

STATE ELECTRICITY OMBUDSMAN

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Review Petition On the Appeal Petition No:P/126/2010.

Review Petitioner/ Original Respondent. : The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard,
Fort, Thiruvananthapuram.

Review Counter Petitioner/Original Appellant. : M/S. Sree Padmanabha Theatre,
East fort, Thiruvananthapuram.

ORDER.

Background of the case:-

The Review Petitioner, the Assistant Executive Engineer, Fort, Thiruvananthapuram, has filed the Review Petition, received on 23.12.2011, against the Order of the State Electricity Ombudsman, dated 24.05. 2010, in the Appeal Petition No: P/126 of 2010, filed before it. The main prayer of the Review Petitioner is to give orders that the Counter Petitioner, M/S Padmanabha Theatre, Thiruvananthapuram, is not eligible for the benefit of changing to HT tariff, since they did not comply with the conditions mentioned in the Board order No.BO (FB) No.280/03 (Plg com.3776/1996) dated 07.03.2003 and Board Order (FM) No.588/2004 (Plg com/ 3776/1996) dated 05.03.2004, with in the stipulated time.

Arguments of the Review Petitioner:-

The averments adduced by the Review Petitioner are as follows:-

1).The Opposite Party, M/S Sree Padmanabha Theatre, Thiruvananthapuram, coming under Electrical section, Fort, Thiruvananthapuram, is an existing LT consumer with a connected load of 117KW and is being billed under deemed HT basis with effect from 01.03.1989. As per Board Order No. (FB)/280/2003, dated 07.03.2003, Cinema Theatres were allowed to continue under HT tariff by installing TOD Meter of required capacity and CT on the LT side, and if the same is done by the date 30.6.2003, in such premises where there were no independent transformers exist and there is no space for the installation of HT equipment. Later the cutoff date for conversion of such consumers were extended till 31.03.2004, vide BO (FM) No.588/2004 dated 05/03/2004. Based on the above Board orders, the consumer paid the application fee on 02.09.2004, and submitted the HT agreement for availing the benefit. However, the Application for conversion to HT Tariff could not be processed further by the KSEB due to the reasons of (a) outstanding dues pending against the consumer (b) belated submission of the documents (c) late remittance of application fee and (d) non-fulfillment of other conditions by the consumer to avail the benefit under the said Board Orders. It is submitted that the Appellant was bound to comply with the

conditions as mentioned in the Board Orders with in the stipulated time, i.e. on or before 31.03.2004 to be eligible for HT Tariff. It may be noted that the consumer purchased the TOD meter, CT etc. and fixed the same in May 2004 only. Moreover, they submitted the HT agreement on 18.06.2004, and paid the application fee for availing the HT tariff only on 02.09.2004, thereby not complied with the conditions stipulated in the Board Orders within the cutoff date of 31.3.2004. Hence the consumer is not eligible for the tariff converted to HT as per rules.

2).Further the Review Petitioner has quoted another order of KSEB vide BO No.481/2010/ KSEB/TRAC/ HT/2009-10 dated 20.12.2010, which states that, those consumers who opt to receive power at higher voltage shall be provided power at higher voltages (HT or EHT) at their cost and billed at respective HT or EHT tariff, as a measure for encouraging consumers to avail supply at higher voltages.

3). The Review Petitioner also argues that as per clause 5(b) of Kerala Electricity Supply Code, 2005, (4th amendment in 2008), in the case of new consumers connected load permitted under LT Supply is limited to 100 KVA, but for consumers existing as on the date of implementations of Kerala Electricity Supply Code, 2005, it is permitted to operate in LT up to a connected load of 150 KVA.

4). The Licensee points out that the Board has approved Maximum Demand based tariff as an optional scheme for LT IV-Industrial Consumers, LTVII(A) and LT VII(C) commercial consumers having connected load of 20 KW or above with effect from 1.4.2010, as per Circular No KSEB/TRAC/Tariff Rev 09-10, dated 13.01.2010. Hence the consumer can opt either (2) or (4) schemes listed above.

The contention of the Review Petitioner is that the Order passed by the Hon: Ombudsman dated 24.5.2010, is inconsistent with the Electricity Act, 2003, the Regulations framed there under and the Board orders stated above. Therefore, there is error apparent on the face of the said Order, they argue.

The Review Petitioner, the Assistant Executive Engineer, Electrical sub division, Fort and their counsel Sri.B. Sakthidharan Nair, were heard in my chamber at Edappally, on 04.01.2012. In addition to the averments stated in the Review Petition, the Counsel to the Board stressed that they actually wanted to review the Ombudsman's Order earlier but there was no provision in the existing Regulations for doing the same. The Hon: KSERC framed the Regulations for Reviewing the Orders issued by the CGRF and the Ombudsman, after amending Regulations 12 and 27 respectively, as per the 5th amendment notification dated 7.2.2011 only. Thereafter to get the Board's sanction for filing the Review Petition there was some Office procedure delay and after getting sanction on 21.10.2010, the Review Petition was filed. There was no willful delay or latches on the part of KSEB in this case. The delay was due to lack of provisions in the KSERC Regulations for Review of Orders and also due to administrative reasons of KSEB only. The order of Hon Ombudsman is against the Board Circular issued with KSERC's approval, dated 13.1.2010 and is a fit ground to review the Order. Otherwise it will lead to far reaching consequences.

