

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

Appeal Petition No. RP/005/2023
(Present A. Chandrakumaran Nair)
Dated: May-14-2023

Appellant : Mohammed Nisar,
Kannanchery House,
Kammini Paramba P.O.,
Kondotty, Malappuram

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSEB Limited,
Kondotty, Malappuram (Dist.)

ORDER

Background of the case

The review appellant Mohammed Nisar is a domestic consumer of the licensee under the Kondotty, Electrical Section. The review appellant availed temporary connection under tariff 6F and then regularised the domestic connection on completion of the construction to Tariff 1A and the connection was converted into 3 phase on 05/10/2021. Due to certain error happened in the data entry to the Orumanet, the bill was not generated for two billing cycles. The meter readings were taken and entered in the register. The bill was issued on 21/03/2022 for a period from 20/09/21 to 20/03/2022 for Rs. 25,357/-. This was not agreed by the review appellant stating that there is no consumption as there is no occupant in the home. He filed the petition to CGRF and CGRF issued order stating that the respondent can collect the energy charges from the petitioner. Then the appeal petition was filed to this authority and petition was numbered P/13/2023. The appeal was disposed after completing all the procedural formalities. Aggrieved by the decision of Ombudsman this review petition was filed to the authority.

Maintainability of Review Petition

The Section 27(A) of the KSERC (CGRF and Electricity Ombudsman) 2005, states above the review petition.

27A (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.”*

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

Provided that 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.”

(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.”*

Here in this case the review petition was filed not within 15 days of receipt of application. There was a little delay in receiving the petition as this was wrongly send to the old address. This delay is condoned and hence the petition has been accepted. When this examined with reference to 27A (i), (ii) & (iii), there was not new or important matter or evidence produced. Then there is a mistake in the order, in the decision it is mentioned that the decision was arrived hearing both the parties. In the original petition P/13/2023 the hearing was not attended by the appellant. Though the message of hearing by post & telephone have been intimated nobody attended the hearing and not requested for the postponement. As such the review petition is being accepted and chance to hear the appellant was given.

Arguments of the Review Appellant

1. The review petitioner has been working abroad for the last 10 years, and his family recently joined him in Saudi Arabia. The review petitioners house in Kerala is very adjacent to his parental house. Whenever the KSEB meter reading staff visits to take reading, the review petitioners mother used to open the door of his house and permit the staff to take the reading. This was the procedure continuing for the last two years. However, since October 2021, the KSEB personnel stopped talking the meter reading at his house, stating that

there was no occupancy, then no need of taking meter reading regularly and the reading would be generated automatically. The review petitioner contacted the Kondotty KSEB office, and they informed him that he would the minimum bill online or via SMS.

2. To his surprise, after six months, the appellant/petitioner received a consolidated bill for six months, amounting to Rs. 26,542/-, despite not consuming any electricity during this period. He complained to the Assistant Engineer, KSEB Kondotty, who informed the appellant/petitioner that they have the right to issue bills accumulated even for a year continuously. Later, he filed a complaint before CGRF Kozhikode seeking get redressed his genuine case, which was disposed of by CGRF on December 31, 2022.
3. However, the appellant/petitioner was not informed about the order at all. Interestingly, after receiving his complaint before CGRF, the Kondotty KSEB office contacted him and informed that there is a slight mistake in the earlier issued bill. Instead of 26542, it should be 24605. Accordingly, they issued three bifurcated bills also. This attitude of the KSEB made the appellant more doubtful.

When the review petitioner got a call from KSEB Kondotty asking him to pay the amount stated earlier, he realized that there would be some orders from the CGRF. Thereafter, he contacted Kondotty KSEB office and came to know that the order has been passed. Subsequently, he contacted CGRF also by mail asking for a copy of the impugned order. The review petitioner received the impugned order by mail on March 2, 2023. Immediately after getting that order, he preferred an appeal No. P/013/2023 before this Hon'ble ombudsman.

4. It is pertinent to note that the review petitioner appointed a representative before Ombudsman to appear on behalf of the review petitioner. After numbering the appeal petition, the representative got a call from the ombudsman informing that the respondent has appeared before the ombudsman on that day and the representative / the review petitioner should appear before them on the same day. Without getting a prior intimation, the representative who resides at Manjeri could not appear before the ombudsman at Ernakulam on the same day. The representative categorically informed the office that to adjourn the matter to any convenient day and let it be informed the representative in advance. Later the representative/ review petitioner does not receive any intimation other than an order dated 10-05-2023 without hearing the review petitioner.

Grounds of Review

1. The Order passed by the Ombudsman against the review petitioner is illegal and against the evidence on record, hence liable to be set aside.

2. The Order passed by the Ombudsman against the review petitioner is not just and reasonable and false and frivolous.
3. The order passed by the ombudsman is without giving an opportunity to submit the case of the review petitioner.
4. The Ombudsman ought to have seen that the passing an order without hearing the aggrieved party is unknown to law.
5. At any rate, the order passed by the Ombudsman is against natural justice.

In the above circumstances and other grounds which may come at the time of hearing, it is most humbly prayed that this Honourable Ombudsman may be pleased to:

- A. Admit this review petition
- B. Recall the order passed in P/013/2023
- C. Peruse the documents and hear the parties,
- D. And set aside the order passed by the CGRF in OP 56/2022-23 dated 31-12-2022.

Arguments of the Review Respondent

1. All the averments which are otherwise specifically admitted here under are denied by the respondent.

The regulation 27 A(1) of Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations 2005, stipulated that a review is possible against the order of Electricity Ombudsman may either on its own motion or an application of any person aggrieved by an application of any person aggrieved by an order on the following grounds namely

- 1) On 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.
- 2) Mistake or error apparent on the face of the record.
Since there is no valid reason stated in the review petition by the review Appellant for reviewing the order in Appeal No. P 013/2023 and also there is not existing any satisfied criteria for entertaining the matter in review jurisdiction, this review petition is not maintainable by law and hence it is requested to dismiss the review petition by upholding the order of Appeal No: P /013/2023

2. In review jurisdiction, mere disagreement with the view of the judgement cannot be the ground for invoking the jurisdiction.

The regulation 27 A(2) of Kerala State Electricity Regulatory commission(CGRF and Electricity Ombudsman) Regulations 2005, stipulated that the review petition shall be filed within the period of 15 days from the date of receipt of order. The review Appellant submitted the review petition only on 12.06.2023 which was taken more than 15 days after receiving the order in the Appeal No. P/13/2023 dated 11.05.2023. Hence this review petition is not maintainable as per provisions in the KSEERC Regulations (CGRF and Electricity Ombudsman) 2005.

3. The review appellant Sri Mohammed Nissar is a consumer under Electrical Section Kondotty having consumer Number 1165522036022 . The review appellant's connection was effected on 29.04.2019 under LT 6F tariff and the last bill in this tariff was issued on 20.09.2021. The consumer remitted the required fee for load regularization, meter shifting and tariff change on 05.10.2021. The KSEBL has taken the meter reading of this consumer regularly. On 05.10.2021 the appellant remitted the fee for load regularization and tariff change. The field activities were completed by removing old meter and installing new meter, and the service connection regularized in the software " Orumanet " on 06.10.2021 itself but there were occurred some error in the FR entry made in connection with the tariff change. Due to this current charge bills were not generated timely in 'Orumanet ' software later the bills were issued On 25.03.2022,even though the meter reading was taken on regular basis. After the changing of the energy meter on 06.10.2021, the Consumption of electricity from 06.10.2021 to 18.11.2021 was 904 units amounting to Rs 7544/-. Consumption from 19.11.2021 to 20.01.2022 was 782 units amounting to Rs. 6211 and Consumption from 21.01.2022 to 20.03.2022 was 1210 units amounting to Rs 10850 charged under LT 1A tariff, therefore a total amount of Rs 24605/-(Rs 7544+ Rs 6211+Rs 10850) is liable to pay by the appellant for the energy consumption after the regularization of tariff and load. Besides this a consumption from 20.09.2021 to 06.10.2021 of 98 units amounting to Rs 752 under 6F tariff was also liable to pay towards the current charges, for the energy consumption, before changing of energy meter. Therefore, a total amount of Rs 25357 /-(Rs 24605+ Rs 752) is liable to pay towards the electricity charge for the period from 20.09.2021 to 20.03.2022. As per the Regulation 128 of Kerala Electricity Supply code 2014,there is a provision for consumers to remit self-assessed electricity charges in case of non-receipt of bills. As per the Regulation 134 of Kerala Electricity Supply code 2014, the licensee can review undercharged bills/ Over charged bills. As per the Regulation 136 of Kerala Electricity Supply code 2014 the licensee shall be entitled to recover the arrears of charges or any other amount due from the consumer along with interest at

the rates applicable for belated payments from the date on which such payment became due. The section 45 of Electricity Act 2003, stipulate that the licensee has power to recover the charges for Electricity supplied.

