



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

A.P.No.80 of 2014

M/s.Magus Customer Dialog Pvt.Ltd.,
No.372, Old No.231, 3rd and 4th Floor,
Ratna Building,
TTK Road,
Alwarpet,
Chennai-600018

... Appellant
(Rep.by Tmt.R.Varalakshmi,
Corporate Dy.Manager
(Legal)

Vs

1. The Executive Engineer (O&M),
Mylapore,
Chennai Electricity Distribution Circle/Cetnral,
TANGEDCO,
110/33 KV Valluvar Kottam SS Complex,
MGR Salai, Nungambakkam,
Chennai-600034.

2. The Asst. Executive Engineer (O&M),
Thousand Lights,
Chennai Electricity Distribution Circle/Central,
TANGEDCO,
52, College Road,
DPI Complex, Chennai-600006.

Respondents
(Rep. by Thiru Gopinath,
EE/O&M, Mylapore &
A.N. Murugadasan/AEE on 22.1.2015 &
Thiru. R. Ramasubbu, AEE on 11.2.2015)

Date of hearing 22-1-2015 & 11-2-2015

Date of Order : 27-5-2015

The petition dated 11-12-2014 received from M/s. Magus Customer dialog Pvt. Ltd., Chennai was registered as Appeal petition No.80 of 2014. The above appeal petition came up for hearing before the Electricity Ombudsman on 22-1-2015 & 11.2.2015. Upon perusing the appeal petition, counter affidavit and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the Appellant :

The Appellant prayed to set aside the orders passed by the Consumer Redressal Forum in petition No.76/2014 and the orders of Executive Engineer, O&M, Mylapore, in letter No.EE/O&M/MYL/FM/SMAGUS/D.No.568/2014 dt.10.7.2014 and allow the appeal filed by the Appellant dt. 15-11-2011 by setting aside the orders dated 28-10-2011 and the demand letter dated 4-11-2011 passed by the Asst.Executive Engineer, O&M, TANGEDCO, Thousand Lights section, Chennai in Lr.No.AEE/O&M/TANGEDCO/TLS/FPDC/D196/2011 and the levy of Rs.9,40,574/- as per Lr.No.EE/AAO/AS/RBMYL/A/BOAB/D22-1 dated 11-4-2011/ SOAB/Slip No.79 dated 26-2-2011 and consequently order refund of the amount Rs.9,40,574/- together with interest.

2. Brief history of the case

2.1 M/s.Magus Customer Dialog Pvt. Ltd., the Appellant herein is a limited company within the meaning of Companies Act 1956 interalia engaged in the business of providing of a range of customer Dialog and Customer Retention services through call centres, data base management and fulfilment services. The company conducted its business in Chennai at its premises on 4th and 5th Floor of 68/1 Greams Road, Chennai – 6 which are leased to them. The disputed service connection No.131-003-548 is available in 5th Floor.

2.2 The AEE/O&M/Thousand Lights has claimed a short fall amount of Rs.9,40,574/- towards non adoption of correct average consumption in the above service for the period from September 2009 to January 2011 based on an audit slip. The above amount was paid under protest by the Appellant.

2.3 The Appellant filed a petition before the CGRF for refund of the above shortfall amount stating that their usage is less in the 5th Floor due to non function of the office work from that floor. The CGRF has rejected the request of the Appellant. Hence aggrieved over the orders of CGRF of Chennai EDC/ Central, the Appellant filed this appeal before the Electricity Ombudsman.

3. Contentions of the Appellant

The Appellant has contended the following in the Appeal petition:

- i) Appellant states that it is a limited company within the meaning of the Companies Act, 1956 inter alia engaged in the business of providing a range of Customer Retention service through call centres, database management and fulfilment services.
- ii) The Appellant states that it conducted its business in Chennai at its premises on the 4th and 5th floor at No.68/1, Greams Road, Thousand Lights, Chennai-6 during the dispute period (September 2009 to January 2011). The said premises were leased premises and the appellant had two separate electricity connections, one for the 4th floor and another for the 5th floor. This appeal is being filed in respect of the 5th floor bearing Electricity connection No.131-03-548.
- iii) The Appellant states that during May 2009, the appellant was facing severe financial crisis including in view of losing business on account of a worldwide recession. By August, 2009, the appellant initiated the process of downsizing the company including by reducing the strength of the employees so as to cut down the costs.
- iv) The Appellant states that the 5th floor premises (in respect of which electricity connection, this appeal is being filed) was not conducive for proper functioning of the company since the false ceiling had given way and the rain water started seeping inside the premises. Consequently there was regular electric short circuits making it unsafe for the employees to work there and the electrical appliances including the AC's broke down. The Appellant had to regularly spend huge amounts on repairs. By December 2009, it reached a point where the company had to completely construct a new roof, should the company chose to

function from the 5th floor premises. Further the AC's completely stopped functioning.

