

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/159/2015

(Present: V.V. Sathyarajan)

Dated: 27th January 2016

Appellant : Sri. Biju T. Nair
Indus Towers, 8th Floor,
Vankarath Towers,
Palarivattom, Kochi 24.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Ramapuram, KSE Board Ltd,
Kottayam.

ORDER**Background of the case:**

The appellant is representing the mobile tower provider, M/s Indus Towers Limited, Cochin who was given a service connection for a connected load of 10 kW during 8/2007 with consumer number 18263 under Electrical Section, Kollapally (formerly known as Ramapuram). The appellant had applied for an additional load of 4.1 kW and remitted an amount of Rs. 4,95,420.00 towards the OYEC charges for installing 1 No. 100 kVA transformer. The connected load of this service connection was enhanced to 14.120 kW with effect from 08-06-2011. It is alleged that though the appellant had raised complaints regarding the low voltage problems in his premises the respondent has not taken any action on that. In order to overcome the situation, the appellant availed the supply from the DG set with effect from 05/2011 and not used KSEB supply. But the respondent issued average bills from 07/2011 onwards.

The respondent has neither solved the voltage issue nor given any reply and the appellant was forced to run the site with DG set suffering huge loss. In the meantime, the appellant's meter became faulty and the same was replaced with a new one. The respondent tested the meter in the meter testing unit without any intimation to the appellant. Further, the respondent had issued average bill during that period for Rs. 2,91,174. As the appellant failed to remit the said amount, the respondent disconnected the supply on 20-6-2014 and issued dismantling notice on 23-1-2015.

Aggrieved against this, the appellant approached the CGRF, Kottarakkara with a petition in OP No. 1465/2015 which was disposed of with the following orders: "the petitioner shall remit the amount within one month from the date of receipt of this order, the instalment facility shall be allowed, if he desires." Not satisfied with the above order of the Forum, the appellant filed this appeal before this Authority.

Arguments of the appellant:

The appellant, M/s Indus Towers Limited, Cochin, a company incorporated under the provisions of the Companies Act 1956 for providing passive infrastructure service to telecommunication service providers and subsequent to the order of Honourable High Court of Delhi in copt 14/2014 dated 18-04-2013, the passive infrastructure of M/S Bharati Airtel Ltd, Vodafone Essar Cellular Ltd and Idea Cellular Ltd are dissolved and merged with Indus Towers Ltd.

The appellant has more than six thousand own sites doing operation and maintenance all over Kerala, among one such site at Kollapally, which was formerly under Electrical Section, Ramapuram. The appellant had procured service connection from Ramapuram Section with a connected load 10 kW with consumer No.18263. When the voltage became low, the appellant had raised complaints to Electrical Section Ramapuram. But no action had been initiated. As the condition became very severe the supply had switched on to DG set completely from 05/2011. As there was no consumption in the meter, KSEB had started average billing from 07/2011 onwards.

Then appellant had again complained to Ramapuram Section on 09-02-2012 and then Assistant Engineer had marked the paper to concerned Sub Engineer for testing the meter instead of solving the voltage issue. The appellant had not given any such complaint to Assistant Engineer for testing the meter. The appellant had applied for power enhancement of 4.1 kW on 02-09-2010. As and when the application submitted, the Assistant Engineer had asked to install one 100 kVA transformer under OYEC scheme since there exist severe low voltage issue so appellant was forced to remit Rs. 4,95,420.00 on 07-05-2011 even for a small load of 4.1 kW with an intention to solve the low voltage issue thereby appellant can run the site with KSEB supply and the load was regularized on 08-06-2011.

But unfortunately the voltage issue was not solved and again the appellant had given complaint to Assistant Engineer, Ramapuram on 16-11-2012, 27-03-2013 and 05-05-2014. But the respondent had not given any reply or solved the voltage issue. Whenever appellant had contacted the office regarding the voltage issue they had told that it will be solved when transformer was energized. The appellant was forced to run the site only with DG set suffering very huge loss. When the new transformer had energised the respondent had not informed the matter to the appellant even though the appellant paid OYEC for installing the transformer to solve the low voltage issue at

their site. The cause of the low voltage issue remained unsolved due to some other technical reason in respondent's transformer station.

