THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/074/2019

(Present: A.S. Dasappan)

Dated: 3rd December 2019

 Appellant : Sri. Narayanan K.,

 Energy Head,

 Indus Towers Ltd.,

 Palarivattom,

 Ernakulam

 Respondent : The Assistant Executive Engineer

 Electrical Sub Division,

 KSE Board Ltd, Edakkara,

 Malappuram

**ORDER**

**Background of the case:**

The appellant represents M/s Indus Towers Ltd., a company providing passive infra structure service to telecommunication providers. The appellant is a 3 phase LT VI F consumer bearing number 34136 under Electrical Section, Edakkara, with a connected load of 26340 watts. The premises of the appellant was inspected on 11-02--2019 by a team of KSEB Limited led by the Anti Power Theft Squad (APTS) of Malappuram unit. An irregularity of metering was detected as the missing of R phase current and resulted in inaccurate metering. So as to compensate revenue loss to the Board for the unrecorded portion of energy, the Assistant Engineer, Electrical Section, Edakkara, issued short assessment bill by directing the appellant to pay Rs 2,17,998/-. Against the short assessment bill, the appellant had approached the CGRF, Kozhikode by filing a petition No. OP No. 179/2018-19. The Forum disposed of the petition by quashing the bill for Rs. 217998/- and by directing the respondent to revise the bill by limiting the period of assessment to 24 months vide order dated 21-06-2019. Accordingly, the respondent has revised the bill to Rs.165885/-. Aggrieved against this, the appellant has submitted this appeal petition before this Authority 0n 01-10-2019.

**Arguments of the appellant:**

An inspection was conducted in the site on 11/02/2019 by the KSEB officials and detected one phase of the meter installed in appellant’s premises was not recording consumption due to the failure of the R phase current in the meter. A site mahazar has been prepared during the inspection. Subsequent to the inspection a bill amounting to Rs.2,17,997.64/- with a covering letter was issued by the Assistant Engineer, Electrical Section, Edakkara. No details of the bill preparation such as calculation details of the bill, consumption details, period of assessment etc. except the mention in the bill as "period of short assessment 926 days, consumption for the above said days 44040 units and short assessed consumption 22020 units" were issued. The appellant had filed a petition against the bill before the CGRF Northern Region. The period of assessment was taken as 926 days and the basis of the same is not recorded anywhere in the site mahazar or bill. The assessment was made by taking 50% of the recorded consumption of the entire period of 926 days and it is not sustainable as per the regulations. The CGRF partially admitted the Petition and as per the order dated 21/06/2019, the period of assessment is limited to 24 months against the 926 days. Accordingly, the Assistant Engineer revised the bill to Rs. 165885/- vide letter dated 07/09/2019 and a revised bill attached with date 15/02/2019. It is to be specifically noted that the date of order of the CGRF is 07/09/2019 and the date of revised bill as per the above order is 15/02/2019. It is not in order.

The order of the CGRF was received by the appellant on 28/06/2019 and revised bill received on 16/09/2019. In this situation, the delay for filling Appeal petition before this authority due to some unavoidable reasons may please be condoned.

 As per the regulation 125(1), in the case of defective or damaged meter, the consumer shall be billed on the bases of average consumption of the past 3 billing cycles immediately preceding the date of the meter being found or reported defective.

In this case, since the meter was not recording consumption in R phase, the metering was defective and hence the defective/faulty period should be billed for the previous average consumption as per the above regulation. The short assessment bill prepared for the 50% of the recorded consumption by the assumption that the consumption in all phases are equal at every time is not in order. This is only a theoretical condition that the consumption in all phases are equal especially in the case of single phase loads. It is also to be noted that this Authority itself quashed the short assessment bill issued in the same manner in a similar case in Appeal Petition No.030/2018 under Electrical Sub Division, Kalady and directed to revise the short assessment bill based on the previous average consumption.

 As per the analysis of the downloaded data by the CGRF, it is not found convincing that R phase current output from CT is continuously missing from the date of starting. Hence the assessment for the faulty period by taking the 50% recorded consumption as short fall is erroneous.

Considering all the above facts, the appellant prays to set aside the order of the CGRF and necessary orders should be issued to revise the short assessment bill based on the previous average consumption as per the Regulation 125(1) of Supply Code 2014.

**Arguments of the respondent:**

The APTS, Malappuram along with Section officials conducted an inspection on 11.02.2019 and revealed that R phase current was missing in the electric meter installed in the premises. The meter data was down loaded and analysed. The R phase was missing from 03.08.2016 to 11.02.2019. A short assessment bill to the tune of Rs. 2.17.998/- (Rupees Two lakhs seventeen thousand nine hundred and ninety eight only) was issued to the consumer to recover the loss sustained to KSEB Ltd. as the consumer was charged only 1/3rd of actual consumption.

The short assessment bill was issued to recover the "1/3rd " portion of energy unrecorded in the electric meter installed in the appellant’s premises. Hence the bill issued to the appellant is legally sustainable.