- v) The employees who used to function from the fifth floor were now asked to perform their jobs on shift basis in the 4th floor. In this manner the appellant tried to function from the 4th floor itself till March 2010 and then the appellant managed to find new premises in lieu of the 5th floor space.
- vi) The appellant states that since December, 2009, the 5th floor premise was completely non functional and has not been used for the day to day affairs of the company. The AC's (the main consumption of electricity) had completely stopped functioning and only the fans were used as and when necessary. The premises remained unusable and the appellant is unable to use the 5th floor for its day to day affairs till the appellant shifted completely to the new premises at Alwarpet. Consequently, the usage of electricity in respect of the 5th floor reduced drastically since only the fans and tube lights were used as and when required only on working days and during business hours.
- vii) The appellant states that to make matters worse the meter stopped functioning and the appellant called upon Electricity Board to forthwith rectify the meter. However the Board failed and neglected to replace the meter or rectify the defective meter in spite of repeated reminders made by the appellant. But it was evident even to the officials (who came to record the meter reading) that the 5th floor had very few electrical appliances and was hardly ever used by the appellant. Hence the official reckoned the electricity units keeping this in mind and imposed electricity charges.
- viii) The appellant states that although the appellant had not consumed the units as recorded in the electricity card the appellant paid the electricity charges every time under protest and in view of the threat of disconnection of electricity which would result in disrepute to the company.
- ix) The appellant states that it was shocked and surprised to receive a notice dated 11-4-2011 from the AEE, Mylapore alleging short levy of

Rs.9,40,574/- for the period Sep 2009 to Jan 2011. The appellant made several trips in person to explain the issue.

- x) The appellant states that there was no short fall as alleged in the said notice and the consumption of electricity itself has gradually decreased since August, 2009 in view of the facts stated above. The appellant therefore explained the aforesaid facts on several occasions and also sent reply dt. 8-9-2011 when the appellant was threatened of disconnection.
- xi) The appellant states that in view of constant threat of disconnection of electricity the appellant had no other option but to pay the amount of Rs.4,00,000/- under protest vide its reply dt. 8-9-2011.
- xii) The appellant states that without considering the case of the appellant, the AEE proceeded to confirm the demand made in the show cause notice vide letter dt. 28-10-2011 and called upon the appellant to remit the balance amount of Rs.5,40,574/-. This was proceeded by another letter dt. 4-11-2011 threatening to disconnect the electricity which was also paid by the appellant in 3 instalments.
- xiii) The appellant states it filed an appeal dated 15-11-2011 to the Deputy Engineer.
- xiv) The appellant states that for nearly two years the appellant relentlessly followed up with the respondent, however, to no avail. The appellant eventually got frustrated and had no other option but to file an RTI dated 13-11-2013 to the Appropriate Authority being the State Public Information Officer, TNEB, and Chennai under the Right to information Act (RTI) seeking information on the status of the above appeal.
- xv) The appellant states that it received a letter dt. 26-12-2013 from the Information Officer enclosing an inter Office Communication between the Deputy Chief Internal Officer to the Audit Branch dated 18-4-2013, wherein it was alleged that the "request" of EE/O&M/Mylapore, is not feasible of compliance since refunds/write off powers are vested with the Full Board.
- xvi) The appellant states that instead of disposing of the appeal, the respondent forwarded an Inter Office Communication in the Audit Department as if the appellant had made a request for refund. Hence,

the RTI request of the appellant was not complied by the respondent letters forwarded to the appellant from the Audit Department is in no way connected to the appellant's appeal.

