

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/045/2016
(Present: V.V. Sathyarajan)
Dated: 13th October 2016

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

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

ORDER

Background of the case:

The appellant represents M/s Indus Towers Ltd., a company providing passive infra structure service to telecommunication providers. The consumer number of the above service connection is 16592 and is under the jurisdiction of Electrical Section, Melmuri. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the letter dated 01-02-2016 directed the appellant to remit an amount of Rs. 81,430.00 based on the findings that the meter was sluggish during the period from 05/2014 to 09/2014. An objection against the demand was filed before the Assistant Engineer and the same was rejected without quoting any valid reason or regulations.

So the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 177/2015-16. Though the Chairperson has allowed the petition and ordered to quash the impugned bill of Rs. 81,430.00, the second and third members have recorded their difference of opinion that "the nomination submitted for the person who attended the hearing is not proper" and the case is not maintainable. Hence as per the Regulation 11 (3), of CGRF and Ombudsman Regulations 2005, the Hon'ble Forum issued final order as the petition is dismissed and the demand of Rs. 81,430.00 raised by the

licensee is upheld. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

M/s. Indus towers Ltd, a company incorporated under the provisions of the Companies Act, 1956 for providing passive infrastructure service to Telecommunication service providers and subsequent of the order of Honourable High court of Delhi in copt 14/2014 dated 18-4-2013, the passive infrastructure of M/S Bharati Air Tel Ltd, Vodafone Essar Cellular Ltd and Idea Cellular Ltd. are dissolved and merged with M/s Indus Towers Ltd.

The company have more than 6000 own Tower sites all over Kerala with KSEB supply and paying around Rs. 1 crore per day (30 crores per month) towards electricity charges at a high rate of Rs. 10.85 per unit and among that, one site under Electrical Section, Melmuri with consumer No. 16592 and paying current charges as per their bills regularly without any dues or delay. But they had been given a short assessment bill amounting to Rs. 81,430.00 towards the short assessment for the period from 05/2014 to 09/2014.

An objection against the illegal demand was filed before the Assistant Engineer and the Assistant Engineer rejected their objection without quoting any valid reason or regulations. Then the appellant had approached the Hon'ble CGRF (NR) by filing the petition OP No. 177/2015-16. But in the petition, the Chairperson as per their findings, the petition is allowed and ordered to quash the impugned bill of Rs. 81,430.00. But the second and third members are recorded their difference of opinion that "the nomination submitted for the person who attended the hearing is not proper" and the case is not maintainable, hence as per the Regulation 11 (3), of CGRF and Ombudsman Regulations, 2005, the Hon'ble Forum issued final order as the petition is dismissed and the demand of Rs. 81,430.00 raised by the licensee is upheld.

1. Sri K.N. Anil Kumar authorized signatory of the company was the appellant and he filed the petition as he is the Power of Attorney of the company to represent the company in the various Forums and he nominated Sri. M.Y. George, E B Consultant in the prescribed form for attending the hearing. At the time of hearing, the Forum not raised any objection against the nomination or not directed to produce any proof of the power of attorney. The same Forum with same members released many orders without any objections against the same nominations and representations in various petitions filed by the appellant for various reasons. Hence the difference of opinion recorded by the Members 2 & 3 of the Forum, about the nomination is, baseless and with bad intentions. Copy of the power of attorney and the nominations are attached with the petition. Many times it was felt that some members of the Forum acting as the advocate of the licensee and it is not intended to do so as it is a

Consumers Grievance Redressal Forum. In the above circumstances, the Hon'ble Electricity Ombudsman may kindly consider the above facts and issue proper orders to uphold the decision of the Chairperson of the Hon'ble CGRF to cancel the illegal short assessment demand issued by the licensee.