The voltage and current in the meter during the time of inspection were

|  |  |  |
| --- | --- | --- |
| Phase | Voltage | current |
| R | 219 | 0 |
| Y | 218 | 5.71 |
| B | 222 | 5.79 |

The R phase was showing zero consumption, but when the outgoing cable from the energy meter to the cut out was checked by using a clamp meter, the current in the R, Y and B phase was found 5.76, 5.82 and 5.85 Amp respectively. This clearly shows that current is utilised in R phase but not recorded in energy meter. A site Mahazar was prepared and which was acknowledged by Sri. Assan Kalangadan, Manager of the building. The data from the meter was down loaded using L&T Software and it shows that the current bypass in R phase occurred for a duration of 926 days 5 hrs 26 minutes and 58 seconds.

A short assessment bill was prepared invoking Reg.134(1) of the Kerala Electricity Supply Code 2014 for an amount of Rs. 2.17.998/- (Rupees Two lakhs seventeen thousand nine hundred and ninety eight only) and issued to the consumer along with detailed calculation sheet and downloaded meter data.

The current consumption in three phases are almost equal and in this particular case the current is utilised in R phase but not recorded in energy meter, the assessment is made by taking 50% of the recorded consumption.

Period of assessment = 926 days

Final reading in the meter on 11/02/2019 = 256886 units

Final reading in the meter on 03/08/2016 = 212846 units

consumption during the assessment period = 256886-212846

44040 units

Short assessed units =50% of 44040 = 22020 units

Balance units to be billed = 22020 units

Short assessment Amount

Energy charge. = 22020 x 9.00 @ Rs. 1,98,180/-

Duty 10% = Rs. 19,818/-

Total' = Rs. 2.17.998/-

The above short assessment bill is exclusively for the undercharged units due to the non-recording of energy consumption in one phase and no penalization charges levied on the bill. The short assessment is issued to recover the revenue loss occurred to KSE Board.

The contention of the appellant that the date of the revised bill is 15.02.2019 isn't valid as the order of CGRF is to revise the bill issued on 15.02.2019 bill No: 6544190211082.The date or number of the revised bill will not be changed, only the amount can be revised. The consumer has been given 30 clear days to remit the bill as per letter dated 07/09/2019 given along the bill.

According to regulation 152 (1) & (2) of the Kerala Electricity Supply Code, 2014, the Licensee is empowered to realize the under charged amount for inaccuracies in metering and it can be short assessed under normal tariff.

Here in this case short collected period was reliably assessed and the bill was issued accordingly. Moreover, the right of the licensee to demand and realize the short assessment amount actually due from consumer was established by the regulation of Supply Code 2014.

The contention of the appellant that the period of assessment is taken as 926 days and the basis of the same is not recorded anywhere in the site mahazar or bill is not true the facts. The fact is that during the inspection, the meter data was downloaded using L&T software and it clearly shows that current bypass occurred in R phase of the meter for a duration of 926 days 5 hrs 26 minutes and 58 seconds. The copy of the same was issued to the consumer along with the short assessment bill. Regulation 152 sub regulation 3 para 3 says that " provided further that while assessing the period of such short collection the factors as specified in the sub regulation 8 of regulation 155 shall be considered. "

Regulation 155 sub regulation (8) item (iv) says that data recorded in the energy meter memory can be considered as evidence for assessing the period. Another contention of the appellant that no downloaded data was issued for verification is also not true. A copy of the same was received as one of the attachments along with the complaint and notice received by mail from the appellant to Assistant Engineer, Electrical Section, Edakkara on 8 3 2019.

The argument of the appellant that, issuing of short assessment bill is in violation of clause 125 of the Supply Code 2014 is not true to the facts. The fact in this particular case is that, the recorded consumption was 33.33% less than the actual consumption due to non-recording of one phase in the energy meter. The regulation authorizes the licensee to set right the omission occurred and the consumer has actually consumed the energy and hence liable to pay the under charged amount.

In several cases the Hon'ble High Court has established the right of the licensee to demand and realize the short assessment amount actually due from the consumer. In the Judgment of OP No. 5930/1985 which was filed by Mr. V.A. Balakrishnan, the Hon'ble Court held that "If there is a mistake or there is an under billing, it is always open to the respondents to rectify their mistakes and to demand the proper charges due from the consumer". Also, in judgment dated 09/02/2012 of WA No, 211/2012 in WP(C) No. 34768/2011, the Hon'ble High Court of Kerala held that "the question of normal period of limitation is not applicable both, towards electricity and water charges". Hence the bill issued to the consumer in accordance with the law of the land to realize the undercharged amount for the unaccounted portion without any penal charges is legal.

The regulations authorize the respondent to set right the omission occurred while assessing the consumption and to prefer the correct demand. It cannot be ignored that the consumer has actually used the energy and hence liable to pay the correct charges for the energy he has consumed.

A short assessment bill for consumption of the period from 11/2/2019 to 2/3/2019 is issued to this consumer on 2/3/2019 vide Bill no 6544190302215 for amount of 5465/- (Rupees Five thousand four hundred and sixty five only). It was assessed 50% extra for the recorded consumption. The appellant received the bill and paid the amount vide RT Number 65440190314407001 on 14-03-2019. It shows that the appellant is convinced with the assessment.

