

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/070/2017
(Present: A.S. Dasappan)
Dated: 16th 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,
Pulamanthole,
Malappuram

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 three phase service connection is 20759 under LT VI F tariff and is under the jurisdiction of Electrical Section, Kolathur. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 10-03-2016 directed the appellant to remit an amount of Rs. 53,526/- being the short assessment based on the findings that the meter was sluggish during the period 06/2013 and from 07/2014 to 11/2014. An objection against the demand was filed before the Assistant Engineer and he rejected and directed to remit the short assessment made without quoting any valid reason or regulations.

So the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 70/2016-17. The Forum ordered to reassess the bill for 05/2013 and from 06/2014 to 10/2014 based on the meter reading in the succeeding three months after replacement of the faulty meter in 05/2013 and 10/2014 as per regulation 125 of Kerala Electricity Supply Code, 2014.

According to the direction of the Hon. Forum in its order/the short assessment bill was revised to Rs. 87,197/- by the Assistant Engineer, Electrical section, Kolathur. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant have an electrical connection with consumer No. 20759 under Electrical Section, Kolathur for operating the mobile tower with connected load of 42742 watts under LT 6F tariff and paying current charges as per their bills regularly without any dues or delay. But they had given a short assessment bill amounting to Rs. 53,526/- on 10-03-2016 towards the short assessment for the period 06/2013 and from 07/2014 to 11/2014. (Exhibit A1). Since the short assessment bill was issued illegally only by imagination and assumption, the appellant had filed an objection against the bill before the Assistant Engineer, Electrical section, Kolathur. (Exhibit A2). But the Asst. Engineer did not consider any of the objections and directed to remit the short assessment made illegally vide letter dated 15/07/2016. (Exhibit A3). Aggrieved by this the appellant had approached the Hon. CGRF (NR) by filing the petition with OP NO. 70/2016-17 against the illegal short assessment bill. (Exhibit A4). But even though the Hon. Forum observed serious lapses on the part of the licensee, allowed the short assessment in a different manner. According to the direction of the Hon. Forum in its order, the short assessment bill was revised to Rs. 87,197/- by the Assistant Engineer, Electrical section, Kolathur.

1) The meter of the above service connection was replaced on 27/05/2013. The bill for the month of 06/2013 was issued for the actual consumption recorded in the meter and the status of the meter was recorded as working in the bill issued. Hence the short assessment for the month of 06/2013 is illegal and not liable to pay.

2) Again the meter was seen replaced on 09-10-2014 and billing was done based on the average consumption as per the concerned regulations in the Supply Code, 2014 for the period of 07/2014 to 11/2014 and hence the short

assessment for the above period after around three years of time by the assumption that the meter was sluggish cannot be admitted.

3) As per the regulation 125(1), 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 instant case the previous readings of the meter faulty period are available, average fixed as per the concerned regulations for the assessment of the meter faulty period, bills were issued for the average consumption and payments were made accordingly. Hence the short assessment based on the average after the faulty meter changing period is not legal and sustainable.

4) Any rules or regulations in the Electricity Act or Electricity Supply Code not supporting to reassess 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 without any support of the test report of the meter.

5) 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.

6) As per regulation 116(2), if the meter is gone defective, licensee may test it at site, if feasible, 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.

In the above circumstances the appellant hereby prays before this Authority to quash the order of the Honourable CGRF, Northern Region and give necessary directions to cancel the short assessment bill issued illegally.

Arguments of the respondent:

The supply of electricity to the consumer is being used for the purpose of a cellular mobile tower. Being a mobile Cellular tower, the functioning of the tower is uniform round the clock. The cellular mobile connections are increasing day by day in an exponential rate. Hence the functioning of the cellular tower also will have a consequent growth, which leads to increase in

electricity consumption. The electric meter installed at the premises of the consumer become faulty for the period 05/2013 and from 07/2014 to 11/2014. The consumption of the consumer during the period from 01/2013 to 06/2013 is as follows:

05.01.2013	6274	
05.02.2013	5708	
05.03.2013	6797	
05.04.2013	6060	
06.05.2013	3701	
27.05.2013	1600	Meter replaced on 27.05.2013
05.06.2013	5934	
05.07.2013	7620	

Consumption for 04/2013 taken on 06.05.2013 was only 3701. The lower consumption recorded in the meter was due to fault in meter. The faulty meter was replaced with a new meter on 27-05-2013. The consumption from 06-05-2013 to 27-05-2013 was computed based on the wrong reading taken on 27-05-2013 (1600 Unit) i.e., when the meter is faulty.