- xvii) The appellant states that it had sent another reminder legal notice dated 10-2-2014 demanding for an order which the respondent refused to accept and hence had to be hand delivered by the appellant at the respondent's office on 25-2-2014.
- xviii) The appellant states that frustrated by the behaviour of the respondent it filed the appeal under the Right to Information Act dated 27-3-2014 seeking the status of the above Appeal.
- xix) The appellant states that after filing an appeal, a reminder appeal, and appeal under the RTI and numerous follow ups the respondent finally called for an enquiry on 23-5-2014 wherein again the appellant had to resubmit the proof of evidences to prove that the usage was not commensurate to the amount as demanded by the respondent.
- xx) In spite of production of several documents, the respondent had proceeded to pass a standard order Lr.No.EE/O&M/MYL/FM/S MAGUS/D.No.568/2014 after much reluctance and follow up in person by the appellant, confirming that the amount so demanded Rs.9,40,574/- was found correct without applying his mind to the appeal and the documents filed by the appellant.
- xxi) The appellant states that it filed an appeal before "The consumer redressal forum" and the same was heard on 18-9-2014 as petition No.76/2014-15 and an order confirming that the amount so demanded Rs.9,40,574/- was found correct without giving any valid reasons.
- xxii) The question of making claim based on the average consumption for the period Sep 2009 to Jan 2011 does not arise since the company has already paid the electricity charges beyond the units consumed as seen in the electricity card.
- xxiii) The demand for alleged shortfall is beyond the period of limitation prescribed under the Act.
- xxiv) In spite of the defective meter and a bare minimum consumption of electricity (towards usage of fans and lights alone at times during working hours on business days), the company has paid during the

said period an average of about Rs.50,000/- towards electricity charges. Had the meter been functional, the appellant would have paid for the actual units consumed which would have been much less than the amount paid by the company.

- xxv) The calculation arrived at in the notice dt. 11-4-2011 i.e. the average of the four months 5/09 and 7/09 (based on which the impugned order has been passed) is erroneous since the conditions with regard to usage of electricity changed since August 2009 in view of the reduction in the number of clients for the company and consequent loss of business. Further, the premises itself became unusable in view of the breaking down of the electrical appliances more importantly the Air Conditioners (which is essential for running the office) due to water seepage and short circuits and was not used since December, 2009. Hence, the billing ought to have been done as per Regulation 11(6) of the Tamil Nadu Electricity Supply Code on the basis of the connected load and hours of usage and not the basis of the four months average during which time the circumstances of usage of electricity was different.

4. Contention of the Respondent

The Respondent.1 has contended the following in the Counter affidavit:-

- i) Based on the TANGEDCO BOAB Audit Branch / APS/CNI/ vide audit slip 79 dt. 26-2-2011 towards non-adoption of correct average consumption in SC 131-003-548/TFV/SL49 KW for the period from 09/2009 to 01/2011 to the total shortfall amount of Rs.9,40,574 a letter from AEE, O&M, TANGEDCO, Thousand Light has been sent on vide letter No.AEE/O&M/TLS/D.196/2011.
- ii) The LT supply was effected under TF V to the total sanctioned load of 49 KW in LTSC 131-003-548.
- iii) As per utility in Sc 131-003-548, the demand was recorded as 23.09 KW in 09/2009 and 29.6 KW in 11/2009 which are nearing to their normal demand, say 31 KW.
- iv) Regarding the situation explained by the consumer the "Not in use" status was not informed/recorded at TANGEDCO office.

- v) There is no justification evidences produced towards the premises was remained unusable since 12/2009.
- vi) As per TANGEDCO Rules and Regulations, the average assessments were carried out till the period of replacement of healthy meter.
- vii) The consumer was requested to produce the lawful justification evidences like handing over or certificate from the authorised Govt. or competent authorities towards the premises was not in operation / vacant.
- viii) Based on the consumer request, the shortfall audit amount in part, say Rs.4,00,000/- was accepted.
- ix) The Balance amount of audit shortfall say Rs.5,40,574 was requested by the AEE vide letter dt. 28-10-2011 and letter dt. 4-11-2011. But the service was not disconnected on any time. Besides, the consumer has requested the EE/Mylapore to remit the balance amount in 3 instalments and the approval has also been accorded by the EE/Mylapore.
- x) Each and every time, the consumer has represented without submitting the relevant proof as called in para (vii). Besides as one set of original copies obtained from the consumer had already been submitted to the higher officials for getting approval, one more copy had been requested. As the revision of BOAB audit is not under the power of EE/O&M, the revision order could not be passed.
- xi) Even after so many requests also, the consumer has not produced the authenticated justification. But from our end, the competent authority, BOAB audit officer has been requested for revision of the audit shortfall arrear amount based on the consumer's inter office communication copies which had already been submitted by them.
- xii) The copy of the reply to the request of the EE/O&M/Mylapore received from the deputy Audit Officer was communicated to the consumer. At one stage the consumer had strongly insisted the EE/O&M/Mylapore to issue the copy of the reply by the audit officer so as to approach the audit wing directly and hence the copy was issued.

