

THE STATE ELECTRICITY OMBUDSMAN
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REVIEW PETITION No. 04/2019 IN APPEAL PETITION No. P/022/2019
(Present: A.S. Dasappan)
Dated: 20th September 2019

Review Petitioner : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Thiruvalla,
Pathanamthitta

Review Respondent : Sri. Thomas Alexander
Prasanth Bhavan, Kuttapuzha,
Thiruvalla,
Pathanamthitta

ORDER

The Review Petitioner is the respondent in Appeal No. P/022/2019. The review respondent/appellant is a domestic consumer under Electrical Section, Thiruvalla having consumer number 7582. On 20th July 2018, the review respondent/appellant complained the faultiness of the meter and the meter was replaced on 17th December 2018. While being so, the review respondent/appellant was aggrieved with the exorbitant bills issued for the months of 9/2018 & 10/2018, issued by the review petitioner/respondent on 17-11-2018 for Rs. 3,360/- and for the months of 11/2018 & 12-2018 for Rs. 2,605/- by taking the average consumption of 356 units. The lodged complaint before the CGRF, Kottarakkara requesting to waive off the excess charges levied in the said bills. The CGRF had dismissed the petition on the ground that the bills issued by the respondent are in order and the petition is devoid of any merits, vide order no. OP No. 158/2018 dated 22-02-2019. Aggrieved by this, the appeal petition filed by the review respondent/appellant was found having merits and was allowed to the extent it was ordered. Against the order, the review petitioner submitted this review petition stating that there is an error apparent on the face of the orders of Ombudsman and requested to review the order dated 20/05/2019

in Appeal No 022/2019 and to issue a revised order upholding the decision of CGRF.

The arguments raised by the review petitioner are the following:

The first proviso to regulation-125(l) is applicable in cases only where "required details pertaining to previous billing cycles are not available". Here, the required details pertaining to previous billing cycles were clearly available, recorded and billed.

The appellant had not submitted any documentary evidences to substantiate his argument of non-occupancy or change of occupancy of the premises neither before the Licensee nor before the Hon. CGRF or the Hon. State Electricity Ombudsman. Neither did he produce any documentary evidences before the Licensee or CGRF or Ombudsman during the hearing nor did the / Forum / Ombudsman made any such document available to the respondent. Clearly, the above conclusion of this Ombudsman is violative of explicit provisions of the Supply Code, 2014 and is against the spirit of transparent proceedings and natural justice envisaged in Reg-23(3) of The KSERC (CGRF and Electricity. Ombudsman) regulations 2005..

Even if all the arguments of the consumer are treated as genuine and decided to be considered, the first proviso to regulation-125(l) is applicable, where "Provided that, the average shall be computed from the three billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available."

The Ombudsman has considered the average consumption of only three months after the faulty meter was replaced, while the above Regulation clearly stipulates three billing cycles after the meter is replaced. This is clearly an apparent error in computing the average consumption and warrants immediate review based on regulation-27A(l)(ii) of The KSERC (CGRF and Electricity Ombudsman) regulations 2005.

It is argued by the consumer that he had not occupied the premises during August 2018 during the Floods and the energy consumption in his premises was zero. This was considered by the Ombudsman without any documentary proof. Ombudsman has not sought the opinion of KSEBL, whether this area was flooded and the supply was not provided / available during August 2018. The appellant is residing in Kuttappuzha, at the heart of town under Thiruvalla Municipality, where there were no floods (High-lying area) and where the supply interruption due to Floods 2018 was only normal. This could be verified from the outage details of the 11 KV Town / Kuttappuzha feeders from 66 KV substation, Chumathra feeding this area.

Here also, the argument of the consumer is without any supporting document or evidence and thus the decision of the Ombudsman is arbitrary. This is also against the spirit of transparent proceedings and natural justice envisaged in Reg-23(3) of The KSERC (CGRF and Electricity Ombudsman) regulations 2005.

The review respondent/appellant has submitted the following statement of facts in reply to the review petition.

The faulty meter was not replaced after almost five months' and the review respondent is not responsible for this long delay. It is clear that there occurred delay and lapses on the part of the review petitioner in replacing the energy meter within the specified reasonable time.

Further the review respondent has stated that it seems the KSEB authorities are very keen in implementing the procedure for billing in case of defective energy meter (and that too in part) and all these problems could have been avoided if KSEB authorities had followed the procedure for replacing defective energy meters as per rules with the same vigour. As service provider, it is review petitioner's responsibility to replace faulty meters within the specified time frame and charge consumer for energy consumption according to the energy meter. Moreover, the review respondent is at a loss to make out the logic behind the review petitioners/respondent's argument that he had not submitted any documentary evidence to substantiate non-occupancy of premises during the time of the devastating monsoon floods?

The hearing of the case was conducted on 22-08-2019 in my chamber at Edappally, Kochi. Sri. Harikumar B, Assistant Executive Engineer, Electrical Sub Division, Thiruvalla represented for the review petitioner and argued the case on the above mentioned lines. The review respondent/appellant was absent. On perusing the review petition, and the arguments in hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

As per regulation 27A of the KSERC (CGRF & Electricity Ombudsman) Regulations, 2005, an application for review shall be filed within a period of fifteen days from the date of receipt of the order. In this case the review petition dated 05-07-2019 against the order in appeal petition No. P/22/2019 dated 20-05-2019 was received only on 09-07-2019. Moreover, the review petitioner has not submitted any application to condone the delay. Hence it is found that the review petition is time barred by limitation.

However this Authority has examined whether any mistake or an error which is apparent on the face of records occurred while issuing the order.

The main argument of the review petitioner is that an apparent error in calculating the average consumption of the appellant consumer. According to him, Regulation 125 (1) clearly stipulates three billing cycles after the meter is replaced and this Authority has considered the average consumption of only three months after the faulty meter was replaced which is an apparent error.

In the Analysis of the order issued P/22/2019, it was clearly stated that the appellant occupied the premises in 12/2017 and the change of occupation of the building by the appellant is proved by documentary evidence and the recording of the energy consumption in the meter became standstill in between 19-03-2018 and 19-05-2018, continued up to the date of replacement of meter on 17-12-2018, it is not proper to take the average of the recorded consumption from 22-11-2017 to 19-05-2018 for issuing spot bills from 19-05-2018 to 17-12-2018. The order was issued on 20-05-2019 and at that time only 3 months consumption after replacement of meter was available. Since three complete billing cycles end on 17-07-2019, there is no logic in taking the consumption up to a future date as on the date of issuance of the order on 20-05-2019. Hence this is the judicial discretion of this Authority to interpret the Regulation in such circumstances and cannot be considered as an apparent error.

The review petitioner has not replaced the defective meter within seven working days from the date of detection of the defect as envisaged in clause 4 (15) of the Kerala State Electricity Regulatory Commission (Standards of performance of Distribution Licensees) Regulations, 2015 and has not put forward any valid reason for his lapse. It is interesting that the review petitioner has approached this Authority accusing error in the decision by pointing out non implementation of the provisions in the Supply Code on flimsy grounds but at the same time the review petitioner escapes from his duty and responsibility of adhering the provisions regarding replacement of defective meter within the time limit specified in the rules, submitting review petition in time etc. It seems that he is free from obeying the rules in the Code and Regulations.

In the review petition nothing is pointed out which escaped the notice of this Authority while disposing the appeal petition. The review petitioner is challenging the decision of this Authority by raising fresh arguments in the review petition. The review jurisdiction is limited to rectify a mistake or an error which is apparent on the face of records and it cannot be used as appellate jurisdiction. This Authority has considered all the arguments while

disposing the appeal petition. A decision once rendered by a competent Authority/Court on a matter in issue between the parties after a full enquiry should not be liable to be agitated over again before the same Authority/Court. If the review petitioner is aggrieved by the order of this Authority, it is free for him to challenge that order before the appropriate upper authority. In this background, this Authority didn't find any reason to intervene the order already issued. In view of the above discussions, I hold that review petition is not maintainable and hence rejected. Having decided as above, it is ordered accordingly.

ELECTRICITY OMBUDSMAN

REVIEW PETITION No. 04/2019/ /Dated: _____
IN APPEAL PETITION No. P/022/2019

Delivered to:

1. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Thiruvalla, Pathanamthitta
2. Sri. Thomas Alexander, Prasanth Bhavan, Kuttapuzha, Thiruvalla, Pathanamthitta

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.