

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/114/2017
(Present: A.S. Dasappan)
Dated: 12th February 2018

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

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Velloorkunnam,
Ernakulam

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 19219 under LT VI F tariff and is under the jurisdiction of Electrical Section, Valayanchirangara. The appellant is paying the current charges regularly without any due or delay. But the respondent as per the invoice dated 20-01-2017 directed the appellant to remit an amount of Rs.30997/- being the short assessment based on the findings that the meter was faulty for the period of 11/2013. An objection against the demand was filed before the Assistant Engineer on 20-03-2017. He rejected the petition without quoting any valid reason or regulations, and directed to pay the bill issued vide letter dated 15-05-2017. So the appellant had approached the Hon'ble CGRF (CR) by filing a petition in OP No. 27/2017-18. The Forum dismissed the petition due to lack of merits, vide order dated 28-09-2017. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant has adduced the following arguments in his appeal petition.

1. Since the period of assessment pertains to the month of 11/2013 and around 4 years back, the details of the billing history is not available in appellant's records. However, on verification of the available records, the meter of the above service connection was seen changed on 07/12/2013 without mentioning any reason for the meter replacement. The monthly bills were issued according to the consumption recorded in the old and the replaced new meter. The consumption recorded in the bills for the month of 10/2013 issued on 11/11/2013 and for the month of 11/2013 issued on 05/12/2013 were 6000 and 387 and these readings are found abnormally high and low respectively. There might had been mistakes in the meter reading for the above months. The short assessment prepared merely based on dip in consumption during the month of 11/2013 after more than 3 years of time but at the same time the abnormal excess reading (more than double the average) billed for the month of 10/2013 is not considered. The meter reading and consumption record for this service connection from 06/2013 to 07/2014 is as follows.

Month	IR	FR	Consumption	Remarks
07/06/2013	29224	32168	2944	
08/07 /2013	32168	35260	3092	
07/08/2013	35260	37670	2410	
06/09/2013	37670	40641	2971	-Avg2971
07/10/2013	40641	43612	2971	
11/11/2013	43612	49612	6000	-Abnormal high consumption.
05/12/2013	49612	49999	387	-Only 24 days and abnormal
10/01/2014	0	2750	3344	-Meter changed on 07/12/2013 without any remarks
10/02/2014	2750	5200	2450	

07/03/2014	5200	6200	1000	-Meter reading seems to be not proper
08/04/2014	6200	7218	1018	
09/05/2014	7218	16350	9132	
09/06/2014	16350	19810	3460	
14/07/2014	19810	22195	2385	

From the above reading and billing record, the average consumption before and after the replacement of the meter is seen more or less same and it is very clear that, the meter reading for the above period was not done properly. The consumption after the replacement of the meter, for the period of 03/2014, 04/2014 and 05/2014 are 1000 units, 1018 units and 9132 units respectively. From these itself it can be ascertain that the meter readings were not done properly and very chances for the table reading for the above period. Hence the short assessment done for the month of 11/2013 based on the low consumption recorded without considering the previous month abnormal high consumption is baseless and hence to be cancelled. The average consumption for these two months itself was 3194 units and which is much above the previous average. More over the days between the meter reading dates are only 24 days (11/11/2013 to 05/12/2013).

2. The meter was not declared as faulty for the above period and the billing was done based on the actual consumption recorded in the meter. The short assessment made only based on the dip in consumption for the month of 11/2013. But at the same time the licensee not considered the erroneous abnormal high consumption for 10/2013. Any Rules or Regulations in the Act or Code are not supporting to reassess a consumer based on the dip in consumption in a previous period after a long period of three, four years without any support of the test report of the meter.

3. 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 meter was not declared as faulty or not done any test in the meter for the accuracy of the same as per the above regulation. Hence the short assessment bill is not sustainable.

