

THE STATE ELECTRICITY OMBUDSMAN

D.H. Road & Foreshore Road Junction, Near Gandhi Square,
Ernakulam, Kerala-682 016

Ph: 0484 2346488, Mob: 8714356488

www.keralaeo.org Email: ombudsman.electricity@gmail.com

REVIEW PETITION No. R.P/008/2022

IN APPEAL PETITION No: P/050/2022

(Present: A. Chandrakumaran Nair)

Dated: 05th December, 2022

Review Appellant : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Kondotti, Malappuram Dist.

Review Respondent : Smt. Shabna Vikas,
M/s. Vikas Granites,
'Abhilash' 4/420, A.G. Road,
Kozhikode-673032

ORDER**Background of the case:**

The Assistant Executive Engineer, Kondotti, Malappuram, who was the respondent of the appeal petition P050/2022 has filed review petition, which numbered as RP 008/2022 to review the order of the Ombudsman on the petition P050/2022. Smt. Shabna Vikas was the appellant of appeal petition P050/2022 claimed for the compensation for the delay in getting the HT connection. This Authority has completed the procedure and process and issued the order stating that the Licensee has to assess the quantum of delay and pay the compensation applicable as per the regulation. Aggrieved by the decision, the respondent filed the review petition to review the order issued.

Sustainability as per regulation:

The sustainability of the review petition has been examined as per Section 27 (A) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations 2005.

Section 27 A(1) The Electricity Ombudsman 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.

Section 27 A(2) An application under clause (1) shall be filed within period of fifteen days from the date of receipt of the order.

Provided that the Electricity Ombudsman 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.

Section 27A(3) If on a preliminary examination of the application, if the Electricity Ombudsman found that there is no sufficient ground for review, it shall reject the application after affording an opportunity of being heard to the applicant.

The order for the petition P050/2022 has been issued on 26-09-2022 and review petition submitted on 08-11-2022. There is a delay in submission of which the review appellant states that there is a postal delay in getting order which resulted the delay in filing the petition. This could be considered and hence, the petition is accepted.

The second aspect is Section 27 A (1) (i). The review appellant has put forward a new fact, which they have been noticed after issuing the order. The declaration in Form B states that "The subject matter of the present complaint has not been pending/decided by any Form/Court/Arbitrator/any other Authority." The appellant of the petition P050/2022, who is the review respondent has filed a petition to Appellate Authority with the prayer that has been prayed to this Authority. This results to wrong declaration and violation of the procedure. The Advocate who has appeared on behalf of the review respondent has mentioned that it is a mistake happened by oversight and apologies for the same. Further, he also stated that this particular prayer is not in the jurisdiction of Appellate Authority and hence, have no relevance. This has been accepted and accordingly the review petition stands valid.

Version of the Review Appellant:

First of all, the original complaint submitted by Smt. Shabna Vikas is not maintainable by law. The Regulation 22 of Kerala State Electricity Regulatory commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations 2005, stipulates that a complaint is not maintainable if any case where a representation for the same grievance by the Complainant is pending in any proceedings before any court, tribunal or arbitrator or any other authority or a decree or award or final order has already been passed by any such court, tribunal, arbitrator or authority. In this case, the Original Complainant is already submitted an appeal before the Hon'ble Appellate Authority as case No. AA2/2022, on 31-12-2021, pending for final order, in which their one of the prayer to the Hon'ble Appellate Authority is to allow cost and compensation from the licensee for failing to comply with the time line under section 43 (3) of Electricity Act 2003, & Section 86 (1) of Kerala State Electricity Supply code 2014 (3rd prayer in the appeal No. AA 02/2022- produced herewith and marked as Exhibit -1). The same prayer is again appealed on 27-06-2022 before this Authority by the Original Complainant, as appeal No. P 050/2022. The prayer in P 050/2022 is reproduced here for your perusal as "Direct the licensee to pay compensation under Section 43 (3) of the Electricity act 2003 and Section 86 (1) of Kerala Electricity supply code 2014 for not complying with the timeline for energizing the HT connection. It is very clear that the Original Complainant prayed the grievance before the Hon'ble Ombudsman is the same grievance prayed before the Hon'ble Appellate Authority and the same complaint is pending before the Hon'ble Appellate Authority for final order. Hence, the original complaint is not maintainable as per the provisions of the law.

