

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P / 267 / 2012.

(Present: T.P. Vivekanandan)

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| APPELLANT | : 1). Sri. Bency John,
Assistant Engineer, KSEB,
Electrical Section, Kadapra.
2). Sri. Manoj Mathew
Assistant Engineer, KSEB,
Electrical Section, Kadapra |
| RESPONDENTS | 1). The Secretary,
KSEB, Vydythibhavanam, Pattom,
Thiruvananthapuram
2). The Chairperson,
CGRF (South), KSEB, Kottarakkara.
3). The Asst. Executive Engineer,
Electrical Sub Division, KSEB, Manipuzha.
4). Smt. Annie Renji,
Pampa Beverages Company,
Peringara, Thiruvalla. |

ORDER.

Background of the case:-

Smt. Annie Renji, the 4th respondent had filed a petition earlier before the CGRF, Kottarakkara as OP No.612/2011 and the main grievance in the petition was that the officials of Manipuzha KSEB Section office, had caused much delay and collected excess payment, when she approached them for an electric connection for her new industrial unit 'Pampa Beverages Company,'. This includes;
1) Given a new connection under commercial tariff for the construction purpose of her building meant for starting an industry, which was later converted to three phase connection
2) Given a fresh industrial connection, instead of converting the existing 3-phase connection, which was dismantled subsequently.

For all the above works, she was compelled to make payments to KSEB and she had unnecessarily lost time and money, was the main allegation of Smt. Annie Renji, in the petition filed before the

CGRF. The CGRF, vide its orders dated 07.05.2011, had passed orders to refund the excess amount collected by way of deposit calculated at Rs.27330/- plus Rs.4114 /- towards the cost of materials purchased by the petitioner for getting supply to her factory, within 7 days by the three responsible officers, Sub Engineer in charge during this period, Asst. Engineer and the Asst. Exe. Engineer (AEE), equally, from their pocket and sent it by money order, to avoid delay. Being aggrieved by the said order of CGRF, Sri. C Harikumar, AEE, Smt. Bency John, AE and Sri. Manoj Mathew, Sub Engineer, had filed a Review Petitions before the CGRF which was dismissed vide order no. CGRF/ KTR/OP/ 612/ 2011-12 / 820 dated 01.07.2011, without conducting any hearing of the Review Petition.

Still aggrieved by the dismissal order of CGRF, the appellants had filed a Writ petition WP (C) No. 18883/2011, before the Hon High Court of Kerala, challenging the orders of the CGRF and the Hon Court by judgment dated 18.01.2012, directed the appellants to prefer an appeal/representation before this Forum within two weeks. The Appeal Petition filed by the appellants dated 21.2.2012 challenges the orders dated 7.5.2011 and 1.7.2011, in OP No.612/2011 of the CGRF, Kottarakkara and its review petition, respectively.

Arguments of the Appellants: -

The appellants have adduced the following arguments in their Appeal Petition.

- 1). The petitioners 1 & 2 are presently working as Assistant Engineers, Electrical Sections, Kadapra and Manipuzha, respectively. The first petitioner has worked as Sub Engineer (SE) for the period from 7 / 2009 to 30.01.2011 at Electrical Section, Manipuzha and the second petitioner is continuing as Assistant Engineer (AE) at the above section office since 2010 March onwards.
- 2). While so, the 4th respondent, Smt. Annie Renji, has submitted an application on 17.03.2010 for a single phase electric connection, for the construction of a factory building (packed drinking water unit) in the property, in resurvey No.674 /2011 of Peringara village. After scrutiny of the application the electric connection was provided as per rules, on 17.03.2010.
- 3). Again on 10.06.2010, she applied for changing the single phase connection to three phase, with enhanced load requirement. On receipt of the said application, the Asst Engineer (2nd respondent), after getting the premises inspected by a Sub Engineer, directed the applicant to remit Rs.50/- as application fee, Rs.50/- as Testing fees, Rs.4000/- as additional cash deposit, Rs.6000/- as Special Cash Deposit, Rs.5000/- as OYEC charges, as per existing rules of KSEB. The 4th respondent remitted the amount and the connection was effected on 10.06.2010.
- 4).The 4th respondent (Smt. Annie Renji) again on 25.9.2010 submitted another application for an Industrial Connection. The 1st petitioner (SE) processed the application and asked Smt. Annie Renji, to remit Rs.50/- as application fees, Rs.12000/- as cash Deposit and Rs.13100/- as OYEC charges and on 27.09.2010, the applicant remitted the same and the connection was effected.
- 5). While being so, on 15.11.2010, Smt. Annie Renji, (4th respondent) lodged a complaint before the Executive Engineer (EE), Electrical Division, Thiruvalla, alleging irregularities being done by the appellants, while providing the said industrial connection.
- 6). However, on 06.05.2011, the CGR Forum instructed the appellants over telephone to be present on 07.05.2011 before the said Forum for a hearing in the matter. Accordingly, both the appellants

