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APPEAL PETITION No. P/025/2017
(Present: A.S. Dasappan)
Dated: 22nd June 2017

Appellant : Sri Sajith V.
19/882, Indo PVC Conduits,
East Kallai,
Chalappuram,
Kozhikode

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Mankavu,
Kozhikode

ORDER

Background of the case:

M/s Indo PVC Conduits, East Kallai, Chalappuram, is an LT-IV industrial consumer, under Electrical Section, Mankavu, having consumer No.19713. The registered connected load in the premises is 108 kW. The APTS of KSEB inspected the premises of the consumer on 28-01-2014 and found that the Current Transformer (CT) provided in the metering circuit is of ratio 150/5 and hence the multiplication factor (MF) is 30. On verifying the regular energy bills issued to the consumer, it was found that the CT ratio was wrongly taken as 100/5 (MF=20) instead of 150/5 (MF=30) from 03-02-2011 onwards. Thus the bills to the consumer were raised only for 2/3 of the actual energy he has consumed till 02/2014 due to error in MF used for billing. Hence a short assessment bill to recover the loss, amounting to Rs. 6,43,603/- was served to the consumer on 06-02-2014. Being aggrieved by the short assessment bill, the appellant preferred a petition before Consumer Grievance Redressal Forum,

Kozhikode (Northern Region) as OP No. 117/2013-2014. The Forum disposed of the petition with a direction to restrict the assessment for a period of 2 years prior to the date of inspection, vide order dated 29-05-2014. The respondent preferred a review petition before the CGRF under Section 12 [A] of Electricity Regulations, 2005, to review the order in OP No. 117/2013-2014, on 04-12-2014, which was allowed by holding that the consumer is liable to pay the short assessment bill issued due to the correct multiplication factor from 03-02-2011. Aggrieved by this order, the appellant preferred this appeal before this Authority.

Argument of the Appellant: -

The appellant is the Managing Partner of M/s Indo PVC Conduits, which is a partnership firm, actively engaged the manufacturing of PVC products. The company is a consumer under the Kerala State Electricity Board and a prompt payer of electricity bills. While so, APTS Wing of the respondent made a visit to the premises of appellant's establishment and found that the multiplication factor used for computing the energy consumption was taken as 20 instead of 30.

The APTS Wing issued a short assessment bill for the period commencing from 03-02-2011 to 06/2014, for an amount of Rs. 6,43,603/-. It was a shocking and surprising incident as far as the appellant is concerned because the appellant has nothing to do with the issuance of monthly demand and disconnection notices. It is a fact that the appellant has neither colluded nor played any fraud upon the respondent in order to make any illegal gains. It is also a fact that the respondent has no such allegation of fraud or collusion. It is submitted that wrong application of multiplication factor (MF) if any, is only a mistake on the part of the meter reader, who is none other than the employee of the respondent.

Being aggrieved by the short assessment bill dated 06-02-2014 for an amount of Rs. 6,43,603/-, the appellant preferred a petition before Consumer Grievance Redressal Forum, Kozhikode (North Region) as OP No. 117/2013-2014. The Forum found that the short assessment bill dated 06-02-2014 issued by the respondent is contrary to law and justice. The Forum directed the respondent to restrict the assessment for a period of 2 years prior to the date of inspection by the APTS Wing i.e., 28-01-2014.

The respondent was also directed to grant maximum instalments without surcharge. The respondent after a period of long time, preferred to file a review petition before the forum under Section 12 [A] of Electricity Regulations - 2005, to review the judgement in OP No. 117/2013-2014. The appellant herein

seriously opposed that petition inter alia, contending that the petition is not maintainable on the ground that there is no formal petition for condoning the delay happened in filing the petition and that there are no sufficient grounds for reviewing the order passed by the Forum. It was also a fact that the Hon'ble members of the Forum who passed the impugned order were not sitting as the members to hear the review petition. The appellant also contended that there is no wrongful act or illegal omissions which lead to the circumstances of issuing a short assessment bill. It is the duty of the respondent or its agent to issue proper demand and disconnection notices properly applying the existing and actual multiplication factor. The appellant has nothing to do with the said process. It is submitted that the appellant is a PVC Pipe Manufacturer. As far as the manufacturing process is concerned, electricity also forms part of the capital. The Marketing price or the MRP is fixed for the product taking into consideration of the expenses incurred for the manufacturing process. Hence the electricity expenses also have a substantial and direct bearing upon the price of the product. The alleged incidents took place during the period 03-02-2011 to 06-02-2014. During the said period a large number of production and marketing have been took place. If a short assessment is issued at this stage according to the whims and caprices of the respondent, the same will cause heavy loss to the appellant. The respondent is responsible for its agent wrongful acts. The appellant is not liable to pay any amount to respondent as per the short assessment dated 06.02.2014.

However, the Forum by its order dated 05-12-2016 reviewed it earlier order in OP No. 117/2013-2014 by a majority judgement of two against one. The dissenting judgement clearly shows that the review petition was only to be dismissed. Aggrieved by the said order dated 05-12-2016 the appellant is invoking the Jurisdiction of this Hon'ble Court for appropriate remedies.

Reliefs sought for:

- i. Setting aside the order passed by the CGRF Kozhikode North Region in RP No. 09/2014 in OP No. 117/2013-2014.
- ii. Directing the respondent to withdraw the short assessment bill dated 06-02-2014.
- iii. Directing the respondent to pay the appellant the entire cost of the proceedings.
- iv. Granting such any other order that may be deem fit and proper by the Hon'ble Court

Arguments of the respondent:

The appeal is not maintainable as there is no such fact or information or evidence or error pointed out against the order of CGRF, Kozhikode in CGRF order 117/2013-14 or the review petition 09/2014 in OP No. 117/2013-14 of CGRF Kozhikode.

It is true that the APTS wing of KSEBL has inspected the premises of the appellant bearing consumer No. 19713 of Electrical Section, Mankave on 28-01-2014 and based on the inspection a short assessment bill was issued amounting to Rs. 6,43,603/- on 06-02-2014. The short assessment bill was made due to the wrong application of CT multiplication factor (which was changed from 20 to 30)

It is also true that the appellant has filed a petition before the Hon. CGRF, Kozhikode against the short assessment bill in OP No. 117/2013-14 and the CGRF Kozhikode as partially allowed the petition directing KSEBL to revised bill up to two years from the date of inspection.

Aggrieved by the order of the CGRF to restrict the bill only for two years prior to the inspection date, KSEBL has preferred review petition to allow short assessment for the entire period from 03-02-2011 (being date on which connected and the meter changed) till the date of inspection that is 28-01-2014. The argument put forth by the respondent is that as per section 24 (5) of Kerala Supply Code, 2005 which was in force at the time of making short assessment bill there was no limitation on the duration of such short assessment and the forum allowed the petition and KSEBL was allowed to collect the short assessment for the period from 03-02-2011.

There is no inordinate delay in filing the review petition against the order of CGRF 117/2013-14 as the order was dispatched from CGRF on 31-10-2014 and the review petition was filed on 04-12-2014. The same was informed in the review petition No. 09/2014 filed by the respondent.

Under circumstances and facts mentioned above, the short assessment bill served by the KSEBL for Rs. 6,43,603/- (Rupees Six Lakhs Forty Three Thousand Six Hundred and Three Only) is as per section 24 (5) of Electricity supply code 2005 which was in force at the time of issuing the short assessment bill which was upheld by the CGRF and hence it is humbly prayed that, the appeal petition preferred by the appellant may be rejected and KSEBL may be allowed to collect the amount as per bill dated 06-02-2014 for Rs. 6,43,603/- (Rupees Six Lakhs Forty Three Thousand Six Hundred and Three Only) plus the applicable interest.

Analysis and Findings: -

The hearing of the case was conducted on 08-06-2017, in the Court Hall of CGRF, Kozhikode. The appellant's side was represented by Sri M.K. Madhavan Kutty, Manager Indo PVC Conduits and Sri T.K. Yahiya, advocate and for the respondent's side by Sri Ayyub K., the Assistant Executive Engineer of Electrical Sub Division, Mankavu. Both sides have argued the Case on the lines as stated above. On examining the appeal petition, the statement of facts of the respondent, the arguments of either side, perusing the documents filed and considering all the facts and circumstances of the case, this Forum comes to the following conclusions and findings leading to the decisions thereof.

The main argument raised by the appellant relates to the maintainability of the review petition which was submitted by the respondent before the CGRF. According to him, the petition is not maintainable on the ground that there is no formal petition for condoning the delay happened in filing the petition and that there are no sufficient grounds for reviewing the order passed by the Forum. As per regulation 12A of the KSEERC (CGRF & Electricity Ombudsman) Regulations, 2005, an application for review before the CGRF shall be filed within a period of fifteen days from the date of receipt of the order. The said Regulation reads as: (1) the Forum 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.

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

Provided that the Forum 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.

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

(4) In cases where the review petition is admitted, the Forum shall dispose of it within a period of 30 days from the date of admission after affording sufficient opportunity to the parties to the application.

In the instant case, the appeal petition of appellant in OP/117/2013-14 is seen disposed on 29-05-2014 and order is seen dispatched only 31-10-2014 i.e., after a period of 7 months. The respondent has stated that he filed review

petition on 04-12-2014 before the CGRF. Even though the appellant, had raised this argument of delay before the CGRF, the Forum has not mentioned anything in its order dated 05-12-2016, whether the review petition was time barred or condonation was granted for the inordinate delay in submitting the review. Another aspect of this review is that though the rule stipulates disposal of any review within 30 days of receipt, this review petition has taken two years for disposal.

In the review petition, the review petitioner has pointed out a relevant provision of Supply Code, 2005 and its applicability which escaped the notice of the Forum while disposing the original petition. The review jurisdiction is limited to rectify a mistake or an error which is apparent on the face of records.

The second argument of the appellant is that the consumer is penalized for the mistake of the KSEB authorities. Though it was a fault on the part of the KSEB, it cannot be ignored that the party has actually consumed the energy and he is liable to pay for it. He is required to pay the charges only and not any penal amount. But the consumer can be allowed to remit the amount in monthly equal installments eligible for him. There occurs a mistake in the billing (calculation) due to wrong application of MF or may be due to some oversight. Amounts of short payments became due only after realization of mistake. The consumer does not dispute the error in the Multiplication Factor (MF) occurred to KSEB in raising his monthly bills nor its period of assessment. The consumer is bound to pay the charges for the electricity he has consumed. As per clause 24(5) of Electricity Supply code, 2005, if the Licensee establishes that it has under charged the consumer, by review or otherwise, it is open to the Licensee to recover the amount so undercharged from the consumer by issuing a bill. In this case, the respondent has only done that and so it is found that the consumer is liable to honor the bill dated 06-02-2014 for Rs. 6,43,603/-issued to him.

Decision

The consumer does not dispute the error in the Multiplication Factor (MF) occurred to KSEB in raising his monthly bills nor its period of assessment. The consumer is bound to pay the charges for the electricity he has consumed. As per clause 24(5) of Electricity Supply code, 2005, if the Licensee establishes that it has under charged the consumer, by review or otherwise, it is open to the Licensee to recover the amount so undercharged from the consumer by issuing a bill. In this case, the respondent has only done that and so it is found that the consumer is liable to pay the bill dated 06-02-2014 for Rs. 6,43,603/-, issued to him. The appellant shall be allowed to pay the full amount, without any interest up to 30th day of this order, if he prefers

so. It is also decided that the consumer shall be allowed to pay the disputed bill, stated above, in 24 installments and the respondent shall intimate the 'installment due dates' within 10 days of the receipt of this order.

The order of CGRF in the review petition 09/2014 in OP No. 117/2013-14 dated 05-12-2016 is upheld. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/025/2017/ _____ /Dated: _____

Delivered to:

1. Sri Sajith V., 19/882, Indo PVC Conduits, East Kallai, Chalappuram, Kozhikode
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Mankavu, Kozhikode

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, Gandhi Road, Kozhikode