- xiii) As the refund / writ off powers are not vested with EE/O&M/the demand for the order by the consumer is not possible to issue from the EE, O&M, Mylapore.
- xiv) The reply had been sent to the consumer for their appeal under the RTI act dt. 27-3-2014.
- xv) Again based on the need of the consumer, the enquiry / personal hearing was conducted on 23-5-2014. In that meeting also the consumer had submitted the numerous submission of their inter office communication papers.
- xvi) As the justification of vacancy/not in use during the audit period is not in clear, the same previous reply had been passed by the EE/O&M/Mylapore.
- xvii) During the consumer's appeal before "The CGRF" the consumer had not passed produced lawful / authorised evidences towards non-operation of office at V Floor during the audit period and hence the order was passed by the Chairman/CGRF.
- xviii) Even after so many requests also, the consumer was not able to produce the lawful proof towards the certificates for non-operation of office/quantum of jobs stopped in the said floor from the Government aided saturated body of the customer dialog/customer retention services (or) from call centre providers along with the agreement copy for the work allocation (or) from the agreement holder of database management since the consumer's limited company covers under the company act 1956.

5. Hearing held by the Electricity Ombudsman

- 5.1 To enable the Appellant and the respondents to putforth their arguments in person, hearing were held before the Electricity ombudsman on 22.1.2015 and 11.2.2015.
- 5.2 Tmt.R.Varalakshmi represented the Appellant on both the days of hearing and putforth her arguments.
- 5.3 On 22-1-2015 Thiru V.Gopinath, EE/O&M/Mylapore and Thiru A.N.Murugadasan, AEE/O&M/Thousand Lights in-charge have

attended the hearing and putforth their side arguments. On 11.2.2015, Thiru R.Ramasubbu, AEE/O&M/Thousand Lights attended the hearings and putforth his arguments.

6. Argument of the Appellant:

6.1 The Appellant's representative reiterated the contents of the Appeal petition.

6.2 She argued that the 4th and 5th floor premises of the Building was utilised by them for their office work. But the 5th floor, premises was not conducive for functioning of the company as the false ceiling has given way and rain water started seeping inside the premises and AC units were not functioning. She had shown some photographs in proof of the poor condition of the 5th floor premises to which the disputed service connection No. 131-03-548 was supplying power.

6.3 She argued that from December 2009 onwards, no office work was done at 5th floor and some of the activities which were carried out at 5th floor were done in 4th floor only.

6.4 She also argued that 50 systems have been transported to Hyderabad on 9-5-2009 as they are transferring some of their activity which were done at 5th floor to Hyderabad. She also informed that the RHD complete migration to Hyderabad was done on 4th June and migration of PCO and DHD calls were done on 5th June and the migration of RHD, PC & DHD from Tamil Nadu to Hyderabad was completed on 5-6-2009. In view of the above, she argued that some of the works that were done at 5th floor were migrated to Hyderabad.

6.5 She also argued that the reduction in consumption after May 2009 is due to the above only and not due to defect in the meter.

6.6 She also informed that while 5th floor works were shifted to 4th floor, there was increase in shift time to cope up the works.

6.7 She argued that as the land owner refused to accept the surrender of 5th floor alone, they were unable to vacate the 5th floor.

6.8 She also informed that the premises owner has given a letter in support of no call centre operation from June 2009 and citing the above she

argued that the same may be taken as proof of not using the 5th floor from June 2009 onwards.

- 6.9 She also furnished the billing trend for the period from April 2009 to March 2010 and argued that there was substantial reduction in Chennai (i.e.) from 17.34 lakhs, in May 2009 to 7.19 lakhs in June 2009 and also increase in Hyderabad office from 4.50 lakhs in April 2009 to 28.33 lakhs in May 2009 and 37.64 lakhs in June 2009 and so on which are due to migration of Chennai office works to Hyderabad.
- 6.10 The Appellants representative informed that they have vacated the above premises completely during June 2012. But have rented a premises at Alwarpet from 5/2010 onwards.