had appeared and they were asked to give reply to certain questions put forth by the Chairperson of the Forum, in connection with the complaint of the 4th respondent of this case. The petitioners had answered those queries truthfully but the CGRF ignored the same.

7). Thereafter on the same day on 07.05.2011 itself, an order was passed by the Forum directing the petitioners as well as the 3rd respondent to refund Rs.27330/- and Rs.4114/-, by way of excess amount collected and the cost of materials respectively, incurred by the consumer for getting the electric supply to her factory. Further it was ordered to give the amount, within 7 days, from their pocket and to send it by money order to avoid delay. The Forum directed the Asst. Exe. Engineer, (the 3rd respondent), to move before the 1st respondent (Secretary, KSEB) to refund the amount, if required and directed the AEE to report the compliance within 15 days.

8). It is submitted that even a copy of the above CGRF order was neither served nor intimated the said directions contained in that order to them by the CGRF at any point of time. However the petitioners came to know about the said order from the AEE, Electrical Sub Division, Manipuzha. On knowing, the petitioners filed separate review petitions before the CGRF (2nd respondent) on 21.06.2011, as provided in section 12 A of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005. True copies of the review petitions dated 21.06.2011 filed by the petitioners are marked as Exhibit P-3 & P-3 (a).

9). But the CGRF rejected the review petitions again without hearing or perusing any documents including the standing orders of KSEB and KSERC.

10). It is submitted that, the present orders of the CGRF, is against the principles of natural justice, statutory rules and standing orders of the Kerala State Electricity Regulatory Commission (KSERC). Not only that the petitioners were not given any fair opportunity to defend their case, but also that they were not arrayed as parties in the original Petition filed by Smt. Annie Renji, (4th respondent).

11). In these circumstances, petitioners preferred WP (C) 18883 / 2011 before the Hon High Court, challenging the orders of the CGRF and the Hon Court by judgment dated 18.01.2012 directed the appellants to prefer this appeal/representation before this Forum.

12). Admittedly the amount collected from the 4th respondent by way of deposits and other charges levied for giving the Electric connection, are kept with the 1st respondent. In such a case, the CGRF has exceeded its authority, by ordering the petitioners to pay the amounts from their own pocket.

The main grounds raised by the appellants are the following;

A). The orders of the Hon CGRF in OP 612/2011 dated 7.5.2011 and 1.7. 2011 are arbitrary and hence illegal. The Hon CGRF has exceeded its legal authority while passing the impugned orders, without hearing the petitioners or considering the actual facts, circumstances and rules prevailing in KSEB for effecting the new electric connections applied for.

B). The finding of the Forum that the 4th respondent, Smt. Annie Renji, could have saved money and time, if the LT V-Agricultural connection (registered in the name of her husband) which was existing nearby was transferred and given to her, is unsustainable for the reason that the same was not requested by the consumer in her application nor at any point of time of disputed period.

C). The finding of the Forum that there is no need of any special cash deposit of Rs.6000/- for three

phase conversion in the case of the consumer, Smt. Annie Renji, is incorrect as it is required for service connections, applied by the tenants or occupiers and not the real owner, vide BO (FB) No.2197 /2008 (DPC II/T&C of supply 02/2008-09) dated 02.09.2008. The 4th respondent has applied for the connection as a tenant and not as the real owner.

D). The Forum ought to have noted that the 1st Appellant (Mr. Bency John) has received application for an industrial connection. Also the Forum should have noted that the proposed purpose for the new connection was for “packed drinking water unit “, which is not included in the list of purpose for which LT IV tariff is applicable, vide Kerala Gazette Notification No.1454, Vol.55 dated 28.06.2010. The view of the Forum that an SSI registered industry need not remit OYEC charges for service connection, is also incorrect as per Electricity Supply Code, 2005.

