

THE STATE ELECTRICITY OMBUDSMAN
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REVIEW PETITION No. P/001/2017

(Present: Sri. A.S. Dasappan)

Dated: 27th October 2017

Review Petitioner : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Limited, Ayoor,
Kollam

Review Respondent : Sri Asokan Vasu
M/s Mangalath Hotel & Resorts,
Chadayamangalam,
Kollam

ORDER

The review petitioner, the Assistant Executive Engineer, KSE Board Ltd, Electrical Sub Division, Ayoor has filed this review petition against the orders issued by this Authority in appeal petition No. P/001/2017 dated 25-05-2017. The brief facts of the appeal petition filed by the appellant/review respondent are as follows. The appellant is running a hotel in the name and style M/s Mangalath Hotels and Resorts, Chadayamangalam having consumer number 5762 under the jurisdiction of Electrical Section, Chadayamangalam with a connected load of 3830 Watts. On 20-12-2011, the appellant had submitted an application for a load of 68 kW, after remitting the required application fee and Rs. 3,64,314/- being the estimate charges for installing one 100 kVA transformer after constructing 100 meters of 11 kV line and after complying with all necessary formalities. On completion of the work on 06-11-2012, the respondent conducted a physical verification in the premises which revealed the actual connected load in the premises was 141 kW instead of 74.853 kW as per completion report submitted by the appellant. Hence he was directed to avail HT connection after observing all formalities or to physically dismantle the load beyond LT limit. The appellant was directed to remit Rs. 16,320/- and Rs. 40,800/- being the Unconnected Minimum Charges (UCM) vide letters dated 24-05-2013 and 10-10-2013, as he was not regularized the additional load or not availed HT connection as directed. The appellant filed a writ petition No. 31413/3013 before the Hon'ble High Court of Kerala challenging the demand and recovery and requesting to provide electric connection under LT category. The Hon'ble court issued an interim stay on the UCM demand. Later the appellant had submitted an application dated 20-01-2014 stating the connected load was reduced to below 80 kW and for effecting the supply under LT category. Since the respondent did not effect connection, the appellant

again approached the Hon'ble High Court. The Court issued interim orders in the writ petition directing the Board to conduct an inspection in the premises and to apprise the facts regarding air conditioners as well as cable connection stated by the appellant. An inspection report is prepared based on the statement, site mahazar and the observations and an order was issued by the Assistant Executive Engineer, Electrical Sub Division, Ayoor rejecting the request of the consumer.

On 30-01-2016, Kottarakkara Electrical Division Squad inspected the premises of the Consumer No. 5762 and an unauthorised additional load of 75378 Watts was detected and a provisional assessment for Rs. 7,72,007/- for the entire period i.e. from 12/2013 to 12/2015 was prepared and issued to the appellant.

The appellant had filed an objection dated 10-02-2016 against the provisional assessment before the Assessing Officer. Considering the facts raised by the consumer, the Assessing Officer reassessed the Provisional Bill and reduced to Rs. 2,37,120/- (Rupees Two Lakhs Thirty Seven Thousand one hundred and Twenty) and final bill issued on 29-02-2016. Aggrieved by this the consumer filed another writ petition before the Honourable High Court vide WP(C) No 10261/2016 and the Honourable High Court in its Judgement dated 30-03-2016 ordered that "recovery steps for recovery of amounts confirmed against the petitioner shall be kept in abeyance for a period of two weeks, so as to enable the petitioner to move the Consumer Redressal Forum for appropriate relief."

Accordingly the appellant approached the CGRF (South) vide OP No. 124/2016. The CGRF dismissed the petition as it is found no merit in the contentions of the appellant; vide order dated 05-12-2016. Aggrieved by the order passed by the CGRF, the appellant has filed appeal petition before this Authority. The appeal petition was disposed of having allowed the plea of the appellant to the extent as it was ordered. Now the review petitioner has submitted that a factual error occurred in the order No. P/001/2017 dated 25-05-2017 issued by this Authority and therefore requested to review the order and to dismiss the said appeal petition.

