

**THE STATE ELECTRICITY OMBUDSMAN**

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REVIEW PETITION NO. P/127/2015

(Present: V.V. Sathyarajan)

Dated: 06<sup>th</sup> June 2016

Review petitioner : The Assistant Secretary,  
Electricity Wing,  
Thrissur Corporation,  
Thrissur.

Review respondent : K.M. Mohandas,  
Managing Partner,  
West Fort Hospital,  
Thrissur.

**ORDER****Background of the case:**

The review petitioner is the respondent in the appeal petition in P/127/2015 before this Authority and the review respondent is a registered consumer with consumer no. 8459 C under the electricity distribution licensee, Thrissur Corporation. He was issued with a demand notice dated 06-04-1998 amounting to Rs. 23,00,552.70 towards arrears of electricity charges relating to the period from 10/1994 to 02/1998. The said demand was challenged before the Hon'ble High Court of Kerala by the review respondent in various Petitions and Writ Appeals viz. OP (C) No. 9332/1998, OP No. 19756/1998, Writ Appeal No. 51/2009, W.P. (C) 25010/2012 and W.P. (C) No. 7129/2015. The Hon'ble High Court of Kerala, in W.P (C) 7129/2015, directed the review respondent to approach the Consumer Grievance Redressal Forum for redressal of his grievance.

Accordingly the review respondent filed a petition before the CGRF which was disposed by ordering therein that the review respondent is entitled only for One Time Settlement and that he has to pay penal interest at the rate of 6%. Based on the order, a demand notice was issued by the review petitioner for an amount of Rs. 6,58,447.00 as penal interest. Against the above order of the Forum, the review respondent filed this appeal before this Authority. Since the appeal petition filed is found having some merits, an order was issued by this Authority and allowed the appeal by quashing the order of CGRF, vide order No. P/127/2015 dated 29-12-2015. Against

the above order, the review petitioner has approached this Authority with a plea to review the decision taken on the appeal petition.

**Arguments of the review petitioner:**

The review petitioner has adduced the following arguments in his review petition.

1. The order passed by the Hon'ble Ombudsman in the above said appeal is mistake or an error apparent on the face of record and hence it is to be set aside.

2. The Hon'ble Ombudsman might have looked into the Hon'ble High Court's direction to remit the arrear balance as per power cut bills amounting to (Rs. 15,67,732 + Rs. 9,75,342) vide order in OP No. 19756/1998.

3. The review respondent had remitted the arrear of principal amount Rs. 15,67,732.00 on 08-01-2009. Since the balance of interest at the rate of 18% was outstanding, the review petitioner demanded for balance arrear of penal interest. The Hon'ble Ombudsman ought to have recognised that the act of the review petitioner is according to the direction of Hon'ble High Court that is to decide the question of penal interest and comply the further procedures as per order in OP 51/09 and the Electricity Ombudsman erred in not finding the material fact that the review petitioner corporation had given the notice for non payment of the electricity bill in correct time, which were pending as arrears from 2002-2009 which comes up to 15,67,732.00 and its interest at the rate of 18% interest as per the Kerala Electricity Supply Code, 2005. The Hon'ble Ombudsman might have considered the fine approach of the review petitioner towards the respondents in allowing them to remit the amount of Rs. 23,43,184.00 in 10 instalments.

4. The Hon'ble Ombudsman might have looked into the fact that the an amount of Rs. 29,66,125.00 remitted by the review respondents had credited to their account and notice dated 30-01-2015 for an amount of Rs. 19,75,342.00 is given for the balance, pending penal interest.

5. The Hon'ble Ombudsman erred in the finding that there is no justification for the issuance of bill dated 23-07-2011 levying penal interest for Rs. 19,75,342.00 and also make a mistake in finding that there is no justification in reducing the rate of interest @ 6% i.e. notice dated 21-05-2015 as per the order of C.G.R.F. The Hon'ble Ombudsman might have noted the finding of Hon'ble High Court directing the review respondents to pay the amount in instalment. Though the instalment facility was availed, the review respondents are rendering an attitude of an escapist.

6. The Hon'ble Ombudsman might have looked into the fact that the review respondent is a litigious that regularly prefers petitions one after

another from 1994 onwards. Since the CGRF had made an order, taking a lenient view to the review respondents, in the payment of penal interest i.e. the rate of interest is reduced from 18 % to 6 %. It was also not taken into consideration by the Hon'ble Ombudsman.

7. The Hon'ble Ombudsman would've noted in the appeal, that the review respondents have suppressed the fact by submitting that complainant paid the entire demand with interest. In the CGRF itself they are convinced with the payment of Rs. 29,66,125.00 and bills of 4/98 for Rs. 90,957.00, 12/98 for Rs. 2,34,872.00 and 3/99 for Rs. 1,67,656.00 have not been remitted and is not able to produce the receipts of remittance. And also the review petitioner had made every effort to convince the respondent about how Corporation arrived at a calculation of Rs. 19,75,342.00 as interest and they are very well acknowledged with the same. It is the interest @ 18% for the period of 2002-2009 and calculated as per the order of Kerala State Electricity Board and as per Section 23 of Kerala Electricity supply Code, 2005 which quotes the clear justification for the imposition of penal interest.