1. The short assessment bill is purely illegal, imaginary and by the following reason, the appellant is not liable to pay the bill amount.
2. The meter installed for the electrical connection with consumer No. 16592 was declared as faulty on 02-09-2014 and average as per the regulations was charged for the month of 09/2014. The faulty meter was replaced during the month of 09/2014 itself. 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. The meter was recorded as faulty on 02-09-2014 and hence the short assessment prior to the period of 02-09-2014 as the meter was faulty is not sustainable. The licensee failed to replace the meter, if it was faulty within the maximum period of two billing cycles in the instant case.
3. The short assessment bill is prepared only by imagination and without any technical support or test report of the meter.
4. No inspection in the premises or testing of the meter was done for declaring the meter as faulty. The finding of the Assessing Officer as the meter was sluggish for the period of 05/2014 to 09/2014 after a period of 15 months is only an imagination and hence the short assessment bill is not sustainable. The meter was not declared as sluggish or faulty for the alleged short assessment period and no intimation has been issued in this regard to the appellant in time. Any rules or regulations in the Electricity Supply Code, 2014 or Electricity Act, 2003 not permitted to reassess a consumer merely based on dip in consumption in a previous billing period by declaring the meter as sluggish/faulty after a long time.

Considering all the above, the appellant prays to cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section, Melmuri.

Arguments of the respondent:

1. Consumer No. 16592 in the name of M/s. Indus Towers is a three phase Low Tension consumer under the billing tariff LT VI F. The power connection is being used for mobile tower for which continuous supply of power is required. During Regional Audit Officer's inspection, it was found that the meter of the consumer was sluggish-during the period from 5/2014 to 9/2014 due to defective meter. The meter was replaced on 25-9-2014. As per the Inspection Report, a short assessment bill was issued on 01-02-2016 for an amount of Rs.

81,430.00 and a detailed explanation was forwarded vide No. BB/RAO Insp/15-16 dated 01-03-2016 by the Assistant Engineer, Electrical Section, Melmuri.

2. As per Regulation 125 of the Kerala State Electricity Supply Code, 2014, if the meter is found defective or damaged, the consumer shall be billed based on the average consumption for a period of past three billing cycles preceding the date of meter being found defective. If the required details pertaining to previous billing cycles are not available the average shall be computed from the three billing cycles after the meter is replaced. Regulation 125 of the Code is reproduced below:

125. Procedure for billing in the case of defective or damaged meter: - (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 available:

Provided further that any evidence given by consumer about conditions of working and occupancy of the concerned premises during the said period, which might have had a bearing on energy consumption, shall also be considered by the licensee for computing the average.

(2) Charges based on the average consumption as computed above 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.

(3) In case, the maximum demand indicator (MDI) of the meter at the installation of the consumer is found to be faulty or not recording at all, the demand charges shall be calculated based on maximum demand during corresponding months or billing cycle of the previous year, when the meter was functional and recording correctly.

(4) In case, the recorded maximum demand (MD) of corresponding month or billing cycle of past year is also not available, the average maximum demand as available for lesser period shall be considered:

Provided that the above sub regulations shall not be applicable in the case of a tampered meter for which appropriate action under the provisions of the Act shall be initiated by the licensee

3. As per the Meter Reading Register, the average consumption for the period from 6/14 to 1/15 for 3 months prior to the replacement of meter and 3 months after the replacement of meter are furnished below:

<u>3 Billing Cycles preceding replacement of meter</u>		<u>3 Billing cycles succeeding replacement of meter</u>	
Months	Consumption	Months	Consumption
Jun-14	1780	Nov-14	3532
Jul-14	1466	Dec-14	3076
Aug-14	1433	Jan-15	3665
Average	1563	Average	3424 Units

4. The consumption of the preceding months to the replacement of meter showed a decrease in consumption which is due to the result of the meter being sluggish. The average consumption for the period from 6/2014 to 8/2014 showed considerable decrease due to defective meter. Thereafter the meter became completely faulty on 02-09-2014. Therefore the past three billing cycles were unavailable for issuing short assessment bill. The consumption for the period from 11/2014 to 1/2015 i.e., after the replacement of meter, showed considerable increase in consumption. Hence as per proviso to Regulation 125 of the Kerala Electricity Supply Code, 2014, the assessment was done computing the three billing cycles after the meter was replaced on 25-09-2014.