E). The finding that the consumer, Smt. Annie Renji, purchased materials amounting to Rs.4114/- for securing connection, is false, incorrect and without any evidence.

F). The CGRF ought to have perused the relevant documents including the applications and documents submitted by the 4th respondent, Smt. Annie Renji, and the KSEBoard orders and rules relating to the matter, heard all the parties including the petitioners, before passing the impugned orders, failure of which is an abuse of power vested in a lawful authority .

Arguments of the 3rd Respondent, Asst. Executive Engineer, Electrical Sub Division, Manipuzha: -

The 3rd Respondent, the Asst.Exe. Engineer, has filed the statement of facts on the Appeal Petition filed and is as follows;

1). Smt. Annie Renji, Peringara, got approval from the Dept. of Small scale Industries, Kozhanchery, to start a “Packaged Drinking Water “unit at Peringara Panchayath. For the purpose of construction of a building she applied for a single phase service connection and for this she deposited Rs.50/- as application fee on 17.3.2010. Later she paid Rs.2000/- as CD and Rs.1850/- as OYEC charge. The CD and OYEC charge collected were in order. The service was effected on 18.3.2010 under LTVII A tariff with Con No: 17138, with a connected load of 600 watts.

2). Later, on 10.06.2010, the consumer again submitted an application for conversion of this single phase connection to three phase, along with a connected load enhancement from 600 watts to 5.5 KW. For this the consumer has remitted Rs.50/- as application fee, Rs.50/- as testing fee, Rs.4000/- as additional cash deposit and Rs.6000/- as special cash deposit, as the consumer was a tenant and Rs.5000/- as OYEC charges, on 10.06.2010 and the 3-phase conversion was effected subsequently.

3). Again on 25.9.2010, Smt. Annie Renji, applied for an industrial connection for a connected load of 23.5 KW and the required fees were remitted on 27.09.2010. The consumer attached an ownership certificate issued by the Peringara Grama Panchayath vide, A2-1889/2010 dated 24.06.2010 and property tax dated 24.09.2010, both standing in the name of Sri. Renji Joseph, Ayrookuzhiyil, Peringara, (in her husband’s name), along with a copy of the license issued by the Panchayath. The service was effected on 28.09.2010 for a connected load of 23.53 KW, under LT IV industrial tariff with Con: No: 17356. The electric connection was effected to the consumer after realizing the cost for providing the electric supply as fixed by the Commission.

4). The consumer by the letter dated 10.11.2010 has stated that “she had applied to KSEB Section,

Manipuzha, to shift the 3-phase meter to the factory panel board and also to change the tariff. This is baseless as no such application was received from the consumer and no application fee remitted. 5). If the tariff of existing LT VII A –commercial was changed to LT IV –industrial with a load of 24 KW the consumer had to remit OYEC as under:

- a). Abstract estimate for conversion of 1-phase weather proof (WP) service connection to 3-phase WP connection with connected load above 10 KW, up to and including 25 KW = Rs.11400/-
- b). Abstract estimate for conversion of LT 1-phase WP weather proof service connection up to and including 10 KW = Rs.2500/-.

In this case, she has enhanced her load, first to 5.5 KW and later to 23.5 KW and hence an amount of (11400 – 2500) = Rs 8900/-, has to be remitted as per rules. But in the findings of the Hon CGRF, it is noted that the consumer had to remit only AF and security deposit. When a service is changed from a 1-phase to 3-phase, he has to remit the Additional CD (ACD) and estimate cost of work.

6). Here the consumer was a tenant when filing the application for an electric connection. So the special CD was needed. Weather proof wire support post was also needed as two twin core wires are to be string from the pole to the temporary supply point installed at the consumer premises, as it has to cross the road. Hence the following amount is payable by her i.e. (a) ACD of Rs.6000/- less CD already remitted Rs.4000/- , (b) the Special CD needed is Rs.6000/-, (c) the OYEC of Rs.2500/- + 2350/-, for providing a support post, totalling to Rs. 4850/-, but has collected Rs.5000/- i.e. an excess of Rs. 150/- by mistake.

