

THE STATE ELECTRICITY OMBUDSMAN
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REVIEW PETITION No. P/372/2013

(Present: Sri. V.V. Sathyarajan)

Dated: 23rd July 2015

Review Petitioners : (1) The Deputy Chief Engineer,
Electrical Circle,
KSE Board Ltd.,
Thodupuzha

(2) The Special Officer (Revenue)
Vydhyuthibhavanam,
KSE Board Ltd., Pattom,
Thiruvananthapuram

Review Respondent : M/s. Guardian Controls,
Vengalloor. P.O,
Thodupuzha,
Idukki-685 584.

ORDER

Background of the case

The Deputy Chief Engineer, Electrical Circle, KSEB Ltd., Thodupuzha, the respondent in appeal petition No. P/372/2013 is the review petitioner herein this petition. The review petitioner has issued a short assessment bill for Rs. 6,19,496/- as the extra charges, worked out at 20% of the regular monthly bill, for the period from 10/2010 to 11/2012, to the review respondent. Aggrieved by the above, the review respondent filed a complaint before the CGRF, Ernakulam and the Forum has reduced the arrear bill to 12 months vide its order No. CGRF-CR/Comp.170/12-13 dated 26-04-2013. Not satisfied by the decision of CGRF, the review respondent has submitted an Appeal Petition before this Authority in Appeal No. P/372/2013 which was disposed that the disputed bill shall be revised to one month i.e. 11/2012 only. Now the review petitioner has submitted that a factual error apparent on the face of the records crept into the order dated 31-01-2014 issued by this Authority. The review petitioner has therefore submitted that the order sought to be reviewed causes serious prejudice and hardship to the review petitioner and requested to review the order dated 31-01-2014 and to dismiss the said review petition.

Arguments of the review petitioner

The arguments of the review petitioner on this case are that the short assessment bill was issued in accordance with the audit report of the Accountant General. As per HT tariff order effective from 01-01-2010 if the light load of an HT industrial consumer exceeds 5% of the total load, segregation of power and light loads is obligatory. In case of no segregation, such consumer should be charged 20% extra. The review respondent's total power load is 364.43 kW and light load is 27.955 i.e. greater than 5% of the power load. There was no segregation of light load in the review respondent's premises and as such he was liable to be charged 20% extra. It was accordingly that short assessment bill was issued. It is submitted that in terms of Regulation 37 (5) of the KSEB Terms and Conditions of Supply, the Kerala State Electricity Board Ltd is well within its authority in demanding the short assessed amount. Moreover, Clause 13 (b) of the agreement executed between the Kerala State Electricity Board Ltd and the review respondent stipulates for segregation of light load, if the same constitutes more than 5% of the power load. The review respondent cannot plead ignorance of the said stipulation. It is submitted that the main contention of the review respondent was that he was not properly intimated by the Kerala State Electricity Board Ltd on segregating and metering of the light load. This Honorable Authority held that the review respondent can be issued only one month's arrear bill.

This Honorable Authority further held that after piling up of penal charges for years together and then raising the arrear bill is not at all justifiable. The Hon'ble High Court of Kerala was pleased to hold in the judgment dated 13-02-2014 in W.A. No 114/2013 and connected cases as follows: **'In a situation where the licensee is prevented from realizing the price of energy supplied and consumed by the consumer on account of an inaccurate recording of the meter; in the absence of any statutory provision, restraining the licensee from realizing its due or placing any such restriction on such right, ordinarily, the licensee is entitled to recover its charges subject, of course to law of limitation, if only, applicable.'**

In view of the law laid down by the Honorable High Court of Kerala in judgment the review respondent is liable to pay the short assessment bill dated 16-11-2012 for the period from 9/2010 to 11/2012 for a sum of Rs. 6,19,496/-. This is especially so since the review respondent has not denied the fact that segregation was not done. In view thereof, the order dated 30-01-2014 in the above appeal petition is liable to be reviewed. It is further submitted that as per regulation 9 (4) of the KSEB Terms and Conditions of Supply, 2005 the lighting circuits of the industrial consumers at LT or HT tariff should be separately wired and connected to separate meters. It is further submitted that the Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006 came into effect from 22/03/2006 and service connection to the review respondent was effected prior to the enactment of the said Regulation. As per the provisions of the agreement and tariff orders then in force the maintenance and replacement of CT/PT and metering system rests with the consumer.

Arguments of the review respondent

The review respondent argued that the review petition is not maintainable either in law or on facts. There is no provision enabling the KSE Board to seek a review of the award passed by this Honourable Authority. The review petitioner has failed to make out any ground warranting review of the said award. The award was passed after a detailed hearing in the presence of all the parties concerned. There is no error apparent on the face of the record as alleged by the review petitioner. The award is based on the categorical finding on facts that **"After piling up of penal charges for years together and then raising the arrear bills is not at all justifiable"** and there is nothing erroneous in it.

It is well settled that a subsequent decision in another case is not a ground for review. Even otherwise the law laid down in the decision relied on has no bearing on the facts and circumstances of the present case. This is not a situation where the licensee is prevented from realizing the price of energy supplied and consumed by the consumer for any reason whatsoever. By not claiming any amount under this head all these years, fully knowing that the review respondent is using light load above 5% of the power load and no segregation has been done and fully aware of their right, the Board must be presumed to have abandoned their right. The review respondent did not commit any malpractice and so there is no scope for imposing any penalty. The Board was all along aware of the real state of affairs and in any view of the matter the review respondent should not have been punished without giving a notice to segregate the meter.

Analysis and findings

Hearing of the case was conducted on 11-06-2015 in my chamber at Edappally. Sri P.K. Anil Kumar, Deputy Chief Engineer, KSEB Ltd, Electrical Circle, Thodupuzha represented the review petitioner and Sri. Daniel C. John, Sri Roy Abraham, Guardian Controls Ltd and Sri Shyam, Advocate are represented the review respondent. On examining the review petition and arguments made by the parties during the hearing, this Authority comes to the conclusions and decisions thereof.

All the points raised by the review petitioner in the review petition, are the points already raised in the appeal petition and the counter statement submitted by him in the appeal. No mistake or apparent error on the face of the record are pointed out by the review petitioner. The submission of the review petitioner is that the orders caused serious prejudice and hardship to the review petitioner. But for the lapses and negligence on the part of review petitioner, the review respondent shall not have been punished. The review petitioner has also pointed out a portion of the judgment dated 13/2/2014 in W.A. No.114/2013 and submitted that in view of the law laid in the judgment, the review respondent is liable to pay the short assessment bill. It is a fact that the law laid down in the decision relied on the above judgment has no bearing on the fact and circumstances of the present case. Hence I

feel that there are no valid grounds in the argument for reviewing the order already passed.

Decision

In view of the fact that in the review petition nothing is pointed out which escaped the notice of this Authority while disposing the petition. I hold that the review petition is not maintainable and hence rejected.

ELECTRICITY OMBUDSMAN

Review Petition No. P/372/2013

Dated:

1. The Deputy Chief Engineer, Electrical Circle, KSE Board Limited, Thodupuzha
2. The Special Officer (Revenue), Vydhyuthibhavanam, KSE Board Limited, Pattom, Thiruvananthapuram
3. M/s. Guardian Controls, Vengalloor. P.O, Thodupuzha, Idukki-685 584.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, KSE Board Ltd. Thiruvananthapuram.