Arguments of the review petitioner:

The review petitioner has raised the following arguments for consideration in his review petition.

In the analysis and findings of the order dated 25-05-2017 in P/001/2017, page 8 it is stated that "clause 8(1) to (10) of Electric supply code 2005 specifies a time frame for providing supply of electricity. Under sub clause 8(3)(c), if the work involved installation of 11 kV/0.4 kV (Sub Station) alone, the licensee has to complete the works and release connection within 2 months after receipt of required amount from the applicant. In this case at hand, it is stated that the licensee had failed to release the connection within

two months. The relevant clause of the Supply Code, 2014, which is applicable with effect from 01-04-2014 read as under:"

It is submitted that the delay in connection was not due to the fault from the licensee's side, but due to the lapse from the consumer. The consumer had remitted the required fee for load enhancement on 07-04-2012. The licensee had completed the work of 100 m 11 kV line construction and 100 kVA transformer installation on 06-11-2012 and intimated the consumer in writing to avail the requested power.

Time frame stipulated as per Supply Code, 2005 Clause 8 is narrated hereunder.

Time frame for providing supply – (1) Supply where no extension of.....
 (c) After receipt of required amount from the applicant, the Licensee shall complete the works under sub-clause (a) and release the connection within the time frame given below..... 2) 11 kV line Per KM- 4 months(d)5, if the Licensee finds that supply of electricity to premises applied requires commissioning of a new substation which is not covered as part of the investment plan approved by the Commission, , the Licensee shall complete the works under sub-clause 3(a) and release the connection within the time frame given below: Time frame 1) 11/0.4 kV Substation alone 2 months /”

The work was completed within the time frame itself. Delay in connection was only due to lapse from the consumer.

In the last Para of page 9, it is stated as follows “It is pertinent to note that the respondent had not taken any action as detailed above though it was found the connected load as 141 kW. But in this case the appellant refuted the allegation of connecting the additional load of 76 kW in his premises during the period 12/2013 to 12/2015. To substantiate his argument, he has produced his consumption details from 12/2013 to 12/2015 as detailed below.....”

Also in the order page 12 it is stated that " Though the respondent had given an intimation dated 24-01-2014 that the appellants request to provide electric connection under LT category can be entertained only after physically dismantling and removing all loads above 80 kW, they had not verified the connected load of the appellant and convinced the appellants connected load in the premises, and they failed to produce any documentary evidence to substantiate their argument.....since the appellant intimated the removal of excess load above 80 kW on 24-01-2014,the failure of the respondent to conduct a physical verification in the premises and to provide the load is a serious fault. Since those aspects were not considered by the CGRF while disposing the petition, this authority is of the opinion that realization of short assessment from 12/2013 to 12/2015 cannot be justified"

The above findings were totally against the facts. The licensee had taken all steps within the legal frame. On receipt of the completion report on 18-08-2013 for a load of 74.853 kW, the premises was inspected and found that the load was beyond the allowable limit of an LT consumer as per the clause 45 of Terms and conditions of Supply Code 2005. He was directed to remove the excess load for regularization as requested. But the consumer was not ready to physically dismantle the excess load and hence regularization of load was delayed.

Instead of complying the direction, by physical disconnection of excess load, the consumer approached the Hon'ble High Court and filed a writ petition vide WP(C) No 31413/2013 with a prayer for providing LT connection and the same is still pending for final orders.

On receipt of the intimation dated 20-04-14, physical verification was done in the premises and timely action from the part of the licensee. The connection was delayed only due to the inaction/defying attitude from the consumer. The registered connected load of the consumer till 05-09-2016 was only 3830 Watts. The consumption pattern during the period from 12/2013 to 12/2015 is as follows

12-2013	-	5083	Units
02-2014	-	2325	Units
04-2014	-	2390	Units
06-2014	-	3427	Units
08-2014	-	2454	Units
02-2015	-	2396	Units
04-2015	-	2206	Units
06-2015	-	2690	Units
08-2015	-	2401	Units
10-2015	-	2109	Units
12-2015	-	1712	Units

The consumption after the regularization of connected load to 79208 was as follows

11-2016	-	700	Units
12-2016	-	1160	Units
01-2017	-	900	Units
02-2017	-	680	Units
03-2017	-	700	Units
04-2017	-	1280	Units
05-2017	-	1280	Units
06-2017	-	980	Units
07-2017	-	840	Units

Hence the presumption that, load was not connected during the period 12/2013 to 12/2015 cannot be proved. The average consumption pattern after the regularization of load from 3830 Watts to 79208 Watts is less than the previous values which clearly proves that the consumption pattern is not an indicator of the connected load of the above premises. Unauthorized load was seen connected and detected on inspection dated 30-01-2016, which was billed as per the prevailing rules. All these aspects were considered by the Hon'ble CGRF while releasing the order of disposal in OP. No. 124/2016 of the Hon'ble CGRF.

It is pointed out that there is a difference in the dates in the order. In the analysis, it is stated that fixed charges for 76 kW has to be realized only from 30-01-2016 to 05-09-2016, if not collected. But in the order it is stated that Fixed charges must be realized from the appellant from 30-01-2015 to 05-09-2016 for 80 kW, if not collected earlier. Also regarding the compensation, Licensee had acted only as per the prevailing rules in force and delay occurred was only due to lapses from the part of the consumer and pending court case. Hence licensee is not at all bound to pay compensation.

Analysis and findings:

Even though the Review Petition was filed late, on 21-8-2017 by the review petitioner, Assistant Executive Engineer, Electrical Sub Division, Ayoor, than within the specified 15 days time, it was decided to accept the Petition into File. The Review Petitioner and the review respondent were heard on 07-09-2017 in my chamber at Edappally Office, Ernakulum. The review respondent had not submitted any deposition afresh.

The Electricity Ombudsman is supposed to review the order only on the following grounds as per Regulation 27A of Kerala State Electricity Regulatory Commission (CGRF & Electricity Ombudsman) Regulations, 2005.

(i) On the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him.

(ii) Mistake or error apparent on the face of the records.

The arguments now adduced by the Review Petitioner were already discussed and analyzed in detail in this Forum's order dated 25-05-2017. There exist no case of discovery of a new and important matter or evidence which was left out even after the exercise of due diligence from the side of the Review Petitioner to be produced before this Forum, during the last trial. The points raised by the appellant in the Review petition are the points to be urged in the Appeal Petition against this Forum's order, if it is challenged in Upper Court of Law only. Moreover, since there is no sufficient ground for the Review

of its Order dated 25-05-2017 and also the fact that the impugned Order does not suffer any illegality or irregularity, the review petition is not admitted on the grounds of Regulation 27A (i).

But on a perusal of the records it can be seen that a mistake or apparent error on the face of the record is pointed out by the review petitioner. Hence it is corrected and issued accordingly.

Decision:

In page 13, the 1st paragraph under the sub head, 'Analysis and findings', of the order No: P/001/2017 Dated 25.05.2017, issued by the undersigned, stands corrected and read as "Hence this Authority is of the view that the fixed charges for 80 kW has to be realized from the appellant only from 30-01-2016 to 05-09-2016, if not collected. The 2nd paragraph under the sub head 'Decision', in page 13 of the order, stands corrected and read as "The fixed charges must be realized from the appellant from 30-01-2016 to 05-09-2016 for 80 kW, if not collected earlier".

There is no other change in the said order dated 25-05-2017. Having concluded and decided as above, it is ordered accordingly. The Review Petition filed by the appellant is allowed to the extent ordered.

ELECTRICITY OMBUDSMAN

P/001/2017/_____ /Dated:_____

Delivered to:

1. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Ayoor, Kollam
2. Sri Asokan Vasu, M/s Mangalath Hotel & Resorts, Chadayamangalam, Kollam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.