

THE STATE ELECTRICITY OMBUDSMAN  
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REVIEW PETITION No. RP 05/2019 in APPEAL PETITION No. P/045/2019  
(Present: A.S. Dasappan)  
Dated: 23<sup>rd</sup> October 2019

Review Petitioner : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd, Gandhi Nagar,  
Kottayam

Review Respondent : Sri. A.K. Xaviour,  
Aruparayil House,  
Pulikuttuserry P.O.,  
Kottayam

### **ORDER**

The Review Petitioner is the respondent in Appeal No. P/045/2019. The review respondent is a consumer under the Electrical Section, Aymanam under VI F tariff bearing consumer No. 13859. He has taken a Single phase connection in 2015 at the time of the construction of his house. After the completion of the construction work, the review respondent/appellant applied for load enhancement under LT 1 A domestic tariff and conversion of service connection to LT three phase, on 18-07-2017. In the application, the connected load applied was 51326 Watts, but on inspection it was found that the connected load at the premises as 44 kW (leaving all unconnected equipments and plug points). On 03-01-2018, the Executive Engineer, Electrical Division, Pallom accorded sanction for an estimate amounting to Rs.12.23 lakhs for constructing 950m of 11 kV SC OH line and installing one 100 kVA transformer at the property of the review respondent/appellant for meeting the appellant's load requirement and accordingly demand notice was issued to the appellant by the review petitioner/respondent. The review respondent /appellant was not willing to bear the expenditure required to meet his power requirement stating that the review respondent/appellant is bound to remit the expenditure only if the power requirement is above one Megawatt. Challenging the demand notice issued, the review respondent/appellant filed a petition

before the CGRF, Southern Region which was disposed vide Order No. OP 20/2019 dated 21-05-2019, ordering that the distribution licensee is empowered to recover the expenditure incurred for providing supply as per Regulation 32 of Kerala Electricity Supply Code 2014 and the Forum dismissed the case. 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. As per order No. P 45/2019 dated 26-08-2019, the following decisions were taken.

“The demand notice for Rs. 12.23 lakhs issued by the respondent was quashed and held that the respondent is entitled to recover the expenditure from the appellant for the extension of 11 kV line up to the transformer station and for the conversion of the single phase low tension service connection to three phase connection. The respondent shall bear the cost of the transformer for giving the three phase LT supply to the appellant. The respondent shall opt the technically feasible route for drawing the 11 kV/LT line using Overhead Conductor/Aerial Bunched Cable”. 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 26/08/2019 in Appeal No 045/2019 and to issue a revised order upholding the decision of CGRF.

The arguments raised by the review petitioner are the following:

In the Order dated 26/8/2019 the Ombudsman allowed KSEBL to collect expenses required for constructing 11 kV network and single phase to three phase conversion charges but directed KSEBL to bear the cost of transformer for giving three phase supply to the petitioner. According to the Ombudsman's analysis and findings, the decision to direct KSEBL to bear the expense of transformer was based on the common judgement of the Hon'ble High Court in writ appeal Nos. 1482/2017 and 1448/2017. The Hon'ble High Court in its order clearly mentioned that the additional expenses incurred for the installation of such 'transformer may be reimbursed through tariff revision from such consumers. In the order the Ombudsman also viewed that the area in which the petitioner resides does not require any line up gradation and new transformers, as the present system is well enough to cater the requirements of the area, and the proposed line and transformer required is strictly for the benefit of petitioner.

The Hon'ble High Court also in its order in writ appeal 1482/2017 & 1448/2017 clearly mentioned that "This would not in any way affect the general tariff determination for the individual respondents which has to be under that category of the consumer: as brought out by the Commission, periodically. The writ petitions would have to pay the tariff under such general Tariff determination order but would also have to pay the additional amounts for the purpose of setting off the expenditure incurred by the Board, for which the Board has to approach the Commission and the Commission has to decide

on the amounts with reference to the expenditure incurred: with notice to the units. In such circumstances, the Board has to install the transformer at his costs and then approach the commission for determination of individual Tariffs with respect to the two units"

So, it is clear that for individual cases the expenditure incurred by Board should not be passed onto other consumers by way of tariff revision but should be met from such consumers itself by way of individual tariff revisions. Hence the decision of Ombudsman to bear the cost of transformer is not in compliance with the order of Hon'ble High Court in writ appeal 1482/2017 & 1448/2017. If complied, the transformer cost and labour expenses required for its installation to meet the petitioners demand should have to be passed on to other consumers of the state through tariff petition. Hence it is requested to issue revised order in compliance with regulation 32 & 37 of Supply Code 2014 otherwise the opposite parties will put in to irreparable losses.

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

There is absolutely no pleading in the review petition alleging any apparent error on the face of record in the impugned judgment. A review petition can only be maintained on a ground of apparent error on the face of record. Review petitioner have failed to establish such a case. Therefore, on that ground alone, the review petition is liable to be dismissed. The review petitioner has approached this Forum through this review petition only on a ground of wrong interpretation of the decision of the Hon'ble High Court in WA No.1482/2017 & 1443/2017. That is not a valid ground for a review petition. The aforesaid decision of the Division Bench was with regard to an order passed by the Ombudsman wherein it was categorically held that an applicant need not remit the any amount towards the cost of the transformer or 11 kV line as per the Regulations in the Electricity Supply Code. The aforesaid order was upheld by the Single Bench of the High Court and the Division of the Hon'ble High Court modified the same to the extent that the Board can Install the transformer and the amount incurred can be reimbursed by fixing additional tariff by approaching the Commission. The decision of the Ombudsman that the Board cannot recover the amount of the 11- kV line was not interfered by the Hon'ble High Court and the same has become final. Therefore, Ombudsman ought to have issued the impugned order in similar fashion as laid down by the Hon'ble High Court. The impugned order suffers illegality to such extent and this respondent intends to exercise the available legal remedies against the aforesaid infirmity and other grievances which the respondent suffers from the impugned order. Therefore, even for the sake of argument on merit of the review petition, the review petitioner has not made out any grounds to review the order of the Ombudsman.

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. RP 05/2019 in  
APPEAL PETITION No. P/045/2019/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to

1. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Gandhi Nagar, Kottayam
2. Sri. A.K. Xaviour, House, Pulikuttuserry P.O., Kottayam

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.