The meter became faulty due to lightning then it was replaced with new one and it was tested in the meter testing unit and confirmed it was faulty, but the copy of the test report had not given. But they had given average bill during that period for Rs. 2,91,174.00. But appellant had not paid amount since appellant had not used any power during that period. The supply was disconnected on 20-6-2014 and given dismantling notice on 23-1-2015.

Again appellant had approached the Assistant Engineer and tried to explain their grievances but reluctant to do anything because he is unaware of the facts and figures as he is a new person. So appellant had approached the CGRF, got an interim order to reconnect the power supply. But the Honourable CGRF in its final order upheld the arrear amount and directed to remit it within one month. Based on that order, Assistant Engineer has issued a revised disconnection notice for Rs. 3,45,476.00 including surcharge from bill generated date.

The findings of the Honourable CGRF by its order in Para (6) is not in the correct sense. The Regulation (10) of Supply Code, 2005 of KSEB stated as

"A Low Tension consumer must, in all cases, provide linked quick break main switches of requisite capacity and main fuse on each pole other than the earthed neutral, which must be erected within one meter of the Boards meter board or in such other position, as approved by the Engineers".

This does not mean that all installations are within one meter. It meant for the position of the main switch and fuse units are to be installed and not for the consumers load if so why should Board allow cable service not only that the installations are approved by the concerned Engineers. The appellant is very much aware of the fact that it is the duty of the consumer to maintain required standard and quality in their installations. The appellant never used substandard materials and it is the duty of the licensee to verify the quality of the materials used in the installation. Moreover, appellant had not changed the UG cable till date so the argument made for the low voltage is not related to the fact. The arguments of Assistant Executive Engineer itself are admitting that there was low voltage issue and try to impose the reason to the consumer.

Meter declared faulty on 01-08-2011 but changed only on 01-01-2013, after 16 months clearly shows the lapse of duty of the licensee which leads things are complicated. After changing the meter on 01-01-2013 no reading had been recorded till the site was disconnected on 20-06-2014. Only fixed charge had been claimed which means the appellant has not used the KSEB supply.

The statement of the Assistant Executive Engineer that the transformer installed under OYEC scheme for which the amount remitted by the company when applied for power enhancement is not related to the fact. The appellant had applied only for 4.1 kW if there exist no low voltage issue why should appellant was compelled to remit a huge amount Rs. 4,95,420.00 for installing a 100 kVA transformer. It was an injustice done by the licensee. The appellant prayed to quash the CGRF order and newly issued disconnection notice for amounting Rs. 3,45,476.00. The appellant is ready to remit fixed charge and meter rent for the above period.

Arguments of the respondent:

The service connection with consumer No: 18263 under Electrical Section, Ramapuram was affected on 18-08-2007 with a connected load of 9983 kW. The connected load of the above service connection was enhanced to 14.120 kW with effect from 08-06-2011. The consumer recorded maximum energy consumption of 8662 units during January 2011. This clearly indicates that the averment made by the appellant that there existed low voltage problem in the premises during the above period is a deliberate act to mislead this Hon'ble Authority and is against facts.

The Hon'ble C.G.R.F Kottarakkara in its order dated 03-08-2015 in O.P. No: 1465/2015 categorically ruled out the above averment made by the petitioner. There is neither any fresh evidence nor proof submitted by the appellant to challenge the findings of Hon'ble C.G.R.F made on the basis of rational analysis of the facts produced by this defendants.

The complaints filed by the appellant were promptly attended by this licensee and there is no lapse in this regard. The consumer availed supply by drawing 500 metres of U.G. Cable from the metering point to the installations of the Mobile Tower. The above U.G. Cable forms part of the consumer end of the installations beyond the metering point and the consumer is liable to maintain quality U.G. Cables of sufficient capacity and the upkeep of the same. The KSEB Ltd is no way responsible for errors and omissions in the quality upkeep of the above U.G. Cables and low voltage problem consequent to the defective cabling network at the consumer end of installations.