Average consumption for three billing cycles for the period from 03/2013 to 05/2013 comes to 6189 units/month. Since the meter was faulty during 05-04-2013 to 25-05-2013 consumption during this period had to be assessed on the average consumption of 6189 unit.

The assessment shall as below:-

Average consumption prior to faulty period

03/2013	5708Unit
04/2013	6797Unit
05/2013	6060Unit
$18565/3 = 6189$	

Consumption to be charged for 06/2013	6189Unit
Less: Consumption already charged (3701+1600Unit)	5301Unit
Balance	888Unit
CC:888x9.1	8081
Duty	808
Total to be realized	8889(1)

Again the meter is faulty and changed on 09.10.2014. The consumption pattern of the consumer during the period from 05.02.2014 to 04.12.2014 is shown below:

05.02.2014	6335	
05.03.2014	6410	
03.04.2014	7428	
03.05.2014	6598	
05.06.2014	4295	
25.06.2014	34	
05.07.2014	41.7	Average bill issued
05.08.2014	Nil	
04.09.2014	Nil	
06.10.2014	Nil	
09.10.2014	5342	(Meter replaced)
05.11.2014	7406	
04.12.2014	7718	

It may please be noted that the appellant/consumer had remitted all the monthly bills raised based on the average consumption of 6416 units per month.

The impugned demand is the charge of electricity for the units which is the difference between those billed during 07/2014 to 11/2014 based on the average consumption prior to the sluggish period and the average monthly consumption of 6414 units as explained below:

Average consumption prior to sluggish period
Consumption charged for 07/2014 to 11/2014.

04/2014	6410 Unit
05/2014	7428 Unit
06/2014	6598 Unit
$20436/3 = 6812$ Unit	
Consumption to be charged 6812	

07/2014	4329 Unit
08/2014	6416 Unit
09/2014	6416 Unit
10/2014	6416 Unit
11/2014	6004 Unit
29581 Unit	

Consumption to be charged from 01.07.2014 to	-	10218 Unit
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15.08.2014 VII A tariff (6812+3406)		
Less: Consumption already billed from 01.07.2014 to 15.08.2014 in VII A tariff 4329 + 3208)	-	7537 Unit
Total to be realized (10218-7537)	-	2681 Unit
2681 x 9.1	-	24397

Consumption to be charged from 16.08.2014 to 30.11.2014 in VI F tariff (6812 x 3 + 3406)	-	23842
Less: Consumption charged from 16.08.2014 to 30.11.2014 (3.208 + 6416 x 2 + 6004)	-	22044
Consumption to be charged (23842 - 22044)	-	1798Unit

Current charge (1798 x 9)	-	16182
Total amount charge (24397+16182)	-	40579
Duty	-	4058
		44637 (II)
Total to be realized (8889 + 44637) (1 + 11)	-	53526

The bill for Rs. 53,526/- has been revised to Rs. 87,197/- in compliance of the order of Consumer Grievance Redressal Forum, Northern Region dated 28-12-2016 by re-assessing the short assessment bill for 05/2013 and from 06/2014 to 10/2014 based on the average consumption of 3 months after the replacement of meter in 05/2013 & 10/2014 as per Regulation 125 of Kerala Electricity Supply Code 2014.

As per the final Order dated 28 th December 2016 in respect of O.P.No.70/2016-17 of the Consumer Grievance Redressal Forum, Kozhikode the Additional Bill revised as follows				
Consumer No. 20759				
1	Billed for 7/2013		7620 Units	
	Billed for 8/2013		7202 Units	
	Billed for 9/2013		6377 Units	
		Total	21199 Units	
	Average	21199/3	7066 Units	
	To be billed	06/2013	7066 Units	
	Billed.	06/2013	5301 Units	
	Balance to be billed		1765 Units	
		1765 x 9.1	Rs. 160,62/-	
2	Billed 12/2014		7718 Units	(Consumption 11/2014)
	Billed 01/2015		7467 Units	(Consumption 12/2014)
	Billed 02/2015		6755 Units	(Consumption 01/2015)
		Total	21940 Units	
	Average	21940/3	7313 Units	

	To be billed 07/2014 To 11/2014		7313 Units	
	01.07.2014to 15.08.2014	7313 x 1.5	10970 Units	
	Billed	4329+3208	7537 Units	
	Balance to be billed		3433 Units	
		3433 x 9.1	Rs. 31,240/-	
	16.08.2014to 30.11.2014	7313x3.5	25596 Units	
	Billed	3208+6416+ 6416+6004	22044 Units	
	Balance to be billed		3552 Units	
		3552 x 9	Rs. 31,968/-	
		Rs.16,062 + Rs. 31,240 + Rs. 31,968		
		CC	Rs. 79,270/-	
		Duty	Rs. 7,927/-	
		Total	Rs. 87.197/-	
(Rupees Eighty Seven Thousand One Hundred and Ninety Seven Only)				