7. Argument of the Respondent

- 7.1 Thiru V.Gopinath, EE, O&M, Mylapore reiterated the contents of his counter.
- 7.2 The EE argued that the meter has stopped its function during 1/2010 when it reaches the reading of 1770. But on a review of the consumption it was observed that the consumption has reduced to 12590 units in 9/2009 assessment period which is 50% of the previous bimonthly consumption of 24170 Units recorded during 7/2009 bi-monthly period. Hence, he argued that the meter was defective from 9/2009 assessment period.
- 7.3 The Appellant has not furnished any valid documents to show that the reduction in consumption during 9/2009 is due to reduction in the utilisation in the above service.
- 7.4 The EE informed that due to shortage of meters at that time, the meter was not changed immediately as soon as it was known that the meter was defective. He informed that the meter was changed on 16-9-2011 only.
- 7.5 The AEE/Thousand Lights who attended the hearing on 11.2.2015 furnished the copies of stores ledger and informed as and when one or two meter were received at stores, meters were issued for new service and hence, there was no allotment for changing the defective meter. He also informed that he has inspected the premises only during 2012

based on the representation of the Appellant and found that the premises was not functioning officially and hence recommended for revision of shortfall based on healthy meter assessment in his letter dt. 16-7-12. But it was not accepted by the audit.

7.6 He also informed that stored data could not be retrieved from the meter as it was burnt vide his letter dt.16.2.2015.

8. Findings of the Electricity Ombudsman

8.1 I have heard the argument of the Appellant and the respondents and perused the documents placed before me. On a careful consideration of the submission of both sides, I find the following as issues to be decided:

- (i) Whether the meter is defective? If so from which period?
- (ii) What is the average consumption to be adopted for the meter defective period?
- (iii) Whether the claim is time barred ?

9. Findings of the First issue

9.1 The EE/Mylapore argued that the meter reading was recorded as 1770 in 1/2010 and the same reading was noted during 3/2010 assessment period also and hence he argued that the meter is defective.

9.2 The Appellant also not disputed defectiveness of the meter. But the dispute is only on the date from which the meter was defective. There is no test result produced by the respondent to confirm the defectiveness of the meter. In order to arrive at a decision about the defectiveness of the meter, we have to analyse the readings taken on various assessment period only. The meter reading noted down from 9/2009 to 5/2010 are extracted below :

Date of reading	KWH – end meter reading	KVAH reading
26-9-2009	85720	25400
24-11-2009	93250	28770
28-1-2010	1770	42650
25-3-2010	1770	42650
31-5-2010	1770	42650

9.3 On a careful analysis of the reading noted above, it is noted that the KWH reading was noted as 1770 on 28.1.2010 and the same reading was recorded in the subsequent assessment period also (ie) the reading struck up at 1770. Similarly the KVAH reading also struck up at 42650 from 1/2010 assessment period. As the KWH and KVAH reading were struck up at 1770 and 42650 respectively, the meter is defective only.

9.4 The next question is from which date, the meter is defective. As there is no change in meter reading after recording the KWH as 1770 on 28-1-2010, the meter might have stopped working as soon as it reaches the reading of 1770. The reading of 1770 was only noted on 28-1-2010 while taking the bimonthly reading. But, the reading 1770 would have reached in the meter on 28-1-2010 or even before that also. Hence, the consumption recorded during 1/2010 assessment is also not full period but upto the period at which the reading was recorded as 1770. Hence, the meter may be defective from 1/2010 assessment period.

9.5 But the licensee argued that the meter may be sluggish from 9/2009 onwards as the consumption has come down from 24170 units to 12590 units during 9/2009. He argued that the meter has become sluggish from 9/2009 and completely stopped its function after reaching 1770 KWH.

9.6 The Appellant argued that the meter could be defective only from 3/10 assessment period when the meter reading struck up at 1770.

