

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/035/2017
(Present: A.S. Dasappan)
Dated: 29th June 2017

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Kundara, Kollam

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 17654 under LT VI F tariff and is under the jurisdiction of Electrical Section, Kundara. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 27-07-2016 directed the appellant to remit an amount of Rs. 94,200/- being the short assessment based on the findings that the meter was faulty during the period from 08/2012 to 06/2013. An objection against the demand was filed before the Assistant Engineer on 16-08-2016. He rejected the petition without quoting any valid reason or regulations, and suggested to approach the concerned Forum or Authority after remitting half of the amount assessed or to remit the amount vide letter dated 23-09-2016. So the appellant had approached the Hon'ble CGRF (SR) by filing a petition in OP No. 251/2016. The Forum quashed the impugned bill and directed the respondent to issue the split up bills for the door locked period of 11/2012 and

12/2012 and for the meter faulty period for 03/2013 and 04/2013. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant have more than 6000 own Tower sites all over Kerala with KSEB supply, among that one site under Electrical Section, Kundara with cons no. 1145814017654 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 94,200/- on 27-07-2016 for the period from 08/2012 to 06/2013. The short assessment bill was issued based on the alleged sluggishness of the meter for the period from 08/2012 to 03/2013. The meter of the above service connection was declared as faulty during the month of 04/2013 and replaced on 17-05-2013. The faulty meter period was assessed for the previous six months average consumption prior to the meter declared as faulty and the appellant had remitted the bills. Since the short assessment bill issued is totally illegal, appellant had filed an objection against the bill before the Assistant Engineer, Electrical Section, Kundara vide letter dated 16-08-2016. But the Assistant Engineer rejected without any comments on the objections and directed to remit the illegal short assessment bill and also suggested to approach the concerned Forum or Authority after remitting half of the amount assessed or to remit the assessed amount within seven days of receipt of his letter dated 23-09-2016. The direction of the Assistant Engineer was not proper as per the rules in force. Then the appellant had approached the Hon. CGRF, Southern Region, Kottarakkara by filing OP No. 251/2016. The CGRF by its erroneous order dated 06-03-2017 directed to quash the impugned bill and issue the split up bills for the door locked period of 11/2012 to 12/2012 and from 03/2013 to 04/2013 for the meter faulty period.

1) The meter of the above service connection was declared as faulty during the month of 04/2013 and monthly bills were issued for the faulty meter period for the previous six months average consumption up to the change of the faulty meter on 17-05-2013. 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.

2) The meter of the above service connection was reported as faulty only during the month of 04/2013 and the monthly bills up to 03/2013 were issued for the actual consumption recorded in the meter and the bill amounts were remitted. The status of the meter was recorded in the bill as working up to the month of 03/2013. Any rules or regulations in the electricity Act or Electricity Supply code is not supporting to reassess a consumer merely due to the dip in

consumption in a previous billing period by declaring the meter as sluggish/faulty after a long period. The case is pertains to the period 08/2012 to 05/2013 and after a lapse of around 5 years, the declaration of the meter as sluggish for the above period without any support of the test report of the meter is baseless and the assessment based on the above is not sustainable as per the regulations in the Supply code.

3) The licensee itself issued the monthly bills up to 03/2013 with the status of the meter as working and based on the actual consumption recorded in the meter. Once the billing was done based on the consumption recorded in the meter and the status of the meter as working and after a long period of around four years, the declaration of the meter as sluggish based on the dip in consumption without any support of the test report of the meter from an approved / accredited laboratory is baseless and not sustainable before Law.

4) As per regulation 116(2) of Electricity Supply Code, 2014, if the meter is found defective, the licensee may test at site, if feasible, and if not feasible, the meter shall be replaced with a correct meter and the defective meter shall be got tested in an accredited laboratory or in an approved laboratory. But in the instant case, the licensee failed to do so. Hence the short assessment bill is not sustainable.

5) As per the Regulation 115(1) of Supply Code 2014 the meter shall normally be tested in the laboratory of the licensee, approved by the Commission. Regulation 115(9) says that "In the case of meter is found to be faulty, revision of bill on the basis of the 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 revisions shall be adjusted in the two subsequent bills". In the present case the meter was not tested for declaring the same as sluggish / faulty and the licensee declared arbitrarily that the meter was sluggish after 4 years of time.