5. It is submitted further that no evidence, as contemplated in Proviso to Regulation 125 (1), was furnished by the consumer about conditions of working and occupancy of the concerned premises during the said period which might have had a bearing on energy consumption for computing the average. Moreover, the power connection was given to a mobile tower for which continuous supply of electricity was needed and hence the Proviso regarding the occupancy of the premises has no effect on computing the average.

6. It is submitted further that the bill was issued on 01-02-2016 which falls due on 15-02-2016 i.e. 30 days from due date as provided in Regulation 134 (1) of Supply Code, 2014. As per Section 56 (2) of the Electricity Act, 2003, the amount due from the consumers are recoverable after the period of 2 years from the date when such sum becomes first due. Section 56(2) is reproduced below:

56 (2) Notwithstanding anything contained in any other law for the time being in force no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due

unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

7. In the case in hand, the bill was issued on 01-02-2016 and hence the bill became first, due on 29-02-2016. Hence the above amount is recoverable within a period of 2 years from the date when it became first due. This has been upheld by the Hon'ble High Court of Kerala in judgment dated 19-02-2009 in WP(C) 90/2009. The Hon'ble Court ordered that the *word "due" in Section 56 (2) of the Electricity Act, 2003 bear the meaning that is upon the issuance of the bill that the amount becomes due. The scheme of Section 56 (2) is that the amount becomes due when the bill is issued*".

8. It is further submitted that after the meter was replaced, the consumption of the consumer has gone high again. The connected load of the consumer always remained constant from the date of connection. Without increase in load, the consumption would not change and hence the contention of these respondents is that the low consumption during the period before the meter was found faulty is due to defect in meter.

9. As per Regulation 134 of Supply Code, 2014, the licensee is authorised to recover the arrears for the entire meter faulty period. As per the agreement executed by the consumer, these respondents have the power to recover the arrears of electricity charges based on a bill issued as per Regulation 136 of the Supply Code. Hence the unwillingness to remit the bill is a breach of contract.

10. The short assessment was made only at a single rate and there is no penalisation. The assessment was made for the energy which was escaped recording in the meter through the defect of the meter. Hence the bill is actually due to the consumer. From the consumption pattern of the consumer, it can be understood that the meter was sluggish before becoming faulty. The billing was done as per the Statutory Provisions i.e. Regulation 125 and 134 of Supply Code, 2014 of the Kerala State Electricity Regulatory Commission.

11. There were no procedural error on the part of the licensee as alleged by the appellant. The Regulation 125 (1) is strictly adhered to while issuing the short-assessment bill. Besides, the consumption pattern of the relevant period is very clear in deciding the fact that the meter was sluggish before becoming defective.

12. Hence it is submitted that in the light of the above and other pleadings which may be submitted at the time of hearing, the Honourable Forum may dismiss the petition in toto with costs to these respondents.

Analysis and findings:

The hearing of the case was conducted on 06-09-2016 in the CGRF Court Hall, Kozhikode and Sri. M.Y. George represented for the appellant's side and Sri Premraj C.V., Assistant Executive Engineer, Electrical Sub Division, Sulthanpet 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.

Before going through the merits of the dispute, this Authority has examined the grounds of rejection of the petition by the Members II and III of CGRF Northern Region, Kozhikode. The reason stated for rejection of the case is that the nomination is not proper and hence it is not maintainable. The appellant is a company incorporated under Companies Act, 1956. Power of Attorney is a document of agency whereby the principal appoints an agent to do and execute certain acts or deeds on his behalf. Though there is a specific act pertaining to Power of attorney but it is a very precise and brief one, the basic principles of these documents are governed by the law of agency as provided for in the Indian Contract Act.