If tariff change had been done with the additional load up to 24 KW, as pointed out by the CGRF, the ACD will be $24 \times 500 = 12000/-$ less CD i.e. Rs.6000/- and Special CD Rs.12000/- less special CD remitted i.e. Rs.6000/-. The consumer has to remit the OYEC amount as Rs.11400/- less OYEC amount remitted for conversion i.e. Rs.2500/-. In that case, the net remittance under OYEC will be, Rs.8900/-. Therefore the consumer had to remit Rs.8900/- as OYEC, Rs.6000/- as ACD, Rs.6000/- as special ACD, Rs.50/- as test fee and Rs.10/- as application fee, totalling to Rs. 20960/-. Hence the findings of the Hon CGRF that only application fee is needed for tariff change, ownership change and enhancement of load to 24 KW is not correct. As such, if the tariff change was done, she would have to remit Rs.20960/-after adjusting the previous remittances.

The Advance amount collected Rs.2000/- can be adjusted in the CD. The CD and special CD remitted in Consumer No.17138 under LT VII A tariff can be refunded on request of consumer.

7). The Electric connection vide Con No.17138/ LT VII A tariff, was dismantled on 16.11. 2010, as per the request of the consumer. There exist no other demands or arrears in that connection.

8). It is certain that no time delay has happened in processing any of the applications/requests of the consumer. Based on the above facts it can be seen that the actions of the concerned officers were in order and in good faith and as per rules laid by the Hon Commission.

9). Regarding the findings of the Hon CGRF, it may be submitted that as per the KSERC (CGRF and Electricity Ombudsman) Regulation 2005, in clause 2- definitions, it is defined that the 'complaint' means any grievances made by a complainant in writing. In the written complaint, made by the consumer before the CGRF, she did not mention about the existence of an agriculture service in

her premise. In the grievances of the petitioner, as given in the proceedings in OP No.612 /2011 of the Hon CGRF, stated that the officials of KSEB had misled and confused the petitioner by not converting the existing LT V agricultural connection. The consumer has not made such a request for shifting this LT V connection to anywhere. It is mentioned in the paragraph of 'findings' by the Hon CGRF only, that a LT V connection is existing in the name of the father of the petitioner, which is also not true as the said LT V service stands in the name of the father of Sri.Renji Joseph. It is not possible to change the connection given to one person to another person's name without filing an application along with documents required for that change. A request from Sri.Renji Joseph, for dismantling the agriculture connection, was received during 11/2010 and same was dismantled.

Hence it is requested that the findings of the Hon CGRF to, first change the ownership and tariff from LT V to LT VIIA, then convert to three phase under LT VII A and finally the same may be shifted to Industrial premises with change of tariff to LT IV industry, may be set aside.

10).The consumer Smt. Annie Renji, has twenty four service connections under Electrical Section, Manipuzha, of which 14 services were taken between 31.01.2009 and 20.11.2010. The consumer has requested and brought into effect 5 changes to her existing services between 24.10.2009 and 28.08. 2010. All these are ample proof that the consumer is well versed with the Electric service connection rules and procedures of KSEB including change of tariff. Hence the finding of the CGRF that the consumer knows nothing about the rules in KSEB is not correct.

11). In the complaint, the consumer stated that she has procured three phase four core cable and accessories and issued to KSEB for effecting the new service. Normally, KSEB is supplying 1 /2.8 size, twin core WP wire for giving 3-phase services. Here the connection was given with higher capacity LT power cable, voluntary supplied by the consumer, for avoiding delay in effecting the connection. The purchase was not made based on request from KSEB as it is bound to replace the WP service wires during the entire tenure of its service in the event of failure. If the complainant wishes so, the cable can be replaced with KSEB's WP wire and can release the complainant's materials back to her. Hence the cost of materials purchased by the consumer is not refundable.

12). The KSERC (CGRF and Electricity Ombudsman) Regulations, 2005, do not empower the CGRF to award punishment to the employees of the licensee. But in the order, OP No.612/2011 the Hon CGRF has done so. This is against the law and procedure. The Hon CGRF can direct the licensee and not punish its employees. As per Clause 12 (1), it shall issue an order to the Licensee directing it:

- (a) to redress the grievance of the complainant and
- (b) to pay such amount as may be awarded as costs to the consumer.

Moreover, by the letter No. CGRF/KTR/OP No.612/2011/ 715 dated 08.04.2011, the CGRF has directed to forward a version of the Licensee to the petitioner. There is no rule in the said KSERC Regulations, to forward such a version to the petitioner.

13). There are some contradictions between the written complaint lodged by the consumer and the grievances of the petitioner recorded in the order of the CGRF in OP No.612/2011. It is pointed in the order that the officials of KSEBoard, Manipuzha had misled and confused the petitioner by:

- (a) Dismantling the existing LT V connection

- (b) Allotting a new LT VII A connections under construction purpose.
- (c) The conversions of single phase to three phases.
- (d) Changing the tariff to LT IV.

At this junction it may be pointed out that:

(i) The consumer had not mentioned about the LT V service in her written complaint. She got the single phase service under LT VII A tariff for construction purpose and later converted to three phases on request. There exists no delay. The officers have acted as per her request.

(ii) There is no request from the consumer to shift the meter and to change tariff. No documents were produced by the consumer for this purpose. The Sub Engineer, the Assistant Engineer and the Asst Exe. Engineer had visited the premise before effecting the service connection. If the consumer desired to shift the meter and to change the tariff, she could have discussed with the Manipuzha section. The consumer made request for fresh connection and it was effected within 24 hours from the date of remittance of AF, CD and OYEC. Hence she is not confused in getting the service.

(iii) KSEB, Manipuzha, has not asked her to pay the sum Rs.11000/- as minimum electrical charges. Hence the allegation in this matter is false.

(iv) There was sufficient material for giving supply in Electrical Section, Manipuzha. The allegation of the consumer that WP twin core wire, cut out, were issued to KSEB is baseless as the 1 /2.8 WP (weather proof) wire has got sufficient capacity (30A) to handle the 5.5 KW of the LT VII A service. It is not mentioned in the written complaint that KSEB, Manipuzha, had requested the consumer to procure and issue the materials for service connection. The consumer has procured and issued the materials as per her decision and are in use at her premise. Hence the cost borne by the consumer, in procuring materials cannot be refunded. It is prayed that officers of KSEB, Manipuzha, had acted as per the direction of the Hon KSERC and in good faith without violating interest of consumer.

Arguments of the 4th respondent (Smt. Annie Renji), the consumer: -

The 4th respondent, Smt. Annie Renji, had filed objections against the appeal petition submitted by the appellants. She has raised the following arguments in her representation dated 20/ 3 / 2012.

(a) She denies the claim that the electric connection were given on the date of application itself.

(b) For the completion of the work of the factory building, she applied for a 1-phase connection and deposited Rs.3900/- as per the direction of 1st appellant. Thereafter she applied to change the 1-phased connection to 3-phase and again as per the direction of the 1st appellant, she deposited Rs.15000/- on 10th June, 2010. After a couple of months, she applied to shift the three phase meter to the factory panel board and also to change the tariff. But the 1st appellant visited the factory and ordered to pay Rs.25150/- for a fresh connection and besides that, the 1st appellant compelled her to pay an additional amount of Rs.2035/- and she paid it. Later in October 2010, KSEB, Manipuzha, directed this respondent to pay a further sum of Rs.11000/- and that also paid off.

(c) First appellant intentionally misused his position as Sub Engineer in order to fulfil his revenge against 4th respondent's family. The 1st appellant and the father-in-law of the 4th respondent were in inimical terms long before.

(d) The 1st appellant has collected money from her for issuing materials like service wire, cut-out

and other service connection materials to provide electric connection to the factory. He collected the materials from Govt. store and thereby made personal profit. These facts were admitted by the 1st appellant before CGRF. So his liability is both official and personal. She is entitled to get back the money collected in excess from her with interest. The poor consumers should get justice.

On the Hearing day she pleaded as follows;

(1) Rs. 2000/- collected as advance PA should be refunded. (2) Rs 13100/- collected as OYEC charges to be refunded. (3) Material cost and Legal expenses have to be reimbursed. (4) Compensation for delay in execution of CGRF order.

Hence in the above circumstances the appeal petition filed by the appellants may be dismissed. In the Argument note dated 5.11.2012, submitted by her, she concluded as follows;

1). She is satisfied with the verdict of CGRF and the decision to refund Rs. 31444/- ordered by the Forum. Since the Officers unnecessarily prolonged the case she has loss of money and time. She wants to add an interest of 18% to the refunded amount.

2). She has attended CGRF two times and had an expense of Rs. 1000/- each time as taxi fare and corresponding expense to Ombudsman's Hearing is Rs.2000/-. The appellants took the case to Hon High Court where she had incurred Rs 5000/- as Court fees, advocate fees , travelling expenses etc. These costs are to be recouped.

