

THE STATE ELECTRICITY OMBUDSMAN
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REVIEW PETITION No. P/351/2013

(Present: Sri. V.V. Sathyarajan)

Dated: 03rd August 2015

Review Petitioner : The Deputy Chief Engineer
KSEB Ltd,
Electrical Circle,
Ernakulam

Review Respondent : Smt. Laila Sasikumar
M/s Saino Polymers (P) Ltd.,
Vandipetta, Thiruvaniyoor,
Ernakulam

ORDER

Background of the Case

The Deputy Chief Engineer, Electrical Circle, KSEB Ltd., Ernakulam, the respondent in appeal petition No. P/351/2013 is the review petitioner herein this petition. The review respondent is a HT industrial consumer with consumer no. HTB-12/4472 under Electrical section Puthencruz and he was issued with a short assessment bill amounting to Rs. 8,02,085/- by Special Officer (Revenue), KSEB, Thiruvananthapuram, the penal charges for non segregation of power and light loads of his industry pertaining to the period of 9/2010 to 10/2012. Aggrieved by the above, the review respondent filed a complaint before the CGRF, Ernakulam against the short assessment bill issued and the Forum dismissed the same vide Order OP No. CGRF-CR/Comp.110/12-13 dated 25-01-2013. Not satisfied by the above decision of CGRF, the review respondent has submitted an Appeal Petition before this Authority in Appeal No.P/351/2013. The appeal petition filed by the review respondent was found having merits and was allowed to the extent it was ordered. Now the Review petitioner has submitted that a factual error occurred in the order issued by this Authority and therefore requested to review the order dated 31/1/2014 and to dismiss the said appeal petition.

Arguments of the review petitioner

1. The review petitioner stated that M/s Saino Polymers Ltd., Con. Code 12/4472 is an existing HT consumer under Electrical Section, Puthencruz. The review respondent has executed HT agreement vide Agt.No. ECE/HT-33/06-07/8-11-06 with contract demand 110 KVA and 108.7 kW (power load - 93.4 kW, light load - 15.3 kW) and also have executed a supplementary schedule on 21/05/2011 for enhancing the connected load to 303.711 kW + 10 kVA (power load 288.724 kW and light load 23.987 kW).
2. As per the Tariff order (Part A Item No. 9) notified by the Kerala State Electricity Regulatory Commission (effective 1-1-2010) in respect of HT industrial category if the connected lighting load is less than or equal to 5% of the connected load for power, the energy for factory lighting can be tapped off from the power mains without segregation. In case lighting load exceeds this limit the whole lighting load should be segregated, metered by a sub-meter and billed at the tariff prescribed. In such cases the light meter consumption, which is in excess of 10% of power meter consumption, should be charged at 10% per unit rate as extra from the normal rate. If segregation and sub-meter are not made the bill amount of the consumer has to be increased by 20%.
3. The review respondent's total connected load is 312.711 and light load is 23.98 kW. Obviously light load is greater than 5% of power load. But there is no segregation of power and light loads and no light load metering. Also the segregation of power and light loads and no light load metering. Also the petitioner was not being billed the 20% extra for this non-segregation and non-metering. On the light of AG audit, Special Officer (Revenue) office included 20% extra charge for non-segregation of light load in the monthly invoices from 9/10 onwards and issued an arrear notice dated 19-11-2012 to the petitioner requesting to remit an amount of Rs. 8,02,085/- on or before 7-12-2012.
4. Since the light load of the review respondent as per supplementary schedule executed on 21-05-11 is 23.987 kW, an inspection was conducted in the premises of the review respondent on 6-12-12 to verify the light load and the same is found as 12.089 kW.
5. As per Clause 14(b) of the HT Agreement executed when there is a change in the connected load the consumer has to intimate the same to the agreement authority. For regularizing the change in connected load revised schedule has to be executed. The consumer has not intimated the change in the connected load to KSE Board.
6. The review respondent executed the revised HT agreement for enhancing the contract demand & connected load and thereby regularizing their light load only on 31-12-13. The consumer is liable to pay the penalty for non segregation up to the execution of revised HT agreement.
7. The review respondent's light load was greater than 5% of power load at the time of issuing of short assessment bill. Change of connected load was not

informed to the licensee. The review respondent has mentioned about the change in connected load only when they filed complaint before the CGRF against short assessment for Rs. 8,02,085/-.