A power of attorney may be of two types -1) General, 2) Specific - The test to determine under which category a given document falls is as to what is the subject matter in respect of which power is given and if it is restricted to some specific matter it is specific, else it is general. In this case, on verifying the power of attorney produced by the appellant, it is found that the power attorney is general in nature and power attorney holder is authorized to sub delegate the said authorities on behalf of Indus Towers Limited in favour of any employee(s) of the company. As per Form A & B, the application for filing complaint with the CGRF and Ombudsman, the complainant can nominate his representative to appear and make submissions on his behalf before the Fora after furnishing a declaration in the prescribed format. Considering the above facts, I am not agreeing with the decisions of Members II & III of the CGRF and found that the petition is maintainable and hence can be accepted.

One of the main arguments raised by the appellant is that the respondent cannot raise a bill after a period of 2 years from the date of occurrence of such issue as per Section 56 (2) of Electricity Act. Hence the question is whether the claim of the KSE Board is barred by limitation under Section 56 (2) of the Electricity Act, 2003 read with Regulation 136 (4) of the Kerala Electricity Supply Code, 2014.

Section 56 (2) of Electricity Act, 2003, which reads as under;

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity”.

The Apex Court have interpreted this Section in detail in the reported decisions in Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC7794 AIR 2008 Jha 99) and other and Brihanmumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11(Bom) where it was held as follows respectively.

“The period of two years as mentioned in Section 56 (2) of the Electricity Act, 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of electrical energy”. “Amount of charges would become due and payable only with the submission of the bill and not earlier. Word “due” in this context must mean due and payable after a valid bill has been sent to consumer”.

Hence from the above, it is difficult for me to agree with the argument of appellant that the claim is barred by Section 56 (2) of Electricity Act, 2003. The period of two years as mentioned in Section 56(2) of Electricity Act, 2003, would run from the date when such a bill is raised by Board against the consumer and become due for payment only after that demand has been raised. In the disputed case, the bill was raised on 01-02-2016 and as such the bar of limitation will not attract. In such a situation, even if the bill was raised under Electricity Act, 2003, the bar of limitation under Section 56(2) will not attract, since the bar will start only from the due date of the bill, which is 29-02-2016 in the instant case.

Another contention of the appellant is that no inspection in the premises or testing of the meter was done for declaring the meter as faulty. The findings of the assessing officer as the meter was sluggish for the period of 05/2014 to 09/2014 after a period of 15 months is only an imagination and hence the short assessment bill is not sustainable. According to the respondent, the consumption pattern confirmed that the meter became faulty during September 2014 itself. So, average energy consumption was arrived as stipulated in Regulation 125(1) and issued demand as contemplated in Regulation 125(3) of the Kerala 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 01-02-2016 for Rs. 81,340.00 to the appellant after reassessing for a period 5/2014 to 9/2014 on the basis of average

consumption of 3424 units per month considering the meter as faulty is in order or not?

On going through the records it can be seen that the respondent has issued monthly bills and the appellant remitted the same without any fail. It is pertinent to note that during the inspection of Regional Audit Officer it is found that the meter was sluggish during the period from 05/2014 to 09/2014 and lesser consumption recorded during that period. It is also to be noted that even without conducting any inspection or checking the appellant's meter, the respondent declared the same as faulty on 02-09-2014 and replaced the same on 25-09-2014.

Regulation 125 speaks about 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 on 02-09-2014 that too even without any checking. There is no justification for issuing such a huge demand for a previous period from 05/2014 to 09/2014 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 an audit report of Regional Audit Officer which was made after a period of 2 years. 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 issuing the short assessment. 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

The assessment made in this case is without conducting any testing of the meter in an accredited lab or with a standard reference meter of better accuracy class. The only evidence and documents to substantiate the claim of the respondent is the audit report of Regional Audit Officer. So the assessment is arbitrary, illegal and not sustainable before law and is hereby quashed. The order of CGRF in OP No 177/2015-16 dated 23-05-2016 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/045/2016/ _____ 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, Sultanpet, Palakkad

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