3). She demands a vigilance enquiry as ordered by the CGRF to verify the stock of materials.

ANALYSIS AND FINDINGS: -

The Hearing of the Case was done on 30.10.2012, in my Chamber at Edappally, Kochi, and Sri. Bency John and Sri. Manoj Mathew, the appellants in this case, were present and the respondent's side was represented by Sri. PN Ashok, Asst. Exe.Engineer, the 3rd respondent and Smt. Annie Renji, the 4th respondent and they have argued the case, mainly on the lines stated above. The Hon High Court has specifically directed this Forum to hear the appellant's Petition and to decide as per Law.

On examining the Petition, the statement of facts of the 3rd & 4th Respondents, the AEE and Smt. Annie Renji respectively, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions.

The appellants and the 1st and 3rd respondents in this Appeal petition are the employees of the KSEB. The 4th respondent in this case, Smt. Annie Renji, has earlier filed a petition before the CGRF, Kottarakara, as OP No.612/2011, raising serious allegations of irregularities and collection of excess amount in sanctioning an electric connection to her, against the employees of KSEB, the appellants in this case. After conducting the Hearings, the CGRF by order dated 7.5.2011 has pronounced as; "Perusing all the evidences and documents submitted by the petitioner and opposite party and hearing on both parties on 7/5/2011, it is ordered to refund the excess amount collected by way of deposit, Rs.27330/- and Rs.4114/- by way of materials purchased by the petitioner for giving supply to her factory within 7 days by the three responsible officers, sub engineer in charge during this period, Assistant Engineer and Assistant Executive Engineer, equally from their pocket by money order, to avoid delay. The matter shall be taken up by the Assistant Executive Engineer before the Board for refund of this amount, if required. The order of compliance shall be reported to CGRF by

the opposite party within 15 days.”

Aggrieved by the order of CGRF, Sri. Bency John, Sub Engineer, Sri. Manoj Mathew, Asst. Engineer, Electrical Section, Manipuzha and Sri. C. Harikumar, AEE, Electrical sub division Manipuzha had submitted Review petitions separately, before the CGRF. But the CGRF dismissed those review petitions without giving an opportunity for hearing the petitioners vide its order dated 1. 7. 2011.

Issue No. (i): The main contentions of the appellants are that the CGRF has exceeded its legal authority while passing the impugned orders, without hearing the appellants or considering the actual facts, the rules prevailing in the KSEB, for effecting the electric supply. It is seen that the orders in OP No.612/ 2011 dated 7/5/2011 was not served on the appellants since they were not arrayed as parties in the original complaint. The averment of the appellants that they were not given a fair opportunity to defend their case contains some valid grounds. The clause 12A (3) & (4) Review of KSEB (CGRF and Electricity Ombudsman) Regulations, 2005 reads as follows;
(3) “If on preliminary examination of the application, if the Forum found that there is no sufficient ground for review, it shall reject the application after recording an opportunity of being heard to the applicant, and
(4) “in cases the review petition is admitted, the Forum shall dispose it within a period of 30 days from the date of admission after affording sufficient opportunity to the parties to the application.”

Firstly, the appellants in this case, were not included as respondents, in the petition filed by the consumer, Smt. Annie Renji, before the CGRF. The Asst. Exe. Engineer, Manipuzha, was the only respondent in that case and naturally the CGRF has to decide and issue order accordingly only.

The Forum cannot go against any person without issuing him notice containing the charges levelled against him and giving an opportunity of being heard. It is true that the CGRF has called the Parties (appellants of this case) one day and asked them certain questions and imposed penalty on them, deviating from the established procedures of law and hence is against natural justice. Secondly, the Forum dismissed the Review Petition filed by the appellants, without arranging any hearing and it is clear that the Forum has not adhered to the Regulations framed (referred above), while disposing the review petition. For the above reasons, I am of the view that the CGRF order dated 7.5.2011 and 1.7 2011, are to be set aside.

Issue No.(ii): - Another important question arising for decision is, whether the CGRF has the powers to impose penalty on the employees of the Licensee (KSEB) directly for the lapses occurred from their side? I am of the considered opinion that the Licensee only (and the Hon Commission for non compliance of its orders) has the powers to take action directly, against the Licensee’s employees and the Forum may direct the licensee to take appropriate action against them.