9.7 As there was no downloaded details for the above meter, we have to analyse the consumption pattern to arrive at the assessment period from which the meter could be defective. Hence the consumption from 2008 and 2009 are furnished below :

<u>Assessment Period</u>	<u>Year</u>	
	<u>2008</u>	<u>2009</u>
1	29400	27010
3	30880	28160
5	30140 Ave (no meter)	34710
7	30140 Ave	24170
9	29470	12590
11	29610	7530
	Ave 29840 (Excluding ave. period)	22361

9.8 It could be seen from the table above, that the average consumption for the service during 2008 is 29840 units (excluding the period 5/2008 and 7/2008) for which average was adopted). The average consumption 2009 is reduced to 22,361 units. On a review of the consumption during 2009 it is noted that the consumption has suddenly reduced from 34,710 units in 5/2009 to 24170 units in 7/2009 assessment period and further reduced to 12590 and 7530 units in 9/2009 and 11/2009 respectively.

9.9 The Appellant has stated that 50 systems were transported to Hyderabad on 11-5-2009 and the RHD migration was completed on June 4th of 2009. He has also produced consignment note No.SC/1007 dt.9.5.2009 of shree packers & movers in support of the transportation of the system. There was some 'e' mail correspondence also in support of the transfer of above 50 systems to Hyderabad. The reduction from 34710 units to 24710 units is justified as there was shifting of 50 system's to Hyderabad. Further, it is to be noted that the maximum demand recorded during 5/2009 is 50.85 KW and the same was reduced 23.08 KW during 7/2009 assessment period. The maximum demand recorded is 30 min/15mm integration period. Hence even if the load is utilised for one integration period, the same will be the recorded maximum demand for that particular month. Hence, the maximum demand may not exactly reflect the consumption. However, it will also have some effect on the total consumption. As the maximum demand reached also reduced to 23.09 KW from 50.85 KW, I am of the view that the reduction of consumption from 34170 to 24170 is reasonable. Hence, the meter could be working alright upto 7/2009.

9.10 The consumption has further reduced to 12590 units during 9/2009 assessment period and then to 7530 units during 11/2009. But, the MD recorded as 23.09kw & 29.6kw. The above reduction in units are not explained. The Appellant's argument of Vth floor works were done at IVth floor is the cause for reduction in consumption is also not tenable as there is no appreciable increase in consumption in the service connection no.131-003-198 provided in the IVth floor.

9.11 In order to analyse the reduction in consumption discussed in the previous para. I would like to examine the billing details furnished by the Appellant. The Appellant has furnished the billing amount in both Chennai and Hyderabad office. The Appellant has furnished total billing for Hyderabad and Chennai and also billing related to Bharthi Airtel Ltd., in respect of Chennai & Hyderabad. The above details are furnished below :

Billing trend for period April 2009 to March 2010 – Chennai and Hyderabad														
Total Billing including all clients (in lakh)	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Total	
Chennai	31.48	29.54	18.62	16.95	19.24	17.26	18.41	22.72	32.00	40.83	43.48	44.23	334.75	
Hyderabad	21.43	46.74	60.70	66.42	63.18	57.49	64.75	65.95	61.18	52.43	54.42	60.29	674.99	

Billing trend for period April 2009 to March 2010 – Chennai and Hyderabad													
Billing related to only bharti airtel limited (in lakh)	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Total
Chennai	19.26	17.34	7.19	5.13	5.31	5.20	5.97	4.13	6.90	13.75	13.36	13.57	117.11
Hyderabad	4.50	28.33	37.64	43.55	38.08	36.59	46.17	45.58	41.24	32.09	33.60	39.94	427.30

9.12 As the Appellant informed that the 5th floor consumption is related to Bharathi Airtel Limited, I am taking the billing for the period corresponding to 5/2009, 7/2009 and 9/2009 assessment period and tabulated below :

Period	Consumption in units	Percentage variation over the previous period	Billing trend as per appellant (Rs. in lakhs)		Percentage variation over the previous period
5/2009 24.3.2009 to 20.5.2009	34170	----	March April May	05.14 * 19.26 11.19 32.59	----
7/2009 21.5.2009 to 24.7.2009	24170	(-) 29.27%	May June July	6.15 7.19 3.97 17.31	(-) 51.36%
9/2009 25.7.2009 to 18.9.2009	12590	(-) 47.91%	July Aug Sept	1.16 5.31 3.12 9.59	(-) 44.6%
11/2009 19.9.2009 to 24.11.2009	7530	(-) 40.19	Sept Oct Nov	2.08 5.97 3.30 11.35	(+)18.35%
1/2010 25.11.2009 to 28.1.2010	8520	(+) 13.15	Nov Dec Jan	0.83 6.90 12.42 20.15	77.53%
3/2010 29.1.10 to 25.3.10	--	--	Jan Feb Mar	01.33 13.36 10.94 25.63	

* As March 2009 billing amounts was not furnished by the Appellant the value given for April 2009 was assumed as billing for the above period also and calculated for 8 days.