It is admitted by the appellant that the connected load was enhanced on 08-06-2011 by upgrading the transformer capacity. The fixed charges for the enhanced connected load were realized from the petitioner from 08-06-2011 onwards. Therefore there is no room for complaint that the capacity addition of the transformer was not informed to him. The invoice clearly indicates the connected load as 14120 Watts and corresponding fixed charges were also realized. Therefore the load enhancement and charging of the transformer were intimated to the appellant at proper time and there is no lapse in this regard as alleged.

The energy meter installed in the premises was declared faulty on 01-08-2011 and the same was replaced on 01-01-2013. During the period the energy meter was faulty

the consumer was billed for 3073 units based on the previous 6 months average meter reading recorded prior to the period the meter went faulty. There is no reliable proof produced by the consumer to prove that there is no energy consumption in the premises when the energy meter was faulty. The diesel consumption records produced by the consumer shows a steady consumption of 1000 litres even during the period, while 5000 units KSEB Ltd supply stands consumed in the premises. Therefore there is no proof available to establish the claim of low consumption in order to revise the bills issued.

The energy meter installed in the premises was tested and confirmed faulty. The consumer was deliberately suppressing the details of unit and readings of the DG set supply consumed. In the absence of reliable information this licensee cannot interfere with the bills issued during the period the energy meter was declared faulty based on previous six months average consumption as per rules. The findings of Hon'ble C.G.R.F is based on the technical proof reliably analyzed on the defective cabling in the consumer end of the installations beyond the metering point for which the licensee cannot be held responsible.

The supply to the premises was reconnected during June 2015. The KSEB Ltd as a licensee besides the up-gradation of the transformer capacity on 08-06-2011 at no point of time undertook any kind of capital works but only resorted to normal maintenance works. Therefore the reason for the voltage improvement and normal consumption in the premises during 08/2015, 09/2015 and 10/2015 is solely attributed to the fact that the appellant rehauling the cabling and wiring at the consumer end of the installations on clearing the defects. The findings of the Hon'ble C.G.R.F clearly sustain the above theory and there is no error on the appraisal of the factual position by Hon'ble C.G.R.F.

In the event of energy not consumed in the premises, the appellant should have informed the licensee in advance and supply got temporarily disconnected. The claim about no consumption of energy is deliberate ploy to mislead this Hon'ble Authority and to take advantage of the position that the energy meter was declared faulty. The connected load was kept below 10 kW in order to take advantage of utilizing existing capacity of the transformer. The overall load of 15 kW has to be reckoned resulting in the erection of the transformer with required capacity as per rules. There is a deliberate act to mislead this Hon'ble Authority by pointing fingers solely at load enhancement of 4137 Watts only.

This licensee have provided quality power supply at the metering point but due to serious omissions and defects in the consumer end of the installations the appellant unnecessarily blames the licensee. The rectification of the above defects are the sole responsibility of the consumer and the petitioner offers lame excuse for evading the responsibility to pay the current charges claimed as per rules.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 16-12-2015. Sri M.Y. George, Indus Towers Ltd represented for the appellant's side and Sri Rajmohanan P., Assistant Executive Engineer, Electrical Sub Division, Ramapuram for the respondent's side. Both sides have presented their arguments on the lines as stated above. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The main grievance of the appellant is that no action has been taken by the respondent against the complaints raised regarding the low voltage problem. Further, the energy meter installed in the appellant's premises was declared faulty on 01-08-2011 by the respondent but the same was replaced only on 01-01-2013. The appellant was charged for 3073 units during the faulty period, based on the previous six months average consumption recorded prior to the period the meter went faulty and issued an arrear bill dated 12-08-2013 amounting to Rs 2,91,174.00. The appellant's contention is that due to severe voltage problem he could not run the site with KSEB supply and forced to run the site with DG set.

In the above circumstances the point to be decided is whether the short assessment bill issued for Rs. 2,91,174.00 is in order or not.

The appellant has argued that several complaints dated 09-02-2012, 16-11-2012, 27-03-2013, and 05-05-2014 were lodged against the low voltage problems and hence the appellant could not avail KSEB supply which resulted in running the site with DG set. Due to the above reason, huge financial loss sustained to the appellant. On the other hand, the respondent's contention is that in the letters dated 09-02-2012 and 16-11-2012 nothing is mentioned about the functioning of DG set. Another argument raised by the appellant is that while energizing the transformer, the respondent has not intimated the details to him. The respondent challenged this argument by quoting the appellant's letter dated 16-11-2012 stating that '**we don't understand the reason for low voltage issue in spite of installing new transformer**'.