Issue No.(iii): - Smt. Annie Renji, has raised objections in her counter statement filed and during the hearing of the Appeal Petition. She has raised fresh allegation against the Sub Engineer, the 1st appellant, that he intentionally misused his position in order to fulfil his revenge against the family

of her. Further she argues that the 1st appellant had collected money from her for issuing materials from Govt. store and thereby made personal profit. As the allegations were new and has not been raised in her petition before the CGRF and further these were not substantiated by any evidence or were not established before this Authority, it is found as not sustainable.

Issue No.(iv): - Another point worth noticing is the pleading of the appellants that any excess sum collected from the consumer by way of deposits and other charges, for giving the Electric service connection, were available with the KSEB itself. In such a circumstance, the CGRF has exceeded its authority, while ordering the appellants to pay the amounts from their own pockets. I feel, it is proper to refund the excess amount collected from the consumer, by the Licensee itself from its exchequer and deal the concerned officers for their lapses and deficiency of service and loss occurred to the consumer, if any, as per rules envisaged.

Issue No.(v): - Finally, the points raised by the consumer, Smt. Annie Renji, is analysed as follows.

(1). The consumer was in the process of starting an industrial Unit of 'Packed Drinking water' and there fore needed to construct a new building for the same. She placed application with KSEB for a 1-phase electric connection (600 watts connected load), for 'Construction purpose' in 3 /2010 and remitted the fees as demanded by KSEB and obtained connection without delay. The party has not raised any objection about the fees collected by KSEB for the same nor the CGRF has found excess collection of charges, but stated that an Agricultural connection existing nearby, could have been used for this, by changing tariff. I feel the opinion of CGRF was unwarranted, because the consumer has not raised such a plea and moreover, the said service was registered for an agricultural purpose which attracts a concessional tariff and also stands in another person's name and therefore the opinion of CGRF does not deserve merit for consideration.

(2). After completing the construction works, again the consumer placed application for conversion of 1-Phase to 3-phase with additional load demand, totalling to 5.5 KW from 600 watts, for testing of machineries or so. The party is required to pay the charges of; Application fee, Test fee, Security Deposit (SD) or Caution Deposit (CD) @ of Rs.1000 x 6 KW= Rs. Rs 6000/- and the charges required for converting 1-phase to 3 phase (up to 10 KW load) which is Rs 2500/-. The KSEB says that a Post was necessitated to support the Cables purchased by the consumer across the Road, and its cost is Rs. 2350/- and the total amount comes to (2500 + 2350) = Rs.4850/- but they have collected Rs.5000/- i.e. an excess amount of Rs. 150/- only. As per rules, she is bound to pay Special deposit equivalent to SD because she is not the real owner. The relevant rule, Clause 14(4) of KSEB Terms and Conditions of Supply, 2005, which states;

"A special Deposit equal to the amount of Security Deposit is also payable whenever service connection is effected to the occupier/ tenant and not the owner."

Here, the Peringara Panchayath has given the ownership certificate dated 24.6 2010 in the name of Sri.Renji Joseph, the consumer's husband. Further, the Tax receipt of Peringara Village also show the owner of the property, in which the industrial unit is built, as Sri.Renji Joseph only. He has given

consent to Smt. Annie Renji, for taking License and running the Unit in her name. Thus she is not the real owner and hence the collection of a Special Deposit equivalent to Security Deposit i.e. Rs 6000/- is permissible. Originally, there was a SD of Rs.2000/- in her credit (while taking the 1-phase connection), so by collecting Rs.4000/- more, the total SD in her account becomes Rs. 6000/-. The KSEB has collected Special Deposit of Rs 6000/- and hence both are found to be in order. The OYEC charges collected was Rs 5000/-, against the eligible amount of Rs.2500/- plus Rs.2350/-(for the erection of a support post) in addition to AF and TF. But the cost of support post could have been avoided, if KSEB's WP wires were used for giving the Electric connection. Hence the excess amount collected from the consumer is determined as $(2350 + 150) = \text{Rs.}2500/$ as on 10.6.2010.

(3). The consumer was compelled to take a fresh industrial connection, instead of converting the existing 3-phase connection with 5.5 KW load, by remitting AF, Security Deposit Rs. 12000/- and OYEC charges Rs. 13100/- and allowed 23.5 KW load.