Analysis and Findings:-

On a perusal of the Review Petition filed and examining all the relevant facts raised by the Review Petitioner in the hearing, it is noted that their main contention is the consumer, M/s Padmanabha Theatre, had not complied with the conditions mentioned in the Board orders issued for the specific purpose of availing HT tariff, with in the stipulated time of 31.03.2004, and so they are not eligible for it. But a close look at this Forum's order dated 24.05.2010, issued after hearing both parties in the Appeal Petition No P/126/2010, filed by the consumer M/s Padmanabha Theatre, will reveal that it has been established after trial that the Appellant had submitted the application for conversion to HT tariff on

02.12.2003 i.e. well within the specified period. The Deputy Chief Engineer, Electrical circle (Urban), Thiruvananthapuram, approved the proposal of the consumer to install the TOD meter and CT on the LT side of the Transformer only on 30.03.2004 i.e. just one day before the cutoff date of 31.03.2004. The reason for the inordinate delay of nearly 4 months for the approval of the proposal of the consumer at the Board office level is not seen explained by the Licensee and hence cannot be justified.

It has been established by the consumer that they had purchased the TOD meter and CT and installed the same by May 2004 and submitted the HT agreement on 18.06.2004. The correspondence between the Appellant and the KSEB officials show that certain documents had been submitted to Board office on 28.07.2004 and 31.08.2004. The consumer is seen to have remitted the AF (Application Fee) for the changeover on 02.09.2004. Finally on 13.09.2004, the Executive Engineer had asked the consumer to clear an arrear amount of around Rs.26.6 lakhs, as the pre-condition for executing the agreement for HT tariff. Hence the HT tariff conversion processing at KSEB office was blocked by this huge arrear demand, which itself was found to be not correct later. It was proved that majority of the arrear claims, around 70% of them, were erroneous and bogus. On judicial review, two major claims preferred were practically withdrawn by KSEB later. The remaining claim for the period up to 3/04 was seen based on wrong application of LT VII tariff done earlier, which was also found to be not correct.

All the above facts were clearly discussed in detail in the said order dated 24.05.2010 of this Forum. If the consumer was not eligible for the conversion to HT Tariff, then why the KSEB asked for additional documents and processed the Application Papers after the due date and also accepted the AF, need to be explained. It is also noted that no intimation was given to the consumer in time by the KSEB declining their request if the request was marred by some deficiency or not proper. The conclusion noted in the this Forum's Order dated 24.5.2010, was that the Appellant(consumer) had suffered irreparable losses by way of denial of an opportunity and dragging the case indefinitely, over his request to convert to HT tariff in the year 2003 and therefore the consumer is eligible for the relief even though it is delayed for years.

The Board orders dated 13.01.2010 and 20.02.2010, submitted now as documents by KSEB to substantiate their averments, have no relevance at this stage because the 'cause of action' for the dispute has occurred in the year 2003 and cannot be decided based on future Board Orders. The consumer has approached this Authority for the redressal of his grievance of denial of HT Tariff from the year 2003. The point for decision before this Forum was whether the consumer is eligible for HT tariff conversion in the year 2003-04, as per the existing rules of that time. It is not rational to decide the issue based on the future Board orders released in the year 2010. The Representation filed before this Forum was decided in consumer's favour, only after hearing both sides and found having merit in their Petition.

An application for Review under Regulation 27 (A) of KSERC (Consumer Grievance Redressal Forum) and (Electricity Ombudsman) Regulations, is to be filed within fifteen days from the date of receipt of the Order. The Ombudsman has the right to entertain an application on the expiry of 15 days, if it is satisfied that the applicant had sufficient cause for not preferring the Review Petition in time. Here the Review Petition is submitted after a lapse of 1 ½ years and has submitted that lack of provision in the Rules for Review of the Orders, was the main reason for the delay in preferring the Review Petition in time is found to be correct. But the argument that the KSEB waited so long till the provision for Review was issued by the KSERC is not maintainable since they could have approached higher courts of Law and prayed for remedies instead for wasting time in anticipation of new rules.

Decision:-

The Licensee is bound to honour the verdict of a Forum established by Law or if they are aggrieved by the decision, they have to approach superior courts of Law and seek the remedy thereof. Here the Board has waited for months together to have the 'Regulations for Review of the orders of Ombudsman' to be issued by Hon: KSERC and then to prefer a Review Petition. Further, in the Review Petition filed before me, I do not find any merit in the averments of the Licensee, KSEB. In the light of the decision made vide Order dated 24.05.2010 of this Forum in the Petition No P/126/2010, filed by the consumer, it is found that nothing more survives for fresh consideration or there is any sufficient ground for reviewing the Order dated 24.05.2010, based on this Review Petition. For the aforesaid reasons, the Review Petition filed by the Assistant Executive Engineer, Fort, KSEB, Thiruvananthapuram, stands dismissed. The Forum expresses its great concern and displeasure over the inordinate delay in implementing its Order and therefore directs the Licensee to comply with this Forum's Order dated 24.5.2010, forthwith.

Dated the 17th of January, 2012,

Electricity Ombudsman.

No.P/126/2010/ **Dated 17.01.2012.**

Forwarded to:

The Assistant Executive Engineer. Electrical Sub Division, KSEBoard,
Fort, Thiruvananthapuram.

Copy to: -

- 1). The Secretary. Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10
- (2). The Secretary. KSEBoard, Vydyuthibhavanam, Pattom, Thiruvananthapuram-4