9.13 On a review of the above table, it is noted that for 34.94 lakhs billing, the consumption recorded was 34170 units during 5/2009 assessment period. Here, I have to mention that, as the Appellant has not furnished any billing amount for March 2009, I have taken the April value for March also and arrived the Billing. Hence, the above may not reflect the exact billing.

9.14 For 7/2009 assessment period, the consumption recorded is 24170 units and the billing amount is 17.31 lakhs (ie) for the reduction of about 51.36 % billing amount over the previous period there is a reduction of 29.27% in the consumption.

9.15 For 9/2009 assessment period, the consumption is 12590 units and the billing amount is Rs.9.59 lakhs (ie) for the reduction of 44.6% billing amount, there is a reduction of 47.9% consumption.

9.16 For 11/2009 assessment period, the consumption recorded is 7530 units and the billing amount is Rs.11.35 lakhs (ie) for 18.35% increase in billing amount over the previous period, the consumption has reduced by 40.19%. As there was decrease in consumption when the billing amount (or) the turn out the company is more than the previous period, I am of the view that the meter is defective during the above assessment period (ie) the meter is defective from 11/2009.

9.17 Here, I would like to record that the above decision is based on the analysis given in the previous paras in the absence of any downloaded/test results of the meter.

10. Findings on the second issue :

10.1 In order to find whether the average calculated for the meter defective period is conforming to the regulation, the regulation 11 (viz.,) Assessment of billing in case where there is no meter or meter is defective of the Supply Code is to be analysed.

The said regulation is reproduced below :

"11. Assessment of billing in cases where there is no meter or meter is defective :

(1) Where supply to the consumer is given without a meter or where the meter fixed is found defective or to have ceased to function and no theft of energy or violation is suspected, the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective, shall be assessed as mentioned hereunder.

(2) The quantity of electricity, supplied during the period in question shall be determined by taking the average of the electricity supplied during the preceding four months in respect of both High Tension service connections

and Low Tension service connections provided that the conditions in regard to use of electricity during the said four months were not different from those which prevailed during the period in question.

(3) In respect of High Tension service connections, where the meter fixed for measuring the maximum Demand becomes defective, the Maximum Demand shall be assessed by computation on the basis of the average of the recorded demand during the previous four months.

(4) Where the meter becomes defective immediately after the service connection is effected, the quantum of electricity supplied during the period in question is to be determined by taking the average of the electricity supplied during the succeeding four months periods after installation of a correct meter, provided the conditions in regard to the use of electricity in respect of such Low Tension service connections are not different. The consumer shall be charged monthly minimum provisionally for defective period and after assessment the actual charges will be recovered after adjusting the amount collected provisionally.

(5) If the conditions in regard to use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any consecutive four months period during the preceding twelve months when the conditions of working were similar to those in the period covered by the billing.

(6) Where it is not possible to select a set of four months, the quantity of electricity supplied will be assessed in the case of Low Tension service connections by the Engineer in charge of the distribution and in the case of High Tension service connections by the next higher level officer on the basis of the connected load and the hours of usage of electricity by the consumer.

(7) In case the consumer does not agree with the assessment made by the Engineer or the higher-level officer as the case may be, the matter may be referred to the next higher-level officer of the Licensee. In case the consumer is still not satisfied, the consumer is at liberty to approach the respective Consumer Grievance Redressal Forum of the Licensee.”

10.2 The Appellant argued to consider regulation 11(6) and arrive at the average consumption. As the Appellant has vacated the premises, and has also stated that the actual load utilisation is less than the sanctioned load, it is not possible at this distant point of time to assess load connected and to arrive at the consumption. Hence, I am of the view that the average consumption could not be arrived based on connected load and the hours of usage as argued by the Appellant.

10.3 On a plain reading of the above regulation, it could be noted that regulations 11(2),11(4) and 11(5) are the related regulations for arriving the average consumption.