The respondent requests to declare that the action of the respondent is well within the purview of the prevailing rules and regulation and is in order and to dismiss the petition with cost.

**Analysis and Findings:**

The hearing of the case was conducted on 19-11-2019, in the office of the State Electricity Ombudsman, Edappally, Kochi, and the appellant was represented by Sri. M.Y. George, and the respondent by Sri. V. Mohan das, Assistant Engineer-in-charge, Electrical Sub Division, Edakkara and they have argued the case, mainly on the lines stated above.

On examining the Petition and argument notes filed by the appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

The contention of the appellant is that 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 has argued that the short assessment bill prepared for the 50% of the recorded consumption by the assumption that the consumption in all phases are equal at every time is not in order. This is only a theoretical condition that the consumption in all phases are equal especially in the case of single phase loads. Further it is stated that as per the analysis of the downloaded data, it is not found convincing that R phase current is missing from the date of starting. Another allegation of the appellant is that the respondent has not given any details of the bill preparation such as calculation details of the bill, consumption details, period of assessment etc. except the mention in the bill as "period of short assessment 926 days, consumption for the above said days 44040 units and short assessed consumption 22020 units" were issued.

The respondent in his counter statement, has stated that the period of assessment is taken as 926 days based on the downloaded data and the copy of the site mahazar was issued to the consumer along with the short assessment bill. According to the respondent, Regulation 155 sub regulation (8) item (iv) says that data recorded in the energy meter memory can be considered as evidence for assessing the period. A copy of the downloaded data was received as one of the attachments along with the complaint and notice received by mail from the appellant to Assistant Engineer, Electrical Section, on 8 -3- 2019.

The respondent further contended that the regulations authorize the respondent to set right the omission occurred while assessing the consumption and to prefer the correct demand and the consumer has actually used the energy and hence liable to pay the correct charges for the energy he has consumed.

Here in this case, the respondent declared that the current in one of the phases connected to the meter is detected as missing/abnormal on the basis of the inspection conducted in the premises on 11-02-2019. The data is downloaded and analysed and it is detected that the R phase was missing from 03-08-2016 to 11-02-2019. From the site mahazar, it is revealed that one phase of the meter was failed and thereby consumption by the load connected to that phase in the premises was not recorded by the meter. The meter will record the time and date of tampers, and the same can be downloaded using MRI/Laptop and can be analysed. Date of occurrence of CT open/bypass/short, voltage missing/low voltage/ unbalance etc can easily be found out using downloaded data.

The site mahazar also justifies missing of current in one phase of the appellant’s metering equipment in the appellant’s premises. In view of the above facts it is clear that the energy meter installed in the appellant’s premises was only recording in two phases of actual consumption on the inspection date of 11-02-2019, but not confirmed the missing of consumption in one phase at the rate of 1/3rd of the total consumption.

Further this Authority is of the opinion that if the respondent had to inspect the metering system soon after the recorded consumption decreases considerably during the disputed period, it can be easily detected the defect in the metering and to avoid the loss if any occurred to the licensee.

The respondent has issued the short assessment bill by taking 50% of the recorded consumption for 926 days following the inspection conducted on 11-02-2019 and detecting of non-recording of energy in one phase. Later the respondent has revised the short assessment bill for a period of 24 months as directed by the CGRF amounting to Rs.1,65,885/.

On verifying the downloaded data of the meter, the current in ‘R’ phase is not continuously shows zero from 3-8-2016 onwards. Monthly consumption recorded for 3 months prior to the faulty period is 1755 units, 1733 units and 2115 units and after changing the meter, it was 2707 units, 2500 units and 2582 units. The consumption recorded in the meter itself was taken for assessing the unrecorded portion of energy. Since the quantum of loss calculated based on 33.33% missing of consumption is not established conclusively, this Authority feels that it is fair to assess the appellant for the missing of consumption for a period of 24 months by taking previous average of the three months consumption.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Hence revision of the bill on the basis of the test report is not possible in this case. Here in this case, the respondent confirmed the non recording of one phase on the basis of the inspection conducted in the premises and load survey/tamper report down loaded. But the quantum of loss calculated based on 1/3rd missing of current is not established conclusively. There is no three phase load in the premises. Considering these facts, an assumption of missing of 1/3rd consumption during the disputed period cannot be sustained.

**Decision**

From the findings and conclusions arrived at as detailed above, I decide as follows:

The short assessment bill for Rs. 217998/- for 926 days and revised bill for Rs.1,65,885/- for 24 months issued to the appellant are quashed. The respondent shall issue revised bill for a period of 24 months based on previous three months average consumption for 05/16,06/16 and 07/16. No interest is payable by the appellant till the due date of the revised bill and the respondent shall issue the revised bill within 15 days from the date of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant stands allowed to the extent ordered. The order of CGRF, Northern Region, Kozhikode in 179/2018-19 dated 21-06-2019 is modified to this extent. No order on costs.

 **ELECTRICITY OMBUDSMAN**

P/074/2019/ /Dated:

Delivered to:

1. Sri. Narayanan K., Energy Head, Indus Towers Ltd., Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Edakkara,Malappuram

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode