the same meter and recorded the initial and the final readings are the same of the reading recorded in the declared faulty meter. It is totally irregular and declaring of the faulty meter as good one, after a long period is not dependable and the short assessment bill issued for the above period by depending the reading recorded in the faulty meter is not liable to pay by the appellant. Hence the appellant had filed an objection against the short assessment bill before the Assistant Engineer, Electrical Section (Exhibit A2). Then the Assistant Engineer tested the meter in the TMR Unit of KSEB, Pallom and as per the test report, rejected the objections and directed to remit the short assessment bill. But the testing of the declared faulty meter after 13 months of time is not dependable for the previous period and appellant had filed a petition before the Hon. CGRF South against the short assessment bill. The Hon'ble Forum dismissed the petition. On verifying the records, another short assessment bill was seen issued by the licensee for the same period of the above short assessment and the bill amount was Rs. 17,414/- (marked as Exhibit A3 a and b). The period of short assessment was 12/2014, 08/2015 and 09/2015. Since the short assessment was illegal, the appellant had filed an objection against the bill before the Assistant Engineer, Electrical-section Neendoor on 28-07-2016 (Exhibit A4). But surprisingly, without any action or reply for the objection, the service connection was disconnected on 30-07-2016 due to the non-payment of the illegal short assessment bill in an arrogant manner. Since the electrical connection in the site was inevitable for the operation of the appellant's mobile tower, appellant had remitted the short assessment bill with protest and the service connection was reconnected on 03-08-2016.

2. The meter of the above service consumer number was declared as faulty on 01-08-2015 and the bills for the period up to 28-07-2016 were issued for

the previous average consumption and the bill amounts were remitted by the appellant. Then it is noticed that the faulty meter was replaced with the same meter on 01-08-2016 and recorded the initial and the final readings are same of the reading recorded in the declared faulty meter. It is totally irregular and the declaring of the faulty meter as good one, after a long period is not dependable and the short assessment bill issued for the above period based on the reading recorded in the faulty meter is not liable to pay.

3. As per the Regulation 125 [1] of KESC 2014, in the case of defective or damaged meter the appellant 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. In this particular case, the meter is declared as faulty during the month of 08/2015 and the billing was done for a long period of 13 months from 01-08-2015 to 28-07-2016 based on the previous average consumption. The status of the meter for the above periods were recorded in the bills was as suspected faulty. The above exercise was done arbitrarily by the licensee only. Once the meter is declared as faulty and average billing were done, the meter to be replaced with a good one and instead the action from the licensee that the declaration of the meter as good after a long period and the assessment made based on the consumption recorded in the faulty meter could not be dependable and hence the short assessment made for the above period is totally baseless. Hence the short assessment bill is against the facts and Rules and cannot be admitted.

4. As per the regulation 125 [2] of KESC 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 case in hand, the licensee had failed to do so and average billing was continued for a long period of 13 months. Hence short assessment based on the consumption recorded in a declared faulty meter for the above period of 13 months could not be admitted and hence to be cancelled.

5. As per the regulation 116 [1] and [2] of supply code 2014, the licensee shall periodically inspect and check the meter and associated apparatus. If the meter is found defective, the licensee shall test it 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 a approved laboratory. But in the present case, the licensee failed to do so. It could be possible to confirm the correctness of the meter by checking the same by the meter reader or other officers, when the consumption recorded was differ from the average consumption billed. But none of them turned to check the status of the meter by testing the same even when showed a considerable difference from the average consumption. Then after 13 months of time, the declaration of the same faulty meter is good and assessment based on the consumption recorded in the meter is not dependable and not sustainable before law.

6. On verifying the consumption pattern recorded in the faulty meter for the period from 03-08-2015 to 28-07-2016 attached with the short assessment bill by the licensee, it is seen that the recorded consumption varies from 3429 Units to 6757 Units and a difference of around 100% is noticed. Hence the recorded consumption in the declared faulty meter cannot be admitted.

7. On filing objections before the Asst. Engineer, Electrical Section, Neendoor against the short assessment bill, the meter is seen tested in the TMR Unit of KSEB Pallom and as per the test certificate the errors were found in the permissible limit. But the testing of the declared faulty meter after 13 months of time cannot be dependable for the previous period and hence the short assessment based on the above is not sustainable and not liable to pay.

As per the figures recorded in the monthly invoices issued, the meter reading, consumption, and bill amounts for the alleged period of meter faulty from 01-08-2015 to 01-08-2016 is as follows

Date	IR	FR	Units	Bill amount	Remarks
01/08/2015	20589	Nil	2588	Rs.27,977	Meter suspected Faulty Average
01/09/2015	Nil	Nil	2588	Rs.27,977	Suspected faulty
05/10/2015	Nil	29705	2588	Rs.27,977	Suspected faulty
03/11/2015	29705	34925	2588	Rs.27,977	Suspected faulty
03/12/2015	34925	39272	2588	Rs.27,977	Suspected faulty
01/01/2016	39272	43882	2588	Rs.27,977	Suspected faulty
01/02/2016	43882	48253	2588	Rs.27,977	Suspected faulty
01/03/2016	48253	53020	2588	Rs.27,977	Suspected faulty
01/04/2016	53020	57562	2588	Rs.27,977	Suspected faulty
02/05/2016	57562	64319	2588	Rs.27,977	Suspected faulty
01/06/2016	64319	69313	2588	Rs.27,977	Suspected faulty

27/06/2016				Rs.17,414	Short assessment Bill for 12/2014, 8/2015 And 09/2015
01/07/2016	69313	73334	2588	Rs.27,977	Suspected faulty
01/08/2016	73334	77193	Nil	Rs.23,530	
Total				Rs.3,76,668	

Copy of the bills referred above are attached herewith and marked as Exhibit A5 [i to xiv). From the above, it can be seen that, the calculation of the illegal short assessment bill itself is incorrect.

8. Serious lapses and negligence are noticed in the above case from the part of the licensee and the appellant is not liable for the same.

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:

1. The service connection having consumer No.1146486010510 under Electrical Section, Neendoor is registered in the name of Deputy General Manager, Indus Tower under LT 6F tariff. While taking meter reading in 08/2015 energy meter in this appellant's premises had no display. Hence it was recorded as 'no display, in the meter reading register by the Sub Engineer who took meter reading of the appellant. Therefore the appellant meter status was changed to meter suspected faulty and was billed by taking the average of the past three bills. From the next month i.e. from 09/2015 onwards the meter showed display and the Sub Engineer who was the meter reader took the readings and recorded it in the meter reading register. But the status of the meter was not changed to healthy and was continued to be billed as meter faulty status.

During verification of the meter reading register by the Senior Superintendent in the Section above discrepancy in billing was noticed. Hence immediately the meter was inspected at the premises itself and found that it was working correctly. As the average was very much lesser than the actual consumption recorded in the meter the average billed period i.e. from 08/2015 to 07/2016 was reassessed with actual energy consumption and found that there is short in demand raised for the above period. According to Regulation 134(1) of the Kerala Electricity Supply code, 2014 if the licensee establishes

either by review of otherwise that t has undercharged the appellant, the licensee may recover the amount so undercharged from appellant by issuing a bill. Hence the short assessment bill amount to Rs. 2,14,147.00 was arrived after deducting the amount already paid by the appellant during this period. (Exhibit R1). On receiving the short assessment bill dated 31.08.2016, the appellant had filed an objection on 21-09-2016 before the Assistant Engineer, Electrical Section, Neendoor by saying that the meter was not tested in approved laboratory. By giving due respect to the objection, the meter under challenge was removed from the site on 29-09-2016 in the presence of Sri. Vishnukuttan, technician of the Tower and was given to the TMR Unit, Pallom for testing its accuracy. After testing the accuracy of the meter, the TMR unit has given a test report via. No. TMR-PLM/CHD-3PH-WC-189/2016-17 dated 20-10-2016. The test report said that the errors of the meter were found within permissible limit. Hence after receiving the test report of the TMR unit, Pallom, it is confirmed that the meter was working normal during the back assessment period and the units taken for the back assessment was really consumed by the appellant for working their tower unit.

Hence once again a letter was given to the appellant on 26-10-2016 by confirming the short assessment bill dated 31.08.2016. The action taken by the respondent is as per Rule and the short assessment bill issued was in order. Hence the appellant is liable to pay the bill.

2) During the verification of meter reading register in the Section Office, it came to notice of the Senior Superintendent that the meter of the Appellant No.1146486010510 is having considerable consumption recorded in the meter reading register, but appellant was billed for average units as meter was suspected faulty. Therefore the meter was checked at the appellant premises by the Sub Engineer and he has reported that meter was not faulty and he had been taking the reading every month and was recording the same properly in the reading register. By comparing the previous energy consumption of the appellant and the preliminary inspection of the meter at site, it came to the conclusion that the meter is working properly. Hence the units recorded in the meter reading register is the actual units consumed by appellant. Therefore a short assessment bill of Rs 2,14,147/- has been issued to the appellant on 31.08.2016 for the period from 7/2015 to 7/2016. The bill was issued to the appellant on the basis of Regulation 134 (1) of Kerala Electricity Supply Code, 2014.

Even though the meter showed "No Display" status was recorded as no display in 08/2015 subsequently the meter showed good and healthy reading which were also recorded in the meter reading register. After recorded healthy reading instead of billing with actual consumption the billing was continued with average units. When the error in billing was noticed, after confirmation of meter status, for changing the status of the meter from suspected faulty to working status in Orumanet billing software using in Kerala State Electricity

Board Limited, a meter change with same meter has been carried out for this purpose. The last billed reading i.e. 77193 is taken as initial Reading (IR) of new meter with effect from 01.08.2016. (It should be noted that this meter change was carried out in software alone because the status of the meter cannot be changed after preparing one more bill in Orumanet software without a meter). It is admitted that the appellant remitted the regular bills during the above period. Hence the averments in para (l) in the appeal are partially correct.

3) The meter was not faulty during the period and is confirmed by the meter testing report of TMR Unit, Pallom via. No. TMR-PLM-PLM/CHLD-3PH-WC-189/2016-17 dated 20.10.2016. Hence there was no need to replace the meter with another one, instead its status needed to be corrected. In order to change status of the meter from suspected faulty status to working status in the billing software Orumanet, a meter change with same meter has been carried out only in Orumanet software with the last reading recorded on 01-08-2016 i.e., 77193 as IR of new meter with effect from 01-08-2016. (This meter change was carried out in software alone because, the status of the meter cannot be changed after preparing one more bill in Orumanet software). Hence the subject case comes under Regulation 134(1) of the Kerala Electricity Supply Code, 2014, in which it is stated that "if the licensee either by review or otherwise, that it has undercharged the appellant, the licensee may recover the amount so undercharged from the appellant by issuing a bill and in such cases at least thirty days shall be given to the appellant for making payment of the bill". The short assessment bill issued was in order and hence it is liable to pay by the appellant.

4) The billing was previously done on the basis of the average of past three billing cycles, as the meter was wrongly declared as suspected faulty for billing purpose. Later it is confirmed that the meter was not faulty and is also confirmed by TMR unit meter testing lab, Pallom). The short assessment bill amount to Rs. 2,14,147/- was issued on the basis of regulation 134(1) of the Supply Code 2014 not as per regulation 125(2) of Supply Code, 2014. The short assessment bill issued was in order and hence it is liable to pay by the appellant.

5) The Sub Engineer of Electrical Section, Neendoor was taking the meter reading regularly on every month and he reordered the meter reading correctly in the meter register. He never reported that the meter was faulty. The correctness of the meter can be verified on going through the reading register of the appellant and it shows consumption pattern of the appellant as regular. And the Sub Engineer was not knowing the fact that the meter was being billed in suspected faulty status as he never reported so. The Sub Engineer who is competent to check the working condition of energy meter has not reported that the meter in the premises became faulty. The billing branch has changed the meter status to suspected faulty on 08/2015 for billing purpose since there

was no reading but they failed to change status of the meter after getting reading on the month itself due to oversight and being billed for average units.

6) Consumption in the meter was 3429 units only in 10/2015, later the consumption of the appellant has increased to 5220 units in 11/2015, 4610 units in 11/2016 and so on and 6757 units in 05/2016 and in 06/2016 its consumption was 4994 units. Even after replacing the meter of the appellant with new meter physically on 30-09-2016 during the removal of the meter for testing in TMR, Pallom, the appellant uses 4846 units in the succeeding month, i.e. during October 2016. Hence the higher consumption mentioned in the complaint, i.e. 6757 units is not a vague reading. There is a noticeable variation in energy consumption of the appellant. The appellant may have used this much unit for their tower due to various reasons. By considering the lowest and highest units during the period, it cannot decide the meter is faulty. Hence the statement by appellant is wrong and hence denied.

7) Testing of the meter was carried out as per the point mentioned in the objection filed by the appellant. The testing of the meter is valid as it is done in the TMR Unit, Pallom which is an approved laboratory for the purpose. And testing of the meter was done after 13 months because the meter was actually never faulty and is became suspected faulty due to a clerical mistake from the part of the licensee. So technically, the meter was working good and can be seen from the reading register.

8) There happened a clerical mistake from the part of the licensee, but on identification of the fault, actions have taken to rectify the errors and hence the bill was issued, which is the actual current charge to be paid by the appellant, as he had used that much of energy. As per Regulation 134(1) of the Kerala Electricity Supply Code, 2014 in which it is stated that "If the licensee establishes either by review or otherwise, that it has undercharged the appellant, the licensee may recover the amount so undercharged from the appellant by issuing a bill and in such cases at least thirty days shall be given to the appellant for making payment of the bill", the licensee can collect the undercharged bills. The licensee has acted as per Rule. The impugned bill issued is in order and hence the bill is liable to pay by the appellant. As the meter is found working normal, the appellant is liable to pay to the units he consumed. The impugned bill issued was in order and hence the appellant is liable to pay the bill. The complaints raised by the appellant is baseless as the Kerala Electricity Supply Code, 2014 Regulation 134(1) allows the licensee to recover the undercharged amount of bills. Hon'ble Appellant Grievance Redressal Forum (South) in OP No. 276/2016 after examining all these points ordered that the short assessment bill is legal and sustainable as it is for the actual energy consumed by the petitioner. So, it is humbly requested that the complaint of the appellant may be dismissed in toto with regards to the facts submitted above.

Analysis and findings:

The hearing of the case was conducted on 21-07-2017 in my chamber at Edappally and Sri. M.Y. George represented the appellant's side and Smt. K.V. Mini, Assistant Executive Engineer, Electrical Sub Division, Ettumanoor 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 the meter is declared as suspected faulty during the month of 08/2015 and the billing was done for a long period of 13 months from 01-08-2015 to 28-07-2016 based on the previous average consumption. According to the appellant, once the meter is declared as faulty and average billing were done and later the licensee had declared that the meter is good after a long period. The assessment made based on the consumption recorded in the faulty meter could not be dependable and hence the short assessment made for the above period is totally baseless. It could be possible to confirm the correctness of the meter by checking the same by the meter reader or other officers, when the consumption recorded was differ from the average consumption billed. But none of them turned to check the status of the meter by testing the same even when showed a considerable difference from the average consumption.

On the other hand the respondent argued that Sub Engineer was not knowing the fact that the meter was being billed in suspected faulty status as he never reported so. The Sub Engineer who is competent to check the working condition of energy meter has not reported that the meter in the premises became faulty. The billing branch has changed the meter status to be suspected faulty on 08/2015 for billing purpose since there was no reading but they failed to change status of the meter after getting reading on the month itself due to oversight and being billed for average units during the disputed period.

The point to be decided in this case is as to whether the issuance of short assessment bill for Rs. 2,14,147.00 to the appellant after reassessing on the basis of consumption recorded in the reading register is in order or not?

On going through the records it can be seen that the respondent has issued monthly bills based on the average consumption that the meter was suspected faulty and the appellant remitted the same without any fail. It is to be noted that the meter reader has detected that the meter shows 'no display' when he taken reading on 03-08-2015. It is pertinent to note that even without conducting any inspection or checking the appellant's meter, the

respondent issued monthly bills based on the average consumption for the period from 03-08-2015 to 28-07-2016. Here in this case, the respondent declared the meter as suspected faulty and issued monthly bills based on average consumption for a period of 13 months that too even without conducting any testing.

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 consumer’s 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.

The assessment made in this case is relying on meter reading register. The respondent’s contention is that the Sub Engineer who had taken monthly reading was not aware the fact that the meter was being billed in suspected faulty status. A prudent officer can easily detect the considerable difference from the average consumption and the meter reading. It is found that the appellant was billed for an average consumption of units for the months of 08/15 to 07/16 and the appellant remitted the amount.

In this case, the respondent assumed that the meter is suspected faulty from 08/2015 and the meter was not replaced. When receiving an objection dated 21-09-2016 against the short assessment bill, the meter was sent for testing in the TMR unit, Pallom by the Assistant Engineer and the test report confirmed that the errors of the meter were within permissible limit. 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.

There is no material to show that the respondent has conducted any detailed checking of the appellant’s meter. On going through the bills issued for the disputed period, it is found that the initial meter reading as on 01-08-2015 is 20589 units and the present reading as on the date is shown as “NIL”. Similarly, as on 01-09-2015, the IR and FR are shown as “NIL’. The present reading noted as on -5-10-2015 is shown as 29705. From 05-10-2015, there is reading available in the meter. But the period from 08/2015 to 07/2016, the consumer was billed for an average consumption of 2588 units per month and meter status is shown as suspected faulty. The officers who took the meter reading, prepared the bills are responsible for these lapses and negligence. The

licensee is free to take disciplinary action against the concerned officers for the dereliction of duty.

This Authority is also found that there is clear violation of the provisions under Regulation 124 of the Supply Code, 2014, which reads as follows:

124. Procedure for billing when meter not accessible.- (1) If the licensee is not able to access the meter for reading, a provisional bill may be issued on the basis of the average consumption of the previous three billing cycles.

(2) The licensee shall ensure that such provisional billing does not extend to more than two billing cycles at a stretch, and there are not more than two provisional bills generated for a consumer during one financial year.

(3) The provisional bills shall be adjusted on the basis of the subsequent actual meter reading.

The meter reading of the energy meter was mentioned in the demand notices issued to the consumer in every month. It was very clear in the demand notice that the meter was working but the demand was raised erroneously based on average consumption instead of the actual consumption. The Regulation 109 (19) states that "The consumer shall promptly intimate the licensee about any fault, accident or abnormality noticed with the meter". The consumer has not resorted to the said statutory obligation. Instead he conveniently accepted the low average consumption being levied during the alleged meter suspected faulty period which was beneficial for him. As per the Agreement executed by the consumer with KSEB, the consumer is bound to pay the charges for the true electricity he has consumed.

The industrial consumers are usually seen to have showing great care and a bit cautious about the energy consumption of his Unit including correct working of the meter and surely will question any higher bill than his normal energy consumption. This is because; the energy bill plays an important role in any industrial concern's growth. In the opposite case, if the Meter slows down in working, there are chances that the consumer may not report it, since it is beneficial to him. In this case it is also noted that the consumer has not an argument that he approached the KSEB to test the accuracy of the meter at any time, even after receiving the average bills.

On going through the records, it is found that a clerical mistake occurred from the part of the licensee, but on identification of the fault, actions have been taken to rectify the errors and hence the bill was issued, which is the actual current charge to be paid by the appellant, as he had used that much of energy. As per Regulation 134(1) of the Kerala Electricity Supply Code, 2014 in which it is stated that "If the licensee establishes either by review or otherwise, that it has undercharged the appellant, the licensee may recover the amount so

undercharged from the appellant by issuing a bill and in such cases at least thirty days shall be given to the appellant for making payment of the bill", the licensee can collect the undercharged bills. As the meter is found working normal during all these period in dispute, the appellant is liable to pay to the units he consumed. The impugned bill issued was in order and hence the appellant is liable to pay the bill.

Decision

From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

The order dated 28-03-2017 issued by the CGRF, Kottarakkara, in Petition No. 276/2016 is upheld.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/054/2017/ _____ /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, Ettumanoor, Kottayam

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.