10.4 As per regulation 11(2) , the electricity supplied during the period in question shall be determined by taking the average of the electricity supplied during preceding four months in respect of HT and LT service connection, provided that the conditions in regard to use of electricity during the said four months were not different from those which prevailed during the period in question.

10.5. The billing amount for the meter defective period 11/2009, 1/2010 and 3/2010 are Rs.11.35 lakhs, Rs.20.15 lakhs and Rs.25.63 lakhs respectively. The above period billing amounts are more than the billing amount of Rs.9.59 lakhs for 9/2009 assessment period which is the immediate previous assessment period of the meter defective period (since the meter is defective from 11/2009). As the billing amount/turnout for the immediate previous assessment period is less than the billing amount of the first three assessment periods of the total defective period (for which alone the billing amount is available), the working pattern of the meter defective periods and the immediately previous assessment period is not same. Hence, the previous four months consumption (previous two assessment period (ie) 9/2009 and 7/2009) could not be taken for arriving the average assessment amount (ie) regulation 11(2) could not be adopted.

10.6 As per regulation 11(5), if the condition, in regard to use of electricity during the periods as mentioned above were different, the assessment shall be made on the basis of any consecutive four months period during the preceding 12 months, where the conditions of working were similar to those in the period covered by the billing.

10.7 On comparing the billing amount of Rs.11.35 lakhs, 20.15 lakhs & Rs.25.63 lakhs worked out for 11/2009, 1/2010 and 3/2010 assessment period respectively with that of the billing amount of Rs.35.59 lakhs worked out for 5/2009 assessment period, it is observed that the billing for 5/2009 assessment period is high. Hence, the working pattern of the company during the defective period may not be same as that of 5/2009 period and the above period may not be taken for arriving at the average assessment. The balance available period of assessment for arriving the average are 3/2009, 1/2009 & 11/2008 only. Out of the above as the meter defective period starts from the assessment period of 11/2009. I am of the view that the 11/2008 & 1/2009 assessment period shall be taken to arrive the average consumption for the defective period.

11. Findings on the Third issue :

11.1 The Appellant argued that the claim is beyond the period of limitation under the Act.

11.2 With reference to the applicability of section 56(2) of the Electricity Act, 2003, for limitation, the judgment of Appellate Tribunal for Electricity, 2003 in appeal Nos 202 and 203 of 2006 is relevant and the relevant portion of the judgement is reproduced below :

“Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. In the instant case, the meter was tested on 03.03.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003. The revised notice of demand was raised for a sum of Rs. 4,28,034/- on 19.03.2005. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected, the amount become payable only on 19.03.2005, the day when the notice of demand was raised. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired”.

11.3 It is clear from above judgment that, even though the liability to pay energy charges is created on the day the electricity is consumed, the charge would become first due only after a bill or a demand notice is served. Therefore, the limitation in the present case also shall run from the date of demand notice.

11.4 In the case on hand, the short fall amount was intimated on 11.4.2011. Hence, the 2 years period starts only from 11.4.2011. Hence, I am unable to accept the argument of the appellant that the arrears pertain to the back period of more than 2 years is time barred.

12. Observation :

12.1 It is noted that the licensee's officers have taken about 1 ½ year time to replace the defective meter of a commercial service of sanctioned load of 49kw. The time taken for changing the defective meter is abnormal. Had the defective meter was changed in time, the issue would have been avoided.

13. Conclusion :

13.1 In view of my finding in first issue, it is held that the meter is defective from 11/2009 onwards.

13.2 In view of my findings in second issue given in para 10, above, the respondent is directed to work out the average consumption for the meter defective period, based on the consumption recorded for the assessment period 11/2008 & 1/2009 and revise the shortfall amount for the disputed period. The excess amount collected if any shall be returned to the Appellant within 30 days from the date of receipt of this order.

13.2 A compliance report shall be sent to this office within 45 days from the date of receipt of this order.

13.3 With the above findings, the AP No.80 of 2014 is finally disposed of by the Electricity Ombudsman. No cost.

(A. Dharmaraj)
Electricity Ombudsman

To

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4) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/Central,
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5) The Chairman & Managing Director,
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NPKR Malaigai,
144, Anna Salai,
Chennai – 600 002.

6) The Secretary
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai
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7) The Assistant Director (Computer) - **FOR HOSTING IN THE TNEO WEBSITE PLEASE**
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