6) The billing was done for the period of 12/2012 to 02/2013 without taken any meter reading and with the comments as door lock. As per the Regulation 124(1) of Supply code 2014, if the licensee is not able to access the meter for reading, a provisional bill may be issued on the basis of the average consumption of previous three billing cycles. Regulation 125(2) says that licensee shall ensure that such provisional billing does not extend more than two billing cycles at a stretch and there are not more than two provisional bills generated for a consumer during one financial year.

As per regulation 111(1) of Supply code 2014, if the meter is rendered in accessible on two consecutive meter reading dates of two billing cycles, a notice shall be issued to the consumer to keep the meter accessible for reading and to get the meter read by the licensee after payment of a penal charge as approved by the commission, on a date which shall be at least seven days after the date

of the notice and at the time specified in the notice. Regulation 111(2) says that, if meter is not accessible even on the date specified in the notice, a disconnection notice shall be served on the consumer or affixed near the main entrance of the premises, if the consumer is not available. As per Regulation 112(3), if the consumer fails to comply with the notice the supply shall be disconnected and the reconnection of supply shall be effected only after the reading is taken and all the dues are realized. In this case, the above regulation was not followed by the respondent and hence the billing done as door lock for three months from 12/2012 to 02/2013 was not in order and the door lock status was not correct.

7) Please note that the opinion of the CGRF Central Region in a similar case that "a sluggish meter is not defined anywhere in the Act or Code and charging of the consumers based on the sluggishness of the meter without changing the meter then and there, as per rules, is illegal." The Honourable CGRF quashed the short assessment bill issued in a similar case of re assessment for the alleged meter sluggish period in the OP No.64/2016-17 under the jurisdiction of Electrical Section, Thodupuzha No. 1.

8) In the erroneous order released by the Hon. CGRF (Southern region) in this case, it is directed to reassess the faulty meter period and door locked period each for two months based on the average consumption after the replacement of the faulty meter. The assessment of the faulty meter period based on the average consumption after the replacement of the faulty meter is permitted only in the case of previous readings of the faulty meter is not available. In this case, the previous readings are available and the licensee issued bills as per the average consumption prior to the faulty meter period.

Hence the order of the Hon. CGRF is erroneous and to be quashed. Considering all the above facts we hereby request to this Honourable Electricity Ombudsman to set aside the erroneous order of the Hon. CGRF (SR) and necessary directions may be given to the licensee for cancelling the short assessment bill issued illegally.

Arguments of the respondent:

1. The appellant is a consumer of this licensee under Electrical Section, Kundara with Consumer No.17654. The registered connected load of the premises is 30000 watts and the present tariff is LT VI F and the assigned tariff for the mobile towers at the disputed period was LT VII A.

2. The appellant is providing passive infrastructure to different mobile operators. The business done by the appellant is not a seasonal one and hence the consumption pattern is almost identical.

3. The internal audit wing of KSEBL has been conducting periodical auditing in its offices and during such an audit, it was reported that the consumer was short assessed during the period from 08/2012 to 06/2013. On analysing it is found that the appellant's consumption pattern was gradually decreased during that period and by ascertaining that the meter was faulty, the same was replaced with a new one on 17-05-2013. The consumption pattern of the consumer before and after changing the meter (from 02/2012 to 12/2013) is submitting as Exhibit RI. Based on the report a short assessment bill for Rs. 94,200/- was issued to the consumer for the short assessment period from 08/2012 to 06/2013 (Exhibit R2).

4. From the consumption pattern of the consumer, it is very clear that there was a considerable dip in the energy consumption of the consumer from 06/2012 itself. Since this consumer was not a seasonal consumer and hadn't made any change in their connected load or in their mode of business, the dip in consumption was established as due to meter fault and only by ascertaining the same the licence had changed the meter. The consumer hadn't made any objection in replacing the meter as faulty.

5. The appellant's argument regarding the issuance of the bill is totally against the facts. The appellant is well aware of the mode of business they had engaged in and also the quantum of energy they had to consume for the same. The meter was declared faulty on 17-05-2013 and the short assessment was done for the period from 08/2012 to 06/2013. Clause 42 (3) of the KSEB Terms & Conditions of Supply, 2005 (Revised in 2007), "if the meter is found faulty such meters shall be replaced immediately at the expense of the Board. If the existing meter after having found faulty is replaced with a new one, the consumption recorded during the period in which the meter was faulty shall be reassessed based on the average consumption for the previous six months prior to the replacement of meter. If the average consumption for the previous six months cannot be taken due to the meter ceasing to record the consumption or any other reason, the consumption will be determined based on the meter reading in the succeeding six months after replacement of meter and excess claimed if any, shall be adjusted in the future current charge bills" Here the consumer was billed legally and Regulation 125 (1) has no relevance in this case. As per the Clause 42 (3) of the Terms & Conditions of Supply, 2005 reassessment is permitted.

6. The appellant argued that the word 'sluggish' is nowhere mentioned in Act or Code by referring an order of the Hon'ble CGRF (Central). Clause 58 v (d) Terms & Conditions of Supply 2005 (Revised 2007) describes as "if the consumer fails to get the faulty or sluggish meter replaced", hence the appellant's argument regarding sluggishness is worthless. More over as per Regulation 19 (2) of the Supply Code 2005, "If Licensee is unable to base a bill on meter reading due to its non-recording or malfunctioning, the Licensee shall issue a bill based on the previous six months average consumption. In such

cases the meter shall be replaced within one month". The word malfunctioning includes sluggishness also.

7. The word 'arrear' and short assessment are entirely different. An amount becomes "arrear" only after the prescribed due date. The Hon'ble High Court of Kerala in its judgment in WA 2090/2009 clarifies that 'the word 'due' contained in Section 56 (2) can be constructed as having meaning that, only issuance of a bill, that an amount becomes due. Therefore bar of limitation would not apply. (Exhibit R4)

A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of a bill. Though the liability of a consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus, for the purposes of Sub-section (1) and Sub-section (2) of Section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him. In fact, under the later part of Sub-section (2) of Section 56 an exception is carved out to the principle that no sum due from the consumer shall be recoverable after a period of two years from the date when such sum became due. The exception is that when such sum is shown continuously as recoverable as arrears of charges for electricity supply. In other words, where a bill continues to show the sum recoverable as arrears of charges for electricity supplied, the sum due can fall for recovery even after the expiry of a period of two years.'

Hence it is humbly prayed to dismiss this petition and to set aside the order of the Hon'ble CGRF (South) and to direct the appellant to remit the entire short assessment amount as the same is actually due to this licensee.

Analysis and findings:

The hearing of the case was conducted on 20-06-2017 in the Court Hall of CGRF, Kottarakkara and Sri. M.Y. George represented for the appellant's side and Smt. Daisy Jose, Assistant Executive Engineer of Electrical Sub Division, Kundara, 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 08/2012 to 06/2013 after a period of four 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 2012 itself. So, average energy consumption was arrived based on the consumption for the last 6 months before the meter faulty period and a short assessment bill was issued for the period of lesser consumption as per Regulation 19(2) of Electricity Supply Code, 2005. 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 19-04-2017 for Rs. 46790/- to the appellant after reassessing 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 08/2012 to 03/2013 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 17-05-2013.

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 08/2012 to 06/2013 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 06/2012 and it was replaced on 17-05-2013 without conducting an inspection or testing of the alleged faulty meter in an accredited lab. The replaced meter was declared as faulty during the month of 04/2013. According to the respondent the monthly consumption shows enormous decrease from 06/2012 onwards. It is here relevant to note that the status of the meter was recorded in the bills as working up to the month of 03/2013. 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 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 06/2012 onwards and hence is not sustainable. The respondent has not taken timely action to replace the meter within one month as stipulated in Regulation 19(2) of Supply Code, 2005, if he detected the non-recording or malfunctioning during the month of June 2012. There is no material to show that the respondent has conducted any detailed checking of the appellant's meter. Further it is found that the respondent had

issued regular bills during the period in dispute. 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.

Decision

In view of the above discussions, the issuance of revised short assessment for an amount of Rs. 46,790/- is not sustainable and hence it is hereby quashed.

The order of CGRF in OP No. 251/2016 dated 06-03-2017 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/035/2017/_____ /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, Kundara, Kollam District

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