

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/077/2016
(Present: V.V. Sathyarajan)
Dated: 13th February 2017

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Vadakkanchery,
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 appellant's three phase service connection is 17633 coming under the jurisdiction of Electrical Section, Mudappallur. The connected load of the appellant is 24.10 kW and tariff is LT VI F. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 29-02-2016 directed the appellant to remit an amount of Rs. 28,806.00 being the short assessment based on the findings that the meter was sluggish during the period from 06/2014 to 07/2014.

An objection against the demand was filed before the Assistant Engineer but he did not allow the petition and rejected without quoting any valid reasons. So the appellant had approached the Hon'ble CGRF (NR) by filing a petition in OP No. 28/2016-17. The Forum dismissed the petition vide order dated 09-09-2016. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant, M/s Indus Towers Ltd, a company incorporated under the provisions of the Companies Act, 1956 for providing passive infra-structure 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 Indus Towers Ltd.

The appellant 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, Mudappallur with consumer no: 17633 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. 28,809.00 towards the short assessment for the period from 06/2014 to 07/2014. An objection had been filed before the Assistant Engineer against the short assessment bill and the Assistant Engineer did not consider any of the objections and directed to remit the short assessment made illegally vide letter dated 05-05-2016. Then the appellant had approached the Hon'ble CGRF (NR) by filing the petition with OP No. 28/2016-17 against the illegal short assessment bill. But the Forum dismissed the petition without considering the facts and concerned regulations in the KESC, 2014.

In the above circumstances, the appellant invite the kind attention of the Honourable Electricity Ombudsman to the following facts for your consideration and favourable orders to cancel the short assessment bill issued illegally and refund of the excess amount collected during the faulty meter period. The short assessment bill is purely illegal, imaginary and by the following reason, the appellant are not liable to pay the bill amount.

- 1) The meter of the above service connection was declared as faulty during the month of 06/2014 and replaced on 19/07/2014. Average of the previous six months billing period were fixed and bills were issued and payments made accordingly for the meter faulty period. Then, after a period of around 2 years, the findings that the average fixed for the assessment of meter faulty period was not correct and the short assessment based on the average consumption for the post period of faulty meter change is not legal and not sustainable. Hence the appellant are not liable to pay the short assessment bill prepared illegally.
- 2) 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 and hence the short assessment based on the average after the faulty meter changing period is not legal and sustainable.

- 3) From the copy of the meter reading register submitted by the respondent itself, the consumption pattern for the period of one year back to the meter faulty period is as follows:

4-2014	545
3-2014	1830
2-2014	1695
1-2014	1544
12-2013	1478
11-2013	1457
10-2013	
9-2013	DL
8-2013	DL
7-2013	1576
6-2013	465
5-2013	866

From the above, the consumption pattern is not seen similar and hence the imagination that the meter was sluggish for the month of 04/2014 is baseless as the consumption for the month of 06/2013 and 05/2013 are 465 and 866 Units respectively recorded by the same meter and the same connected load. Hence the statement of the respondent that "The consumption of the preceding months to the replacement of meter showed decrease in consumption which might have been a result of meter becoming sluggish is not correct and only a imagination." The short assessments made based on the chances without evidences are not sustainable and not liable to pay by appellant. The billing was done for these months as per the actual consumption recorded by the same meter. The status of the meter was recorded as working in the bill for the month of 04/2014 and after around two years of period, the findings that the meter was sluggish by simply depending the dip in consumption without any test in the meter is totally baseless. So the short assessment as per the average consumption after the replacement of the faulty meter is not in order. As per the Regulation 125 (1) of KESC the assessment for the faulty meter period based on the three months average consumption after the replacement of the faulty meter is permitted only in the case of where the previous details are not available. In the present case the previous history is available and hence the short assessment based on the average of post period of meter replacement is not sustainable.

- 4) As per the Regulation 125 (1) of KESC, in the case of faulty 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. But in the present case, the previous six months average was taken for the billing of the faulty meter period of 06/2014 and 07/2014.

The average fixed is as follows:

4-2014	545
3-2014	1830
2-2014	1695
1-2014	1544
12-2013	1478
11-2013	1457
	8549/6
	1424 Units

As per Regulation 125 (1) of KESC, the average should be fixed as follows:

4-2014	545
3-2014	1830
2-2014	1695
	4070/3
	1356 Units

Hence the average consumption already fixed for the faulty meter period was itself not correct and to be revised and the excess amount collected may be adjusted towards the future bills.

5. Please note that, 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.
6. As per Regulation 116 (1) and (2) The licensee shall periodically check the meter and associated apparatus. If the meter is found defective the licensee may test it at site, if feasible, and if not feasible, the meter shall be replaced with a corrective meter and the defective meter shall be got tested in an accredited laboratory or an approved laboratory. In the instant case the meter not tested for declaring the same as faulty/sluggish. It could be possible by the meter reader/any other authorized officers to check the correctness of the meter by testing the same when the low consumption was noticed. But any authorized persons were not followed the above Regulation to ascertain the

correctness of the meter even when the consumption was less compared to the previous period. The meter is installed by the licensee and it is the duty of the licensee to confirm the correctness of the same and not by the consumer. The Honourable CGRF not considered any of the above facts/Regulations in the KESC and simply dismissed the petition. Hence the appellant hereby pray before this Honourable Kerala Electricity Ombudsman to consider all the above facts and quash the order of the Honourable CGRF Northern Region and

1. Cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section, Mudappallur.
2. Issue necessary orders to adjust the excess amount collected during the faulty meter period of 06/2014 and 07/2014 by fixing wrong average to the future bills.