The correct way was to convert the existing 3- phase connection under commercial tariff to industrial tariff by collecting the SD and the estimate amount required for strengthening the WP service wires for carrying the 23.5 KW load. Since the Consumer has purchased materials required for this, she need to pay 10% of the cost of materials as Supervision charges (as per clause 8(9) of Electricity Supply code, 2005), plus the work deposit required to shift the Electric connection from out side to inside of the factory. The shifting charge for a 3-phase connection is decided as Rs.500/- and the Supervision charge as Rs.1000/-, (rounded) [10% of the estimate cost, as approved by the Hon Commission, for conversion above 10 KW up to 25KW = Rs.11400/-], totalling to $(500 + 1000) = \text{Rs.} 1500/$ -. The Security Deposit (SD) payable is $\text{Rs.} 500/ \times 24 \text{ KW} = \text{Rs.}12000$, out of which Rs. 6000/- was already paid for the existing service and therefore the balance amount payable as SD is Rs. 6000/-. Therefore the sum payable by the consumer is $(6000 + \text{Rs.} 1500/-) = \text{Rs.} 7500$ plus AF and TF. But KSEB has collected $(12000 + 13100) = \text{Rs.}25100$. Thus the Board is required to refund, the excess sum of $(25100-7500) = \text{Rs} 17600/$ -, collected on 27.9.2010.

The advance CD collected on 4.9.2010, i.e. Rs.2000/- need also to be refunded to the consumer.

The litigation costs demanded by the consumer, said to be incurred by her in other Courts of Law, are to be decided by the respective Courts only and is not considered here.

DECISION :-

From the analysis done detailed above, the findings and conclusions arrived at, I take the following decisions.

The CGRF does not clearly state how they assessed the amount to be refunded to the consumer as Rs. 27330/-. As per Electricity Supply Code, 2005, clause 5(4), the applicable AF to be collected w.e.f. 24.10. 2008, for new applications for power, is stipulated as Rs. 50/- and not as Rs. 10/-.

From the above conclusions reached, it is found that the consumer, Smt. Annie Renji, is eligible to be refunded the following amounts, with interest at the rate, as approved by Hon Commission for Security Deposits, from the date of collection to the day of refund.

(i) Rs. 2500/- collected on 10.6.2010,(ii) Rs.17600/- collected on 27.9.2010 and (iii) Rs. 2000/- collected on 4.9.2010. She is also eligible for Rs. 500/ as litigation costs from the appellants.

The 1st and 3rd respondents shall take action urgently to refund the said amounts (2500 + 17600 + 2000) = Rs. 22100/-, with in 60 days of this order and shall also regularise the Security Deposit and Special deposit of Con. No.17356 -LT IV-industrial, either by transfer from consumer No.17138-LT VII A or otherwise, as it deems proper. Similarly, the SD in consumer No. 17138 LT VIIA, may be closed, after transfer of SD and special SD as per this order and rules in force and need not wait for any formal request from the consumer.

The appellants has not given the correct advice while taking the industrial connection and has caused the consumer to remit excess amount than what was required as per law and hence the 1st respondent may take action, as it consider proper, after conducting enquiry, against the erred officers in this case. Since the excess amount collected from the consumer has been credited with KSEB's accounts, the Board may refund the excess amount collected, to the consumer with in the time frame fixed.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellants is found having merits and is allowed to the extent ordered. The related CGRF order in OP 612/2011 dated 7.5.2011 and 1.7 2011 are set aside. The litigation cost is decided as Rs 500/- (as stated above) and is payable by the appellants to the consumer with in 60 days of this order. Dated the 22nd of April 2013,

Electricity Ombudsman.

Ref No. P/ 267/ 2012/ 1703/Dated 23.04.2013.

Forwarded to

1. Sri. Bency John,
Assistant Engineer, KSEB,
Electrical Section, Kadapra. (Via) Thiruvalla.
2. Sri. Manoj Mathew,
Assistant Engineer, KSEB,
Electrical Section, Manipuzha. (Via)Thiruvalla.
3. The Secretary,
KSEB, Vydythibhavanam, Pattom, Thiruvananthapuram-4
4. The Chairperson,
CGRF (South), KSEB, Vydythibhavanam, Kottarakkara
5. The Asst. Executive Engineer,
Electrical Sub Division,KSEB, Manipuzha, Via Thiruvalla
6. Smt. Annie Renji,
Pampa Beverages Company, Peringara, Thiruvalla.

Copy to: -

- (1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.