4. As per the section 56(2) of the Indian Electricity Act 2003, and the connected Regulation 136(3) in the supply code 2014, the assessment prior to the period of two years is not sustainable. The section 56(2) of the act says, "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 a period of two years, from the date when such sum first due unless such sum has been shown continuously as recoverable as arrear for electricity supplied and the licensee shall be cut off the supply of the electricity. Since the alleged short assessment is for the period of 11/2013, as per the above section of the Act and regulation itself, the short assessment is not sustainable

The Hon. CGRF, on the analysis of the case it is viewed that "since the consumer is a constantly energy using consumer, the low consumption for the month of 11/2013 is due to the fault of the meter. But at the same time the Forum is silent about the abnormal high consumption for the month of 10/2013 for the constantly energy consuming consumer. Also the Forum stated that " the petitioner has not submitted any evidence about the condition of working during the said period". But this fact was also not considered for the abnormal consumption recorded during the month of 10/2013. Any regulation in the supply Code or Act is not insisting to keep the reason for the difference in consumption pattern by the consumer for the whole time of service. The billing to be done for the actual consumption recorded in an accurate meter installed in the premises and the accuracy of the meter to be verified periodically by the licensee. Hence the analysis of the Forum and order based on that is erroneous.

In the above circumstances, the appellant prays to set aside the erroneous order of the Hon. CGRF, Central region and necessary orders may be issued to cancel the illegal short assessment bill issued by the licensee after a period of around 4 years of time.

Arguments of the respondent:

As per RAO inspection short assessment bill was issued to Consumer No 19219 under (VI F) tariff .The reading and consumption from 1.5.13 onwards is as follows.

Period	Reading	Consumption
6/13	32168	2944
7/13	35260	3092
8/13	37670	2410
9/13	40641	2791
10/13	43612	2971
1/11/13	49612	6000
1/12/13	49999	387
7/12/13	49999	0
1/1/14	2750	2750
1/2/14	5200	2450

Meter reading for the month of 12/2013 shows a great dip in consumption ie, only 387 units. But examining the last 6 months reading (6/2013-11/2013) shows 3398 units as average. From this reading, it is evident that actual consumption for 12/2013 was not recorded properly. This matter was noted during the monthly reading on 5/12/13 and hence immediately the meter was changed on 7/12/13. Considering the nature of load -as a mobile tower- and consumption pattern, it is clear that the meter becomes stuck during 11/2013 and the reading noted (387 units) is only up to the date of meter stuck and not for the entire month 12/2013. Hence the difference in actual consumption was billed and, short assessment was made only for 1/11/2013 to 7/12/2013.

Detailed calculation for the short assessment period is as follows,

Previous monthly average	= 3398 units
Consumption for 6 days (1/12/2013 to 7/12/2013)	= $3398 \times 6/30 = 680$ units
So net consumption to be charged for faulty period	= $3398 + 680$
	= 4078 units
But actually charged during this period	= 981 units
Hence balance to be charged	= $4078 - 981$
	= 3097 units

Current charge	=3097x9.10
	=28197
Electricity duty 10%	=2818
TOTAL	=30997/-

Short assessment bill of Rs 30997 /- was issued on 20/1/2017. The bill consists of short assessment current charge only, no penal charge or surcharge were levied on this bill and the consumer challenged the bill before Hon. CGRF, Emakulam as petition No 27/2017-18. The Hon. CGRF analysed the consumption pattern thoroughly and directed the consumer to pay the bill considering as a "constantly energy consuming consumer."

As the findings are based on the meter reading pattern and nature of consumption, the CGRF findings are very clear and hence the bill is fully payable. Considering these facts and finding, the respondent requests to this Authority for directing the consumer to remit the bill at the earliest.

Analysis and findings:

The hearing of the case was conducted on 21-12-2017 in the Office of the State Electricity Ombudsman, Edappally, Kochi, and Sri. M.Y. George represented for the appellant's side and Sri Dinesan V.K., Assistant Executive Engineer of Electrical Sub Division, Valloorkunnam 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 argument put forward by the appellant is that the period of assessment pertains to the month of 11/2013 and around 4 years back and the meter of the above service connection was seen changed on 07/12/2013 without mentioning any reason for the meter replacement. The monthly bills were issued according to the consumption recorded in the old and the replaced

new meter. The consumption recorded in the bills for the month of 10/2013 issued on 11/11/2013 and for the month of 11/2013 issued on 05/12/2013 were 6000 units and 387 units and these readings are found abnormally high and low respectively. According to the appellant, there might had been mistakes in the meter reading for the above months. The meter was not declared as faulty for the above period and the billing was done based on the actual consumption recorded in the meter. The short assessment made only based on the dip in consumption for the month of 11/2013. But at the same time the licensee not considered the erroneous abnormal high consumption for 10/2013. 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. On the other hand the respondent argued that the consumption pattern confirmed that the meter became faulty during November 2013 itself. So, average energy consumption was arrived based on previous six months average and issued demand as contemplated in Regulations. Further, the appellant could not produce any evidence to show that there was variation in the consumption pattern in their premises.