On going through the records will reveal that the appellant submitted complaints dated 09-02-2012, 16-12-2012, 27-03-2013 and 05-05-2014 regarding the low voltage issue and the functioning of DG set. But the respondent has not taken any steps to find out the reason for the voltage drop in the premises of the appellant. Instead he stated that the appellant availed supply by drawing 500 metres of underground cable from the metering point. The reason for the low voltage issue is due to defect in the cabling network of the appellant. Since the underground cable forms part of the consumer end installations, it is the duty of the appellant to maintain its quality as per standard. The respondent's argument is that they have provided quality power supply

at the metering point and hence not responsible for any defect in the cabling network of the appellant.

The respondent has not adduced any evidence to establish his argument that they have provided quality power supply at the metering point or noticed any defect in the cabling network of the appellant. Nowhere the respondent furnished the exact voltage at the metering point and the details of defects if any noticed in the cabling network. In view of the above factual situation there is no reasonable justification for those arguments of the respondent. A prudent interference from the part of respondent would have taken to find out the reason for the low voltage problem; this sort of unnecessary litigation could have been avoided. Even a reasonable explanation was not given to the appellant's grievance.

It is a fact that the appellant's energy meter was declared faulty on 01-08-2011 and replaced only on 01-01-2013 i.e. even after a period of 16 months for which no reason is forthcoming from the part of the respondent. Though the appellant's meter declared faulty on 01-08-2011 the test was conducted only during 12/2012. The appellant was not informed anything about the testing of the meter and without preparing a site mahazar, the same was sent for testing at TMR unit. Further, it is not known that the accuracy of the meter has been checked or not. The officers of the licensee are responsible for such a grave irregularity and irresponsibility.

As per **Regulation 33 (2) of KSEB Terms and Conditions of Supply, 2005**, "If the Board is unable to raise a bill on meter reading due to its non-recording or malfunctioning, the Board shall issue bill based on the previous 6 months average consumption. In such cases the meter shall be replaced within one month. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or for any other reason, the consumption will be determined based on the meter reading in the succeeding three months after replacement of the meter." But in this case, the faulty meter was not replaced for 16 months from 8/2011 which shows serious lapses on the part of respondent. It seems that the licensee has not taken timely action to replace the faulty meter. If at all any loss sustained to the licensee on this account, it is only because of the malfunctioning of the responsible officers. Hence it is directed to take proper action against the responsible officers for their lapses and to recover the amount from the concerned if the licensee desires so.

Here in this case, a probable conclusion can be arrived at is that due to low voltage problem the appellant could not avail supply from the licensee and forced to run their DG set for the smooth functioning. It is pertinent to note that for availing additional load to the tune of 4100 Watts, the appellant remitted an amount of Rs. 4,95,420.00 towards the OYEC charges for installing a 100 kVA transformer on 08-06-2011. The respondent has not taken any steps to sort out the issues raised in the complaint. Further, the respondent has not taken any steps to record the consumption even after replacing the faulty meter on 01-01-2013 till the date of disconnection of the service. It is the duty of the licensee to inform the appellant about the testing of the

energy meter when it is found faulty and this was not done in this case. In this background, there is no justification in issuing a revised bill amounting to Rs. 3,45,476.00 to the appellant. Needless to say that failure of the officers of the licensee to discharge their duty properly is the reason for issuing such a huge bill for an amount of Rs. 3,45,476.00.

Decision

In view of the above discussion it is concluded that the revised bill issued for Rs 3,45,476.00 is hereby quashed. At the same time the respondent is free to reassess the appellant for fixed charges along with meter rent as per norms from the date of receipt of complaint i.e. from 09-02-2012 onwards. Any amount paid excess shall be refunded to the appellant or adjusted against the future bills. The order of CGRF in OP No. 1465/2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/159/2015/ Dated:

Forwarded to:

1. Sri. Biju T. Nair, Indus Towers, 8th Floor, Vankarath Towers, Palarivattom, Kochi 24.
2. The Assistant Executive Engineer, Electrical Sub Division, Ramapuram, KSE Board Ltd, 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.