Arguments of the respondent:

Consumer No. 17633 in the name of Arun R Chandran, Authorised Signatory, M/s. Indus Towers Ltd, Kochi is a three phase Low Tension consumer under the billing tariff LT VI F. The power connection was given on 29.05.2009 with a connected load of 24.10 kW. The power connection is being used for mobile tower for which continuous supply of electricity is needed.

It is submitted that the meter of the consumer was faulty during the months from 6/2014 to 7/2014. Since the meter was faulty, it was replaced on 19-07-2014. A short assessment bill of Rs. 28,809.00 was issued by the 2nd respondent herein.

As per Regulation 125 of Kerala State Electricity Supply Cede, 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 6-om the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not 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.

The consumption recorded for the succeeding 3 months after the meter was replaced is furnished below.

Month	Consumption
9/2014	2955
10/2014	2710
11/2014	2931
Average	2865

The consumption of the preceding months to the replacement of meter showed decrease in consumption which might have been a result of meter becoming sluggish. The average consumption for the period from 5/2012 to 3/2014 showed considerably decreased to 1024 units. Thereafter the meter becomes completely faulty from 5/2014. Therefore the past three billing cycles were unavailable for issuing short assessment bill. Hence as per Provision to Regulation 125, the reassessment was done computing the three billing cycles after the meter is replaced.

The short assessment was made as per the details furnished below:

Average consumption for the 3 billing cycles after replacement of meter – 2865
Units

Calculation

2865 units x 2	=	5730 Units
5730 x Rs.9	=	52143
Less already collected		26,190
Duty @ 10	=	2619
Total	=	28,809

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.

It is submitted further that the bill was issued on 29-02-2016 which falls due on 29-03-2016 i.e. 30 days from the due date as per Regulation 134 (1) of Supply Code 2014. As per Section 56 (2) of the Electricity Act, 2003, the amounts 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.

In the case in hand, the bill was issued on 29-02-2016 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 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 it 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.

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 i.e. 29-05-2009 without increase in load, the consumption would not change and hence the contention of these respondents that the low consumption during the period before the meter was found faulty is due to defect in meter.

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.

It is submitted that 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. 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.

There were no procedural error on the part of the licensee as alleged by the petitioner. 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.

Hon'ble CGRF in order dated 09-09-2016, dismissed the petition submitted by the appellant based on Regulation 125 and 134 of the Supply Code, 2014. The Hon'ble Forum observed that the licensee issued short assessment based on the average of consumption recorded from 9/14 to 11/14 and computation of assessment was only for a period of 2 months (2 cycles) as provided under Regulation 125 (2) of Kerala Electricity Supply Code, 2014. The Forum also observed that the procedure followed on Regulation 125 and 134 of Kerala Electricity Supply Code, 2014 and steps taken by the licensee for computing the assessment of suspected meter faulty period is in order.

The contentions of the appellant in the representation are false, fictitious and frivolous. The argument of the appellant that the average taken for assessment was not correct is not sustainable. The average taken is as per Proviso to Regulation 125 which is legal. The period preceding the date of changing meter is the faulty period and hence average cannot be calculated using the said period. This is quite evident from the reading taken from the replaced meter. Even though the meter showed lesser reading during the preceding months, replaced one showed good reading during the succeeding months. From this pattern, it is clear that the meter was faulty during the preceding months and perfectly working after the meter is replaced.

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 Ombudsman may dismiss the petition in toto with costs to these respondents.

Analysis and findings:

The hearing of the case was conducted on 04-01-2017 in the Court Hall of CGRF, Kozhikode and Sri. M.Y. George represented for the appellant's side and Sri

Premraj C.V., Assistant Executive Engineer of Electrical Sub Division, Vadakkanchery appeared for the respondent's side. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the decision.

The contention of the appellant is that no inspection in the premises or any testing of the meter was done before declaring the meter as faulty. The findings of the Assessing Officer that the meter was sluggish during the period from 05/2012 to 07/2014 after a period of 2 years are only an imagination and hence the short assessment bill is not sustainable. On the other hand the respondent argued that the consumption pattern confirmed that the meter became faulty during June 2014 itself. 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 short assessment bill dated 29-02-2016 for Rs. 28,806.00 to the appellant after reassessing on the basis of average consumption of 2865 units per month is in order or not?

On going through the records it can be seen that the respondent has issued monthly bills based on the recorded consumption and the appellant remitted the same without any fail. It is to be noted that the respondent has detected that the meter was faulty for the period from 06/2014 to 07/2014 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 19-07-2014.

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 07/2014 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.

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

In this case, the respondent assumed that the meter is sluggish from 5/2012 and it was replaced only on 19-07-2014 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 5/2012 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. If there is an omission or error on the part of respondent, it has to be set right in time with a notice to the appellant giving him an opportunity for being heard. The appellant is bound to pay the electricity charges for his actual consumption.

Here in this case, the respondent argued that the appellant failed to produce any evidence to show that there was variation in their consumption pattern. Though the appellant has not given any evidence about the conditions of working and occupancy of concerned premises during the said period, the short assessment bill preferred for the period in dispute based on presumption only that the meter was sluggish from 5/2012 onwards and hence is not sustainable. There is no material to show that the respondent has conducted any detailed checking of the appellant's meter. In this background, the issuance of short assessment bill on the appellant

merely on the basis of presumption and succeeding consumption pattern cannot be justified before law.

The assessment made in this case is relying on succeeding months consumption which was made after a lapse of 2 years, i.e., only on 29-02-2016. 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.

Decision

In view of the above findings the short assessment issued to the appellant for Rs. 28,806.00 is quashed. The order of CGRF in OP No. 28/2016-17 dated 09-09-2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/077/2016/ _____ /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, Vadakkencherry, 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