Glimpse of events

02.03.2020 Original Complainant applied for an additional load with contract demand of 200 KVA and asking 2-month time for completing their HT power connection process

- 07.09.2020** Application submitted for HT power allocation with Application fee and Advance Estimate amount
- 08.09.2020** Site inspected and sketch prepared by Assistant Engineer, Karad.
- 09.09.2020** Application, Sketch & Voltage Regulation Chart Prepared by Assistant Engineer based on data collected from site inspection and forwarded to Assistant Executive Engineer.
- 18.09.2020** Site inspected by the Assistant Executive Engineer and forwarded the Application, sketch & Voltage Regulation chart to the Deputy Chief Engineer
- 05.10.2020** Application and connected documents verified at the office of Deputy Chief Engineer, and found "Application" is improper and instructed to resubmit the application with mentioned documents.
- 06.10.2020** Letter sent to Transmission Division for checking feasibility of Additional load in Ayikkarappadi 11KV Feeder
- 12.10.2020** Letter to Vikas Granites by AE, for resubmitting the Application with mentioned documents for fulfilling proper application and This letter is directly handed over and of letter acknowledged by Nithin
- 05.03.2021** Vikas Granites Resubmitted all Required documents after a delay of 5 months and same is forwarded to Assistant Executive Engineer by Assistant Engineer
- 17.03.2021** Reply from Transmission Division regarding supply of Additional load
- 28.05.2021** Sanction letter issued by Deputy Chief Engineer for HT connection and issued Demand note of Rs.159589/- for Line Extension work.
1-Regulation 81 - Period of Transmission license excluded
2-Covid- State lockdown from 08.05.2021 to 16.06.2021
3-Section 44 - Exception for duty to supply electricity - other occurrences beyond the control
- 17.06.2021** M/s Vikas Granites remitted the said amount of Rs.159589/- for the line extension work. (Delay of 3 weeks by Vikas)
- 17.07.2021** Work completed by KSEBL
Regulation 93 (4) (ii) - Time limit specify for conversion of LT to HT is within 120 days
- 24.08.2021** Vikas Granites applied and remitted testing fee of TOD meter and CT/PT unit
- 07.10,2021** Vikas Granites submitted documents such as Energization Certificate/Completion Certificate and Applied for HT service connection in prescribed format.
- 16.11.2021** Demand for Rs.601800/- is issued towards security deposit by Deputy Chief Engineer for Energizing the HT service connection

19.11.2021	Paid the said amount of Rs.601800/-
22.11.2021	HT connection agreement executed. Waiting for remitting the dues amount for closing LT connection account and dismantling LT connection for effecting HT connection. HT connection could not be charged in LT connection due to safety issues.
22.12.2021	CGRF case filed - No.93/2021-22. And hence pending the remittance of dues amount. CGRF directed the AEE to avoid disconnection/dismantling until the petition is disposed. Filed another case before CGRF as OP08/2022-23.
30.05.2022	Both cases were disposed by the CGRF and directed the Shabna Vikas to remit dues amount except one before the Appellate Authority outstanding against the LT IV connection and request for dismantle
06.06.2022	Shabna Vikas cleared all dues
10.06.2022	Shabna Vikas requested for dismantling LT connection
14.06.2022	HT connection effected

Version of the Review Respondent:

This respondent specifically denies all the averments and allegations contained in the review petition, except to the extent as are expressly and specifically admitted hereunder.

That at the very outset, it is submitted that the review petition filed by the appellant is not maintainable either in law or on facts as the same is without any cause of action and is barred by limitation and is liable to be dismissed on this short ground alone.

An application under clause (1) of Regulation 27A shall be filed within a period of fifteen days from the date of receipt of the order. The appellant has not stated as to when they received the order nor any sufficient reason for not preferring the review within such period.

A Review Petition can only be admitted 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 within the knowledge, or could not be produced by him at the time when the order was passed.

(ii) mistake or error apparent on the face of the record.

No error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it.

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

There is no new matter or evidence or fact which has been brought, which after exercise of due diligence was not within the knowledge of the Appellant as the Appellant could not produce any such evidence or fact at the time when the hearing on the order dated 26.09.2022 was passed.

'Due Diligence' means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.

The appellant herein has brought entirely new facts and documents in the review petition which was not neither stated before the CGRF nor before the Appellate Authority in Appeal 02/2022 or before the Ombudsman in Appeal P 050/2022.

Neither any sufficient reason has been stated by the Licensee as to why these contentions was not taken earlier when sufficient chances were available; hence it can be easily, presumed that the entire new facts and exhibits stated herein is an afterthought and are fabricated and can only be seen as a desperate attempt by the Licensee to overcome the order of this authority.

Review jurisdiction cannot be allowed to be "an appeal in disguise" Error in reasoning in applying law to facts is not a review able error but only an appeal able error.

Hence at this stage, the respondent has lost confidence that the Licensee will examine and assess the quantum of delay and ascertain the compensation applicable to the respondent and settle it within the period of two months as decided in ORDER P 50/2022 by this Hon'ble authority.

Therefore, review respondent requested that this Authority may dismiss the entire contentions of the review appellant herein and review the order in the Appeal Petition No. P/050/2022 in favor of the review respondent by assessing the quantum of delay and ascertaining the compensation applicable to the review respondent from the Licensee.

Analysis and findings:

The hearing of the review petition was conducted on 30-11-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The review petitioner Sri. Lalu. V.S., Assistant Executive Engineer, Electrical Sub Division, Kondotty along with Sri. Joby Johnson, Nodal Officer (Litigation), Electrical Circle, Manjeri were attended the hearing and Sri. Vaishak. K., Advocate was attended the hearing on behalf of the review respondent Smt. Shabna Vikas. On examining the review petition, the arguments filed by the review appellant, the statement of facts of the review respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The review appellant filed the review petition with some delay, which has been concluded as per the statement of review appellant that there is a postal delay in getting the order. The new matter brought by the review appellant is that the one prayer was same in the petition filed to the Appellate Authority. This was not intentional and by mistake it was happened and hence, this has also been condoned.

The review appellant has brought the details of happening / action taken by the Licensee date-wise. On examining, this proper application was submitted by the consumer on 07-09-2020. The sanction for HT connection issued by Dy. CE on 28-05-2021 i.e. after a lapse of 9 months. In between there is no communication given to the consumer about the technical feasibility or otherwise. Finally, the connection was effected only on 14-06-2022 though the amount for the line extension has remitted on 17-06-2022. Around one year for getting connection after remitting the amount as demand note of the Licensee. The consumer is spending money for making the infrastructure ready to receive the HT power waiting months and years together is not at all acceptable and is a mere violation of the regulations.

The Section 81 of Kerala Electricity Supply Code 2014 is violated. The officials of the Licensee are not at all considering the suffering of the consumer, investment they done and the financial implication they are facing and take their own sweet time for moving the files. The delay in action showing flimsy reasons.

In the order of original petition P050/2022, the order of Ombudsman states:

- 1) The Licensee is required to examine and assess the quantum of delay as per the provision happened from the side of the Licensee or from the Officers of the Licensee and ascertain the compensation applicable to the appellant and shall be settled within a period of two months from the date of this order.
- 2) Licensee may enquire and to fix the responsibility of such delays and also device a mechanism to ensure that the officials of the Licensee shall complied by the Regulations.

On examining all these aspects and documents, no merit is seen to review the order.

Decision: -

There is no merit in reviewing the order and as such the review petition is dismissed.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

RP/008/2022/ _____ dated _____.

Delivered to:

1. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kondotti, Malappuram Dist.
2. Smt. Shabna Vikas, M/s. Vikas Granites, 'Abhilash' 4/420, A.G. Road, Kozhikode-673032

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode