

THE STATE ELECTRICITY OMBUDSMAN

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REVIEW PETITION NO P/054/2014

(Present: Sri. V.V. Sathyarajan)

Dated: 18th November 2015

Review petitioner : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd.
Charummodu
Alappuzha District.

Review respondent : Sri. Adv. T.M. Varghese
Aykkarakuttiyil House
Chunakara .P.O,
Mavelikkara,
Alappuzha-690 534

ORDER**Background of the case**

The review petitioner in this review petition is the respondent in appeal petition No. P/054/2014. The appellant in the appeal petition, Sri T.M. Varghese is a registered domestic consumer with consumer No. 914 under Electrical Section, Charummoodu. He had applied for shifting of 11 kV post from his premises on 24-06-2003 and remitted the work deposit amount of Rs. 7,591.00. Due to the indifference on the part of review petitioner, the review respondent approached CGRF on 07-04-2014. While the matter was pending before the Forum the review petitioner started the shifting work on 14-05-2014. But the Panchayath President of Chunakkara Grama Panchayath objected the above shifting work.

According to the local body, the 11 kV post is situated in the Purambokku land. But the review petitioner stated that the shifting work is technically feasible and will not cross any obstruction or inconvenience to public or vehicular traffic. In the circumstances the review respondent took up the matter with Additional District Magistrate on 22-05-2014 for further instruction. The Additional District Magistrate issued orders to shift the post as proposed by KSEB.

The CGRF dismissed the petition since the matter was within the jurisdiction of Additional District Magistrate and the review respondent filed an appeal against the order of CGRF. The appeal was posted for hearing by this Authority on 13-02-2015. Then the review respondent intimated that the local body moved against the Additional District Magistrate's order by a Writ Petition (C) 32786/2014 before the Hon'ble High Court and the Hon'ble High Court by its judgment dated 29-01-2015 upheld the order of Additional District Magistrate. Since the appeal in petition No. P/054/2014 has partly lost its relevance, this Authority had ordered to pay interest on the amount remitted by the review respondent under deposit work for shifting the 11 kV post on 24-06-2003 on account of delay occurred in executing the work. Against the order the review petitioner submitted this review petition stating that the reason for not having executed the work at that time was due to the objection raised by the local residents and the Panchayath authorities.

Arguments of the review petitioner

According to the review petitioner the objection was in force from 06/2003 when the proposed work taken up by the KSEB. In the absence of back file on the subject issue which happened in 2003 and the review respondent was on abroad at that time, it is not fully established that KSEB alone is responsible for the delay occurred in further follow up in the above issue. As per Regulation 23(2) of Hon'ble Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation, 2005, the representation shall be disposed of either through settlement by agreement or through proceedings held by the Ombudsman to hear the parties.

In this case, before conducting the hearing, which scheduled on 13-02-2015 based on a submission of the review respondent that he was not pressing the petition, since it was felt that the appeal petition has lost its relevance in the light of the order of Hon'ble High Court in WP(C) No. 32786/2014 filed by the Secretary, Chunakkara Grama Panchayath. Further, in the order issued by this Authority has stated that "The Authority see no need to further investigate the matter and to conduct the hearing". Hence it is clear that this Authority has passed the order through "settlement by agreement".

The order allowing the interest on the work deposit amount is made for the delay occurred in executing the work. In fact, the subject work of shifting 11 kV post from the review respondent's premises to the roadside had not been carried out till date, since the measurement of the land of the review respondent by the Revenue Authorities to ascertain the extent of Purambokku land as per the direction of Hon'ble High Court has not been arranged so far. It is also felt that the legal battle on the extent of Purambokku land between the review respondent and Panchayath Authorities may be prolonged.

It can be seen that the delay in executing the work is actually beyond the control of KSEB and hence it cannot be considered as deficiency in service on the part of KSEB. Moreover, the Provision or Regulation under which the order on interest is made is not recorded in the order of this Authority. Since the order was issued through settlement by agreement the order on interest for deposit amount is felt highly unjustifiable and is

against the Regulations. Hence the review petitioner requests this Authority to modify the order issued earlier and to relieve the burden of compensation payable to review respondent by KSEB.

Arguments of the review respondent

According to the review respondent, the review petition is barred by limitation and no petition to condone delay is attached. Further, the review petitioner has been failed to satisfy the criteria stipulated under Regulation 9 of KSERC. Any substantial question of law or any fresh evidence apparent on the face of records or erring of the order had produced by the review petitioner.

It is also submitted that the Panchayath was nowhere in the scene as presumed until 14-05-2014. It is the responsibility of the KSEB officials to explain the situation and status before such dates. If there was a real resistance at site, the officials could have invoked legal action under Section 10 of Telegraph Act, 1885 which states as “when an owner or occupier resists or obstructs the exercise of power under Section 10, the Telegraph Authority will have to approach the District Magistrate for an order under Subsection (1) of Section 16 of Telegraph Act”.