The consumer consumed electricity with a liability to buy its charges and an agreement has been executed by the consumer to this effect. The Regulation in vogue during the relevant period was Kerala State Electricity Board Terms and Conditions of Supply, 2005. Regulation 37 (5) of the above permitted the Board to recover the amount under charged if it is established so either by review or otherwise Regulation 134(1) of the Kerala Electricity Supply Code, 2014 also permits the Kerala State Electricity Board Limited to recover charges if it is established either by review or otherwise that the above charges was undercharged.

It is clear from the consumption pattern of the consumer that the reading shown on the meter on 06/2013 and 07/2014 to 11/2014 was not correct and quite abnormal compared with the consumption in preceding months. The meter was hence replaced with good one on 09.10.2014. Consumption in succeeding months after the change of meter will clearly illustrate this. Regulation 33(2) of the Kerala State Electricity Board Limited Terms and Conditions of Supply, 2005 and Regulation 125 (1) of the KSEB Supply Code, 2014 permits the Kerala State Electricity Board Limited to assess the consumption of a consumer during the period in which when the meter was faulty.

An amount become due only when it is raised and served on the consumer and not before it. Various Courts of this land upheld it. Hon'ble High Court of Maharashtra in Brihanmumbai Municipal Corporation Vs. Yatish

Sharma (2007(3) KLTSN9) and the Hon'ble High Court of Kerala in the matter of Sunderdas Vs. KSEB (2009(2) KLTSNS) has held that "the amount of charges would become due and payable only with the submission of the bill and not earlier. In the case on hand the appellant has given the impugned demand only on 15-07-2016. Hence it becomes due only in the due date specified there in the demand. The impugned demand therefore is not hit by the limitation contemplated under Section 56(2) of the Electricity Act, 2003.

From the legal and settled positions, narrated supra it will prove that the demand impugned is legally sustainable and the consumer is liable to honour it by remitting it. Therefore it is humbly prayed before this Hon'ble Forum that the appeal may be dismissed and the appellant may be directed to remit the demand.

Analysis and findings:

The hearing of the case was conducted on 08-08-2017 in the Court Hall of CGRF, Kozhikode and Sri. M.Y. George represented for the appellant's side and Sri. C. Khaleelul Rahman, Assistant Executive Engineer of Electrical Sub Division, Pulamanthole 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 05/2013 and from 06/2014 to 10/2014 after a period of 2 years is only an imagination and hence the short assessment bill is not sustainable. On the other hand the respondent argued that being a mobile Cellular tower, the functioning of the tower is uniform round the clock and the cellular mobile connection are increasing day by day in an consistent rate and also the consumption pattern confirmed that the meter became faulty during May 2013 and from 06/2014 to 10/2014. So, average energy consumption was arrived as per Regulation 125(1) of the Kerala Electricity Supply Code, 2014 and issued demand as contemplated in Regulation 125(3) of 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 revised short assessment bill dated 25-01-2017 for Rs. 87197/-to the appellant after reassessing on the basis of average consumption after replacement of meter 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 06/2014 to 10/2014 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 27-05-2013 and 09-10-2014.

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 06/2014 to 10/2014, after raising average consumption of 6416 units per month for the disputed period and also 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.

The assessment made in this case is relying on succeeding months consumption which was made after a lapse of 2 years, i.e., only on 10-03-2016. 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.

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, by passing 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 5/2013 and it was replaced only on 27-05-2013 and thereafter the meter replaced further on 09-10-2014 without conducting an inspection or testing of the alleged faulty meter in an accredited lab. According to the respondent the monthly consumption shows enormous decrease from 6/2014 onwards. In the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the post 3 billing cycles immediately succeeding the date of meter being found or reported defective. Here the appellant was billed based on the average consumption of 6416 units during this disputed period. 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's consumption was increasing due to increase in the cellular mobile connections. 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 is not sustainable. On going through the meter readings of the appellant's premises, during the years of 2011, 2012, 2013, 2014, and 2015, it shows the consumption varies considerably per month. 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 and liable to be quashed.

Decision

In view of the above findings, the revised short assessment dated 26-04-2017 for Rs. 87,197/- is hereby quashed. There is no need to issue short assessment bills based on presumptions as it is not sustainable before law. The order dated 28-12-2016 of CGRF (NR) in OP No. 70/2016-17 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/070/2017/ _____ /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, Pulamanthole, Malappuram

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, Gandhi Road, Kozhikode