4. The consumer had approached the Hon'ble Consumer Grievance Redressal Forum, Northern Region, Kozhikode as Case No.OP 56/2022-23 and the Hon'ble Consumer Grievance Redressal Forum, Northern Region, Kozhikode ordered on 31.12.2022 that KSEBL can collect the energy charges from the appellant without any surcharge/interest Accordingly the KSEBL complied the order of Hon'ble Consumer Grievance Redressal Forum, Northern Region, Kozhikode and issued a bill amounting Rs. 25357/- on 21.02.2023 containing energy charges for the period 20.09.2021 to 20.03.2022 without any surcharge/interest. The review appellant has consumed electricity from 20.09.2021 to 20.03.2022 and no payment has been made towards the electricity charges. The review petitioner approached the Hon'ble Electricity Ombudsman against the impugned order of CGRF as appeal No.P 13/2023 and the Hon'ble Electricity Ombudsman promulgated the order.
5. These averments narrated by the review appellant is not correct and hence it is denied. The office of the Honourable Electricity Ombudsman intimated that "the date of hearing of the appeal on 03.05.2023" by issuing a notice dated 10.04.2023 prior to 23 days before the hearing date. It is evident from the notice itself that, copy of the same is also served to the review petitioner on 10.04.2023. Moreover, the office of the Ombudsman ensured the receipt of hearing notice by telephonic follow up just after sending the notice. Not only that, office of the Hon'ble Ombudsman reminded the date of hearing through telephone prior to the hearing date. Even after the continuous follow up by the office of the Ombudsman review Petitioner /representative had not attended the hearing conducted on 03.05. 2023. For this reason there is no denial of natural Justice in the order P/03/2023 dated 11.05.2023. Hence disagreement in the order by the review petitioner is not a valid reason for allowing review petition.
6. The review petitioner narrated in Sl No.1 of the review under ground of review as " *The Order passed by the Ombudsman against the review petitioner is illegal and against the evidence on record, hence liable to be set aside.*" is not correct and denied by the respondent. The Hon'ble Ombudsman acted as per the provisions in the Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations 2005, and also followed the principle of natural justice. Hence the order of the Hon'ble Ombudsman is in legal and liable to uphold.
7. The review petitioner narrated Sl No.2 of the review under ground of review as " *The Order passed by the Ombudsman against the review petitioner is not*

just and reasonable and false and frivolous." is not correct and denied by the respondent. The Hon'ble Ombudsman acted as per the provisions of KSERC regulation and also followed on the principles of natural justice like just, fairness and equity while deciding the case.

8. The review petitioner narrated in Sl No .3 of the review under ground of review that *"The order passed by the ombudsman is without giving an opportunity to submit the case of the review petitioner"* is not correct and denied by the respondent. The office of the ombudsman made sufficient follow up for attending the hearing by
 1. Serving the notice dated 10.04.2023
 2. Ensuring the receipt of notice through telephone just after sending the notice.
 3. Telephonic follow up prior to the date of hearing.
 4. out of 2 copies of the statement of facts submitted by the respondent to the office of the Honorable ombudsman, one copy is provided to the review petitioner by the office of the ombudsman.
9. The review petitioner narrated in sl No. 4 of the review under ground of review as *"The ombudsman ought to have seen that the passing an order without hearing the aggrieved party is unknown to law."* is not correct and denied by the respondent. As per the notice No.2023/01094/dt 10.04.2023, the Hon'ble ombudsman informed the parties to attended the hearing on 03.05.2023,11.30 am ,venue at o/o state Electricity ombudsman, D H road, Ernakulam and also directed to submit all the relevant documents/evidences and present the arguments without fail. Hence it is very clear that the Hon'ble ombudsman passed the order as per the provisions in Kerala state Electricity Regulatory commission (CGRF and Electricity ombudsman) Regulations 2005.
10. The review petitioner narrated in sl No.5 Of the review under ground of review that *" At any rate, the order passed by the ombudsman is against natural justice."* is not correct and denied by the respondent. Here the Hon'ble ombudsman acted up all the principles natural justice. The principles of natural justice should be free from bias, parties should be given fair opportunity to be heard and arriving an order at a reasonable and justifiable manner. Not only that the concept of fairness, just and equity also followed in this order.
11. The intention of the review petitioner reveals that, even though the review appellant consumed electricity from 20.09.2021 to 20.03.2022 is not willing to make payments towards the electricity consumed. Even though the Hon'ble CGRF ordered on 31.12.2022, that the electricity charges are to be remitted by review petitioner, but the review petitioner had denied that the order has

not received till March 2023. Now the review petitioner repeated the same tactics by not attending the hearing conducted on 03.05.2023 and hence not obeying the order .It is very clear that the intention of the review petitioner is for delaying the remittance of payment. Thus there is revenue loss for KSEBL by delaying the remittance of electricity charges by review petitioner.