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. In this case on detecting a dip in the consumption i.e.,387 units in 11/2013, replaced the meter on 07-12-2013 itself. It would have been proper, had the respondent made a site mahazar of the above actions taken, in the presence of the consumer or his representative.

From 10-01-2014 onwards, it is found that the energy consumption is not consistent and the respondent continued to issue the regular monthly bills and the same was paid by the consumer. But KSEB did not opt to prefer any claim due to alleged defective readings of the period prior to 01/2014, based on any test report or site mahazar. That is to say though the defect was rectified in 12/2013 the respondents failed to reassess the consumer, for the alleged meter faulty period causing less energy recordings than the actual. Later, based on the report of the audit party of KSEB regarding the same omission, the short assessment bill was issued to the consumer on 20-01-2017 for the month 11/2013. But the respondent has failed to take proper and timely action as per the procedure stipulated in Supply Code 2005 existed at that time.

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 statutory requirement of testing of the meter in an accredited lab or with a standard reference meter with better accuracy class is not done before declaring the meter as faulty. There is patent illegality in issuing the short assessment bill to the appellant. Without complying with the statutory formalities, the assessment made in this case is not sustainable before law and liable to be quashed.

As per Regulation 118 of the Supply Code, 2014, "If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall be immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, 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."

Another contention of the Appellant is based on the Limitation of the bills, under Sec. 56(2) of Electricity Act, 2003, which reads "The licensee shall not recover any arrears after a period of two years from the date when such sum become first 'due' unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied". This 'due date' is an important date for both consumer and KSEB (Licensee). This is because after a period of two years from the 'due date', the arrear bills are time barred and the consumer is not liable to pay the sum even if it is a legitimate claim otherwise. Therefore it is a boon to the consumer and a loss to the Licensee. For an upright and bonafide consumer, he need not worry of 'Bills' of long pending dues after a period of 2 years, if it is not shown continuously in the regular bills of the consumer. On the other hand, in the case of Licensee they should be more vigilant and smart in preferring the bills in time, otherwise they have to suffer the loss for the laxities and omissions occurred on their part.

Since this issue has been dealt with, analyzed and given a firm opinion by the Upper Courts of Law/Jurists, we may follow the same. As such, I have before me the Judgment in the Petition filed, before the Hon: High Court, Bombay, vide No: 3784/2007, which has dealt the 'due date' issue in detail and pronounced its considered opinion. In this, it was spelt by Hon: Judge as follows;

In construing the expression “due” the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1) & (2) of Section 56. 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 bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (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’.

Thus 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 the Board and have become due for payment only after that demand has been raised. In the same Case it was further clarified by Hon: High Court that;

“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 the consumer”, Brihatmumbai Municipal Corporation Vs Yatish Sharma etc-2007 KHC 3784:2007.

In this case, the bill is seen raised in 20-01-2017 and has become due thereafter and time period of two years start from 20-01-2017 only and hence the appellant’s argument is not maintainable under the bar of limitation. As per the Agreement executed by the consumer with KSEB, the consumer is bound to pay the charges for the true electricity he has consumed. As the bill was issued in 01/2017 only, I am of the view that Section 56(2) of Electricity Act 2003 and Regulation 136(3) in the Supply Code 2014 are not attracted in this case.

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 faulty in 11/2013 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. KSEB preferred the short assessment bill for the period in dispute based on audit report only. Hence the charge against the consumer is not proved conclusively. In this background, the issuance of short assessment bill on the appellant merely on the basis of

presumption and succeeding consumption pattern cannot be justified before law and liable to be quashed.

Decision

In view of the above facts, the short assessment bill for Rs. 30997/- towards the alleged faulty meter period is hereby quashed. The order of CGRF in Petition No. 27/2017-18 dated 28-09-2017 is hereby set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/114/2017/ _____ /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., Velloorkunnam, Ernakulam.

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683503