The KSEB officials have had collaborated illegally with neighbour who was nothing to do with the business of KSEB. The officials then, have to be responsible and liable to be compensated whether they are in service or not. The very cause of litigation began with those delinquent KSEB officials. There was no explanation how the file disappeared and what actions had taken by the officials then to absolve themselves from dereliction of duty. The review respondent had followed up the work on many occasions and also requested to Executive Engineer, Mavelikkara in 2004 and 2005. The applicant is not expected to follow up the matter, once he complied with the mandatory/ statutory requirements in the case of work deposit. Hence KSEB is alone responsible for the delay due to omission / inaction of the officials then.

The review petitioner’s contention of settlement by agreement is incorrect and misleading. The term bound between parties in the litigation where it is mandatory to reach mutual agreement and acceptance between parties. Here there is neither such agreement between parties nor any recommendation made by this Authority. And further Section 25 and 26 of KSERC, 2005 are duly cited on settlement of representation by agreement and proceedings to hear the parties in the review respondent’s counter petition.

The allegations of not pressing and before conducting the hearing by Ombudsman are mere statements short of actual facts. Since the Hon’ble High Court’s judgment on any proceedings before any Authority bound to stand as final, Hon’ble Ombudsman have observed upon submission of hearing / argument note by review respondent on hearing date 13-02-2015 as: “no need to further investigate the matter and conduct the hearing” is refutable and may be totally disregarded. Hence the review respondent prayed this Authority to:

1. The review petition is barred by limitation
2. In the event that the Ombudsman considers the issues in question, compensatory damages may be awarded for inaction / omission of officials.
3. Interest on money deposited in 2003 at the approved rate.
4. Appropriate cost for incurring expenses for this litigation.

Analysis and findings

Hearing of the case was conducted on 30-10-2015 in my chamber at Edappally. Sri Rajesh K.R., Assistant Executive Engineer, Electrical Sub Division, Charummoodu appeared for the review petitioner and Adv. T.M. Varghese appeared for the review respondent. The appeal petition No. P/054/2014 dated 13-02-2015 was already disposed by this Authority. In that order it is held that the long struggle conducted by the appellant for shifting a 11 kV post from his premises has ended in success by way of judgment of the Hon'ble High Court dated 29-01-2015. Hence this Authority sees no need to further investigate the matter and to conduct the hearing. The appeal is disposed of as infructuous and the respondent is directed to see that interest on deposit amount is paid to the appellant for the period of delay occurred in executing the work.

On a perusal of the records it can be seen that no mistake or apparent error on the face of the record are pointed out by the review petitioner. The arguments now raised cannot be considered for a review, as it was considered, decided and order issued accordingly earlier. Hence there is no cause or sufficient reason established by the review petitioner, for the review of the order already issued. ***As per regulation 27A of the KSERC (CGRF & Electricity Ombudsman) Regulations, 2005, an application for review shall be filed within a period of fifteen days from the date of receipt of the order.*** In this case the review petition dated 31-08-2014 against the order in appeal petition No. P/54/2014 dated 13-02-2015 was received only on 02-07-2015. Moreover, the review petitioner has not submitted any application to condone the delay. Hence the argument of the review respondent that the review petition is time barred by limitation can be admitted.

It can be seen from the records that the review respondent remitted the work deposit amount for shifting the 11 kV post on 24-06-2003. The contention raised by the review petitioner for not having executed the work at that time was due to the objection raised by the local residents and Panchayath authorities is without any documentary evidence and cannot be admitted.

It is pertinent to note that even after a lapse of more than 12 years, despite favourable orders issued to shift the 11 kV post by the Additional District Magistrate and Hon'ble High Court, still the shifting was not accomplished. Hence this Authority has observed on merit and ordered to pay interest on deposit made during 2003. The review petitioner preferred this review petition against this without proper explanation for the delay in executing the work. The deficiency in service on the part of review petitioner in executing the work is established beyond doubt. Hence it is not fair from the part of review petitioner to delay the work any more and to deny the interest on deposit.

Decision

In view of the above discussions the review jurisdiction is limited to rectify a mistake or error which is apparent on the face of records and it cannot be used as appellate jurisdiction. So, in view of the fact that the review petitioner has not pointed out anything which escaped the notice of this Authority while disposing the matter earlier, I hold the review petition is not maintainable and hence rejected.

ELECTRICITY OMBUDSMAN

Review Petition No P/054/2014/ _____ Dated: _____

Forwarded to:

1. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd. Charummodu, Alappuzha District.
2. Sri. Adv. T.M. Varghese, Aykkarakuttiyil House, Chunakara .P.O, Mavelikkara, Alappuzha-690 534

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
2. The Secretary, KSEB Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018