12. In the above circumstances, and the other grounds which may come at the time of hearing, it is most humbly prayed that the Honb'le Electricity Ombudsman may be pleased to

- a. Dismiss the review Petition
- b. Up Hold the order passed in P 013/2023 dated 11.05.2023 and
- c. Allow interest on the amount of Rs 25357 from the date of order (11.05.2023) as per the regulation 131(2) of Kerala State Electricity Supply code 2014.

Review of the Analysis and findings

The hearing of the Review petition held on 06/07/2023 at 11:30 a.m. in the office of the State Electricity Ombudsman, D.H Road & Foreshore Road Junction near Gandhi square, Ernakulam South. The hearing was attended by the appellant's Advocate Sri. Abdul Shukoor and the Respondent Smt. Sajimol P.S., AEE, Electrical Sub Division, Kondotty along with nodal officer.

The temporary (construction supply) connection availed under tariff 6F have been converted to permanent connection under tariff 1A and also into 3 phase with effect from 5/10/2021. The reading was taken regularly and recorded the register maintained. While entering FR in the Orumanet there same mistake happened and hence the bill was not generated. The readings were taken on 18/11/2021, 20/01/2022 and 20/03/2022 and the readings were 904 units, 782 units and 1210 units respectively. Then the total amount worked out to Rs. 24, 605/- and there was a consumption 98 units from 20/09/21 to 06/10/2021 in the temporary connection and the amount was Rs. 752/-. Hence the total bill amount was Rs. 25, 357/-.

Though the version of the review appellant was that there is nobody staying there, power was consumed. Whenever the consumer consumes energy, he is liable to pay the charges. The section 45 of Indian Electricity Act 2003b clearly specifies about the power of licensee to recover the charges.

The recovery of the charges was delayed due to the system error and bill was not generated for two billing cycles and no amount was charged. Then the consumer was under charged and then licensee can recover the under charged amount as per Section 134 of the Kerala Electricity Supply Code 2014.

134(1) *“If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill”.*

The Section 136 of the Supply code 2014 spelt out about the recovery of arrears.

136(1) *“The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due”.*

136(2) *“The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due date indicated in the demand notice”.*

136(4) *“If the consumer fails to remit the amount of arrears with interest in or before the due date indicated in the bill or in the demand notice, the licensee may disconnect the supply of electricity after giving notice and initiate proceedings for the recovery of the arrears in accordance with the relevant legal provisions”*

Here in this case the recovery was delayed due to the error in the system which is the responsibility of the licensee. The consumer is not responsible for this.

The review appellant argued that this case is to be treated as Section 124 & 125 of the Kerala Electricity Supply Code. Section 125 speaks about the procedure for billing in the case of defective or damaged meter. In the case in hand the meter is not defective. The meter is working perfectly. Though the consumer requested for meter testing, then they cancelled the meter testing request as the meter was found working satisfactorily. Then the Section 125 is not relevant here. Then it is to be concluded that the meter is working well the consumption was actually consumed by the review appellant. If the energy is consumed by the consumer, he is bound to pay the charges.

Section 124 is about the billing when the meter not accessible for reading. Here the meter was very much accessible and the readings were regularly taken by the officials of the licensee. Then the Section 124 is not applicable in this case.

The review appellant has consumed the energy as recorded by the meter and he has to make the payment. The licensee has failed to issue bill in time, which results to heavy bill amount.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken and accordingly the decision taken on appeal petition P/13/2023 is revised.

1. The review appellant is liable to pay the bill amount.
2. The licensee shall grant at least three instalments for making the payment.
3. No order on cost.

ELECTRICITY OMBUDSMAN

No. RP/005/2023/_____ dated: 14-07-2023

Delivered to:

1. Mohammed Nisar, Kannanchery House, Kammini Paramba P.O., Kondotty, Malappuram
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Limited, Kondotty, Malappuram (Dist.)

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.