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REVIEW PETITION No. RP 03/2019 ON APPEAL PETITION No. P/007/2019  
(Present: A.S. Dasappan)  
Dated: 4<sup>th</sup> June 2019

Review petitioner : The Assistant Executive Engineer  
Electrical Sub Division  
Kerala State Electricity Board  
Wandoor

Review respondent : Sri A.M. Mohammedali  
Managing Partner  
M/s. Mubaraq Granite Industries  
West Chathallur, Othayi  
Edavanna, Malappuram Dt

### **ORDER**

The Review Petitioner is the respondent in Appeal No. P/007/2019. The review respondent/appellant is the Managing Partner of M/s. Mubarak Granite Industries, West Chathalloor, Othayi, Edavanna in Malappuram Dt, was having a low tension three phase industrial service connection with consumer number 18078, under Electrical Section, Edavanna, Malappuram. The appellant has complained that the energy meter in his premises is over reading and requested that the same may be tested at TMR Division. The appellant remitted the fee for testing the meter on 12/7/2011 and the meter was tested on 22/10/2011 at TMR Division, Shornur and the test report revealed that the meter was faulty as it showed abnormal pulses on load. The appellant then represented KSEB to refund the overcharged amount from 11/2009 to 10/2011. The KSEB has prepared a calculation statement that an amount of Rs. 15,74,558/- is to be reimbursed to the appellant, as the amount collected during the meter faulty period was in excess. On 31/12/2013, the supply was dismantled due to the upgradation of the electrical connection to High Tension (HT) and thereafter the cash deposit was refunded in January 2014.

But no action was taken to refund the excess amount collected, the appellant is stated to have made complaints many times for the same before the KSEB authorities. Since no steps were taken to refund the excess amount collected, the appellant filed a complaint before the CGRF which was dismissed, holding that no claim either due to the licensee or due to the consumer shall be raised after dismantling service connection, vide order O.P. No. 69/2018-19 dated 18-12-2018. Aggrieved by this order of the CGRF, the Appellant has submitted appeal petition before this Forum. 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 26/03/2019 in Appeal No 007/2019 and to issue a revised order that there is no excess amount collected by the review petitioner from the respondent/petitioner.

The arguments raised by the review petitioner are the following:

The Respondent/petitioner's connection was effected on 18/02/2005 and the service was dismantled on 31/12/2013 after adjusting the cash deposit as per the request of the complainant for up gradation to HT connection. The respondent / petitioner has not made any dispute over the functioning of the meter prior to the testing of meter on 22/10/2011 at TMR Division Shornur. The regulation 42 (3) of KSEB Terms and Conditions of Supply 2005 (which was in force at 'that time) says " If the existing meter after having found faulty is replaced with a new one, the consumption recorded during the period in which the meter was faulty shall be re-assessed based on the average consumption for the previous six months prior to the replacement of meter. Since the regulation 42 (3) insists the consumption recorded during the period in which the meter was faulty shall be reassessed the date of registration of the complaint is the crucial date for taking the re-assessment. Here the review respondent/appellant has not registered any written complaint with the review petitioner.

The review respondent/appellant remitted the demand raised without any hesitation/protest, which means that he was convinced of his true consumption. Moreover during those periods there were no restrictions in the business/ activities of the quarry industry. The review respondent/appellant has not filed any application for refund other than security deposit at the time of dismantling of service connection on 31/12/2013. The very fact that the conversion of the review respondent/appellant from LT to HT itself proves the requirement of more consumption of power for running his industry / business.

The energy meter of Con. No. 18078 was tested on 22/10/2011 at TMR Division, Shornur and declared as faulty but the faulty period of the meter or the percentage of error was not mentioned in the test report. The review respondent/appellant has paid the requisite fee for testing the meter only on 12/07/2011 and there was no dispute over the functioning of the meter prior to this date. The procedure for testing the meter is clearly staged in clause 42(1) of T & C of supply 2005 and Reg 115 of Supply Code 2014. According to Reg.115 sub reg (9) "In case the meter is found to be faulty, revision of bill on the basis of the test report shall be done for a maximum period of six months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in two subsequent bills.

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

The supply had been dismantled by the Assistant Engineer, Edavanna, on 31.12.2013 in connection with the up gradation of the electrical connection and thereafter the C D and the advance amount had been refunded to the appellant/ review respondent on the month of January 2014. During the time of dismantling the connection, the appellant/ review respondent had demanded to reimburse the dues, but Assistant Engineer, Edavanna specifically instructed the appellant/ review respondent to file request excluding the excess amount remitted during the meter found faulty and further intimated to him that the amount shall be refunded later after settling the C D and the advance amount. By believing the instruction, appellant/ review respondent had not filed request to reimburse the amount along with the request to dismantle the connection for up gradation. Thereafter the Assistant Engineer, Edavanna had turned back. It is a newly incorporated version of the review petitioner that the appellant/ review respondent had not made any dispute over the functioning of the meter prior to the testing of the meter on 22.10.2011 is not legally sustainable, since the very point is already adjudicated by this Authority. Meter was found faulty during the year of 2011 and the appellant alerted this issue to A E, Edavanna on several occasions for initiating to test the meter before TMR Division, Shornur. All the alerts of complaints from the side of the appellant/review respondent had already urged by the appellant/review respondent on all occasions of this proceeding. Non-registration of complaints as alleged is a fault on the part of the review petitioner and it will amount to deficiency of service on the part of the review petitioner. The review petitioner is the custodian of the complaint book and registering the complaints are part of his official duty. It is pertinent to note that all the issues urged in shall cover the admitted official communication dated 02.07.2012 issued from the office of the A E, Edavanna. This document is an admitted document produced by the appellant/review respondent during the proceedings of this Authority.

Now the review petitioner is taking a different stand with an ulterior motive to reject the legitimate claim of the appellant/ review respondent. The appellant/review respondent is not an expert to know about the fault of the meter and paying electricity bill is the primary duty of a customer. Allegation that during these times, there was no restriction in the business of the appellant/ review respondent is quite false and without any factual base, hence denied by this appellant/review respondent.

According to the review petitioner prior to 12.07.2011, the appellant /review respondent had not disputed about the functioning of the meter prior to this date is of no significance, since the abnormal pulses of meter reading had been alerted to the officials on many times prior to this date, it is very important that without convincing the abnormal pulses in the meter reading, office of the review petitioner shall not take steps to send for testing the meter to T M R Division, Shornur. There was convincing evidence to show that there was dispute with regard to the malfunctioning of the meter prior to 12.07.2011.

In view of the 134(3) of the Supply Code 2014 the review petitioner is legally liable to pay of the liability to the appellant/ review respondent without any fail.

The Hearing of the case was conducted on 30-05-2019 in my chamber at Edappally, Kochi. Sri. Pradeep P.S., Assistant Executive Engineer, Electrical Sub Division, Wandoor and Sri. Usman P, Assistant Engineer, Electrical Section, Edavanna represented for the review petitioner and Sri M.M. Ashraf, Advocate represented the review respondent and argued the case on the above mentioned lines. 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.

The arguments now raised cannot be considered for a review, as it was considered, decided and order issued accordingly. The main argument of the review petitioner is to consider the Section 42 (3) of KSEB Terms and Conditions of Supply 2005. According to the review petitioner, since the regulation 42 (3) insists the consumption recorded during the period in which the meter was faulty shall be reassessed, the date of registration of the complaint is the crucial date for taking the re-assessment. Here the review respondent/appellant has not registered any written complaint with the review petitioner. The review respondent has already denied this argument.

In the review petition nothing is pointed out which escaped the notice of this Authority while disposing the appeal 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. 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.

### **ELECTRICITY OMBUDSMAN**

REVIEW PETITION No. RP 03/2019

ON APPEAL PETITION No. P/007/2019/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

- 1) The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board, Wandoor
- 2) Sri A.M. Mohammedali, Managing Partner, M/s. Mubaraq Granite Industries, West Chathallur, Othayi, Edavanna, Malappuram Dt

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.