Arguments of the review respondent

1. According to the review respondent, the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulation 2005 is also very clear and specific in Clause 21 (1) where the complainant cannot be a licensee and hence the licensee cannot approach the Ombudsman asking for a revision because requesting a revision itself is a complaint and also can be considered only as a grievance of the licensee.

2. Further stated that it is true that in 4th amendment of the Ombudsman regulation 2011 a provision for review was introduced as Clause 27 (A) where 'the application of any person aggrieved by an order' is permitted to file a revision before the Ombudsman. It doesn't mean that the revision can be filed by a licensee as 'any person' because the 'any person' can only be a person defined in Clause 2 (e) of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulation 2005. If the definition of 'any person' is elaborated taking into account its verbal meaning even a third party can file a revision if he discovers a 'new or important matter or a mistake or error' in the order of the Ombudsman. Hence the definition of 'complainant' can only be considered as 'any person'.

3. The revision can be considered only ' (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.' Here in the memorandum of review petition filed by KSEB no such discovery or, mistake or error is pointed out. The KSEB have only highlighted the same defence what they have taken in the original petition P.351/2013, which was considered and analysed by the Hon. Ombudsman while declaring the order.

4. The order of the Hon. Ombudsman is relying upon the natural justice pointing out the deficiency of service, inefficiency and negligence of KSEBL 'From the said details, after issuing the notice, the Board could have raised penal bill from that month onwards, if the light load is more than 5% of the power load, But the Board has not preferred any penal bills till 10/2012. There is seen clear lapse and negligence on Board's side to prefer the bills in time. Had the bill been issued in time, the consumer would have known the impact of penalty for non segregation and might have taken appropriate measures. 'KSEBL in their revision does not have any counter argument against this finding of Hon. Ombudsman.

5. The observation of the Hon. Ombudsman with regard to Clause 37 (5) of KSEB T&C of Supply Code 2005 'the Clause 37(5) is provided for the causes of genuine omission

occurred on KSEB's side, so as to recover the electricity charges truly owned by the consumer and that Clause should not be used for the piling up of extra charges and then raising the whole demand as orders on a later date' is also very specific without any counter argument from the part of KSEBL.

8. Above all the review petitioner have filed the revision after 7 months from the date of order and as per the Clause 27 A (2) it is suppose to be filed within 15 days. The KSEBL could not able to highlight any cause for the delay of 200 days for filing the review petition. They have also not highlighted the reason for condonation of the delay.

Analysis and findings:

Hearing of the case was conducted on 11-06-2015 in my chamber at Edappally. Smt. Sudha, Assistant Executive Engineer, Electrical Circle, Ernakulam and Sri. C.P. Boban, Assistant Executive Engineer, Electrical Sub Division, Puthencruz KSEB appeared for the review appellant and argued the case on the above mentioned lines. The review respondent in this petition has submitted a detailed argument note for consideration.

On going through contentions raised by the review petitioner in the review petition, it is seen that no mistake or apparent error on the face of the record are pointed out by the review petitioner. During the hearing the review petitioner has requested that the period limited to one month may be reviewed and extended for a period of 12 months, till the date of regularisation. The arguments now raised cannot be considered for a review, as it was considered, decided and order issued accordingly earlier. Hence there is no cause or sufficient reason established by the review petitioner, for the review of the order already issued.

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 31-07-2014 against the order in appeal petition No. P/351/2013 dated 31-01-2014 was received only on 13-08-2014. Hence the petition is time barred and no reason for condonation for delay has submitted by the review petitioner. The review respondent submits that the application of any person aggrieved by an order is only permitted to file a revision before the Ombudsman and it doesn't mean that the revision can be filed by a licensee as 'any person' because the 'any person' can only be a person defined in Clause 2 (e) of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulation 2005. According to him, the definition of 'complainant' can only be considered as 'any person'. But I am of the view that the licensee can also point out any mistake or apparent error on the face of the record since he is one of the party in the litigation.

Decision

So in view of the fact that in the review petition nothing is pointed out which escaped the notice of this Authority while disposing the matter, I hold that the review petition is not maintainable and hence rejected.

ELECTRICITY OMBUDSMAN

P/351/2013/_____ /Dated:_____

Forwarded to:

1. The Deputy Chief Engineer, KSEB Ltd, Electrical Circle, Ernakulam
2. Smt. Laila Sasikumar, M/s Saino Polymers (P) Ltd., Vandipetta, Thiruvaniyoor, Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
2. The Secretary, KSE B Ltd, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018