

THE STATE ELECTRICITY OMBUDSMAN

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REVIEW PETITION No. R.P/001/2023 IN APPEAL PETITION No: P-078/2022

**(Present: A. Chandrakumaran Nair)
Dated: 06th February, 2023**

Review Appellant : Sri. M. Asokan,
Managing Director,
M/s. Gijas Rebbers Pvt. Ltd.,
Industrial Development Area,
Edayar, Ernakulam Dist.

Review Respondents : Asst. Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Aluva Town, Ernakulam Dist.

ORDER

Background of the case:

The review appellant Sri. M. Asokan is the owner of a small industry at Edayar, Aluva and the consumer of Licensee (KSEBL) under Electrical Section, Edayar. The Licensee has charged Low Voltage Surcharge from July 2016 to December 2016 and also from February 2019 to August 2021. The appeal petition was filed to this Authority against the order of Consumer Grievance Redressal Forum (Central Region) and petition filed as P-078/2022. The Ombudsman issued order dated 12-12-2022. The Review Petition submitted by the appellant to the review the order of Ombudsman.

Maintainability of Review Petition as per Regulation

The review petition was submitted on 05-05-2023 for the review of the order dated 12-12-2022 which was received by the appellant on 21-12-2022 and hence, this is acceptable as per Section 27 (A) (2) of KSERC (CGRF & Electricity Ombudsman) Regulations 2005

Section 27 (A) (1) The Electricity Ombudsman may, either on its own motion or an application of any person aggrieved by an order, review its order on the following grounds, namely: -

- (i) On the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not with his knowledge or could not be produced by him.
- (ii) Mistake or error apparent on the face of the record.

Section 27 (2) An application under clause (1) shall be filed within period of fifteen days from the date of receipt of the order.

Provided that the Electricity Ombudsman may entertain an application after the expiry of the said period of fifteen days, if it is satisfied that the applicant had sufficient cause for not preferring the review within such period.

Section 27(3) If on a preliminary examination of the application, if the Electricity Ombudsman found that there is no sufficient ground for review, it shall reject the application after affording an opportunity of being heard to the applicant.

Section 27(A) (1) states that the order could be reviewed on the discovery of new and important matter or evidence produced or any error or mistake in the order. The appellant has brought out certain views, which could be examined as such the review petition is accepted and further proceedings exercised.

Arguments of the review appellant:

The Review petitioner is the appellant in Appeal No P/078/2022 before this Authority filed against Order dated 23/09/2022 in CGRF-CR/OP No 31/2022-23 250 of the Consumer Grievance Redressal Forum Central of the Kerala State Electricity Board.

Complaint is filed by the consumer against Low Voltage Surcharge for the period 7/2016 to 12/2016 dated 28/2/2022 for Rs. 41925/- and Low Voltage Surcharge short assessment for the period 2/2019 to 8/2021 dated 28/2/2022 for Rs. 70510/- under Regulation 125 and 134 of the Electricity Supply Code. The above demands were issued by the Senior Superintendent Electrical Section, KSEB Ltd., Edayar, Ernakulam district. The complainant filed a complaint dated 22/6/2022 before the Consumer Grievance Redressal Forum Central of the KSEBL at Kalamassery and that was dismissed. Being aggrieved, the consumer approached this Authority by filing appeal which was dismissed as per order dated 12/12/2022.

While arguing the above case, an argument note was produced by the appellant raising specific contentions. One of the important contentions raised by the appellant at the time of hearing was that the power to recover low voltage surcharge was given to the Electricity Board for the first time as per Tariff order

issued by the Kerala State Electricity Regulatory Commission with effect from 18/4/2017 vide KSERC order No 1007/F&T /2016 /KSERC dated 17/4/2017 and that the said order has no retrospective operation. Hence the Electricity Board was not competent to issue such a demand for a period prior to 17/4/2017.

While disposing the Appeal this Authority committed a serious mistake in not considering that contention and there is mistake or error apparent on the face of record.

In the above circumstances the appellant submits this Review petition on the following grounds.

- A. The Order issued by the Regulatory Commission in OA 26/2019 is with respect to a consumer who has connected load and recorded maximum demand more than 100 kVA. That consumer had a sanctioned load of 127 kW with effect from the year 2009. The contract demand of the petitioner was enhanced to 120 kVA only in the year 2021. So, there is no comparison between these two consumers and the order in OA 26/2019 is applicable only to the consumer in that case.
- B. The contention raised by the appellant was that Low voltage surcharge cannot be demanded from him prior to 17/4/2017 on which date the Commission determined the Low Voltage Surcharge. As per calculation sheet issued by the respondent the Low Voltage surcharge is demanded for the period from 7/16 to 12/16, which is a period prior to 17/4/2017.
- C. This has not stated in clear words in the order as to how the licensee is competent to demand Low Voltage surcharge during the above period apart from making a statement that according to the Order in OA 26/2019, "for the period from 7/2016 to 12/2016, this is to be treated as deemed HT consumer and the demand charges as applicable to HT consumer is to be charges and consumption charges as per LTIVA".
- D. The calculation sheet attached by the Board is not clear as to how they have calculated the demands for the period from 7/2016 to 12/2016.
- E. As per Regulation 9 of the Supply Code 2014, low voltage surcharge can be recovered only at the rates as approved by the Regulatory Commission from time to time in the tariff order. The Commission approved the surcharge for the first time on 17/4/2017. Without amending the statute, the Commission cannot direct to treat the period prior to 17/4/2017 as deemed HT.

Review appellant reserves his right to raise all his contentions at the time of personal hearing of the case

Review appellant requested to review the Order dated 12/12/2022 in Appeal Petition No P/078/2022 issued by this Authority and to allow the prayers in the appeal and complaint.

Arguments of the respondent:

The two undercharged bills raised are truly in accordance with the regulation of the Electricity Supply Code 2014. The two undercharged bills amounting to Rs.41925 /- and Rs.70510/- were served for realizing the low voltage supply surcharge which was not collected from this consumer for the period from July 2016 to December 2016 and from February 2019 to August 2021 respectively.

The licensee is wholly denied of the contention of the review petitioner on the subject of introduction and application of the low voltage surcharge in the distribution system. It was there even before the Regulatory Commission issued a revised tariff order with effect from 18/04/2017. Prior to the above tariff order the terminology 'Deemed HT' was used by the Licensee in the tariff determination for categorizing and billing of the consumers who are availing supply at LT voltage level although they have to avail supply at HT level as per the prevailing rules and regulations at that scenario. Secondly, the low voltage surcharge is not a penalty in no way but is an additional charge to compensate for the loss caused by the consumer on account of availing supply at a voltage lower than that specified in the electricity rules and regulations from time to time. It is up to the consumer to decide whether to avail supply at low voltage or high voltage, when the consumer avails supply at low voltage, the value of current flow in the distribution lines will be proportionately high when compared to the operation of the same at high tension so in order to maintain an effective and efficient electric supply distribution system the distribution loss shall be minimized.

Therefore, the question of the retrospective and prospective application law or in this case the tariff order is an irrelevant question and it has no application in charging low voltage surcharge on the deemed HT consumers who are enjoying the benefit of low-tension consumers. Hence, the review petitioner is liable to pay

the undercharged bill for the period of 7/2016 to 12/2016 amounting to Rs.41925/- and the second bill for Rs.70,510/-.

The order of the Hon'ble Kerala Electricity Regulatory Commission in OS No.26/2019 and the subsequent order in the review petition No.01/2022 are an authoritative declaration of law in the field of charging of low voltage surcharge on the deemed HT consumers and a retook is not warranted. It is also stated that this Hon'ble Ombudsman has no jurisdiction to sit on the order of the hon'ble Kerala State Electricity Regulatory Commission.

As far as the limitation periods of arrear bills are concerned, regulation 13 of the Kerala State Electricity Supply Code 2014 states that *"If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.*

For all the above reasons stated respondent, it is most respectfully prayed that this Authority may be pleased to dismiss the review petition by upholding its order in the original appeal petition.

Analysis and findings:

The hearing of the review petition was conducted on 03-02-2023 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The Advocate Sri. Jose J Mathaikel was attended the hearing on behalf of the review appellant and Sri. Pradeep. K.A., Assistant Executive Engineer, Electrical Sub Division, KSEBL, Aluva attended the hearing from the review respondent's side. On examining the review petition, 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 findings and conclusions leading to the decision thereof.

As per the Section 9 of Kerala Electricity Supply Code, 2014, the Licensee is empowered to charge the Low Voltage surcharge as per the approval by KSERC.

Section 9 “Consumers availing supply at voltage lower than the one specified in regulation 8 for the respective limits of connected load or contract demand shall pay the low voltage supply surcharge to the licensee at the rates as approved by the Commission from time to time in the tariff order.”

Here the service connection is LT and maximum connected load/contract demand permitted is only 100 kVA. Wherever the recorded demand exceeded , the Licensee shall charge Low Voltage Surcharge. The present surcharge was approved only in the tariff order dated 17-04-2017 and hence, this is applicable since 2017. As per the order for OA/26/2019 dated 03-12-2019, KSERC, it is stated that “Till commission explicitly determined the low voltage surcharge vide tariff order dated 17-04-2017, the petitioner has to pay electricity charge at the rate applicable to “Deemed HT Consumer” as per the Clause 9 of the General Conditions for HT & LT tariff under Part B. EHT & HT tariff of the tariff order dated 14-08-2014 i.e., demand charge applicable for HT 1(A) Industry and energy charge at LT IVA industrial tariff”.

The order is very clear that the Low voltage surcharge is applicable since 2017 and the charges as per deemed HT consumer category is to be charged for the period prior to 2017 whenever the recorded demand exceeds 100 kVA.

In the case in hand, the consumer has exceeded the recorded maximum demand above 100 kVA during July 2016, August 2016 and December 2016, before 2017 and February 2019, November 2019, June 2021 and August 2021 after the year 2017. The Low Voltage Surcharges rates are approved by KSERC during 2017 and the Licensee can charge the low voltage surcharge since 2017. In the calculation sheet, the respondent has charged Low Voltage Surcharge during the months of 2016. This has been contented by the review appellant. The Licensee should not charge the Low Voltage Surcharge during the period prior to 2017 and only charge as ‘deemed HT Consumer’ category as per the tariff order 2014.

Another contention of the review appellant is that the calculation sheet attached by the Licensee is not clear how they have calculated the demands for the period from 07/2016 to 12/2016. The Section 123 of the Supply Code 2017 speaks about the detailed information to be included in the bill. When the arrear

is calculated, the calculation sheet should be very clear and shows all details and also it should easily understandable for a common consumer.

Decision: -

From the analysis of the arguments and the hearing, following decision is hereby taken:

- (1) The review appellant is liable to pay the Low Voltage as per the calculation of the Licensee for the period from 02/2019 to 08/2021.
- (2) Licensee shall not charge the Low Voltage Surcharge for a period from 07/2016 to December 2016, but shall charge as 'Deemed HT Consumer' category and the calculation is to be revised accordingly.
- (3) The calculation sheet should be very clear and easily understandable and bill also prepared accordingly.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

RP/001/2023/_____ dated _____.

Delivered to:

1. Sri. M. Asokan, Managing Director, M/s. Gijas Rebbers Pvt. Ltd., Industrial Development Area, Edayar, Ernakulam Dist.
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Aluva Town, Ernakulam Dist.

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, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.