8. The review respondents had made suppression of material facts and rather confused the Hon'ble Ombudsman by submitting that it is for the first time after remitting the entire amount due with interest, the notice of penal interest is issued to the review respondent. The review petitioner had every right to recover the arrear charges with interest, which is legal and sustainable. The review petitioner had attempted to recover the amount due which is legally recoverable.

9. The Hon'ble High Court has categorically found that the review petitioner Corporation is entitled to recover any amount remained unpaid from the review respondent. The Hon'ble Ombudsman failed to consider the views of Kerala High Court regarding direction of payment of due amount.

10. The review respondent is liable to pay the interest at the rate of 12% for 1st month and in default liable to pay @ 18% interest for any amount which is due. The Corporation is not demanding for the 'penal' interest. Since the review respondent made the delayed payment for years, he has the bounded duty to pay the principal amount, with the interest. The review respondent remitted the principal amount only without paying the interest due.

11. The review respondent is falsely submitting that he paid the amount with interest. He has to prove by documents where he remitted the interest.

12. The interest at the rate of 18% is calculated to that particular period the bill amount is due. That interest will not be calculated penalty to next month i.e. interest will not be calculated to the pre existing interest which is due or otherwise no calculation of interest on interest or compound interest.

13. The Hon'ble Ombudsman relying on the word penal prefixed to the word interest had made a decision which is error apparent on the face of record. The interest is calculated only to the outstanding bill amount for electricity consumption.

14. The review respondent escaped from remitting the power cut bills and it came to an amount of (Rs. 15,67,732.00 + Rs. 19,75,342.00) and the party paid the principal amount excluding interest.

15. Even though the review respondent was given a humanitarian consideration as a hospital and allowed them to remit the principal amount excluding interest, for giving the reconnection, review respondent has misused the opportunity and evading from the duties and responsibilities of a consumer and thereby putting the review petitioner in a whirlpool of litigations.

16. Since the due amount recoverable is existed during the period before 2003, the case is not barred by limitation and Section 56(2) of Electricity Act will not be applicable. The review respondent has not paid amount (towards arrears) from 2002. The review respondent himself admits that when there is wilful deliberate default on the review respondent, penal interest can be levied.

So it is humbly prayed before the Hon'ble Ombudsman to review the above mentioned OP on the basis of the facts and circumstances mentioned above.

**Arguments of the review respondent:**

The review respondent raised the following arguments against the review petition which is detailed as below.

1. Every allegations and averments made in the review petition is denied by this review respondent. The facts mentioned in the review petition are baseless and hence liable to be dismissed. The review petitioner has not set forth the true and real facts in the review petition. The real facts are stated as under.

2. Detailed statement of facts and proof of documents have been furnished as part of appeal petition by West Fort Hospital before the Honourable Ombudsman. Accordingly, hearing has been conducted on 16-11-2015 to sort out dispute between the review petitioner and the review respondent by the Honourable Ombudsman.

3. In the hearing it was agreed that all relevant information for arriving at demand would be made available by the Corporation to the Honourable Ombudsman. Copy of the same would be handed over to West Fort Hospital for verification. This would have helped us to ascertain the exact reason for charging excess amount and thereafter its interest thereon. Unfortunately

the Corporation Authorities have failed to furnish the required details in the Performa which is jointly prepared and agreed to be provided. The matter of non-submission of details was brought to the notice of the Honourable Ombudsman by West Fort Hospital. It is a clear sign that the Corporation is arbitrarily fixing an amount and sticking on to it and making utter confusion to the Honourable Ombudsman.

4. Honourable Ombudsman in its order dated 29-12-2015 made it clear that the West Fort Hospital had already paid all dues and interest thereon. The decision of the Honourable Ombudsman is reproduced as under:

*"The appellant had remitted an amount of Rs. 29,66,125.00 against the demand of Rs. 23,00,552.70 and probably the excess amount must be paid by way of penal interest for the delayed payment. The division bench of the Hon'ble High Court while disposing the WA No. 51/2009 categorically observed the above fact that the entire arrears of energy charges to the tune of Rs. 29,66,125.00 have been paid by the appellant. In the absence of any wilful default made by the appellant in honouring the demand issued by the licensee, there is no justification for issuance of bill dated 23-07-2014 levying penal interest for Rs. 19,75,342.00".*

And hence the decision of CGRF was disposed. Actually there is an excess amount paid which is to be repaid along with interest by the Corporation to the West Fort Hospital. It is surprised to note that Assistant Secretary of the Thrissur Corporation is not looking into the merit of the case and unnecessarily dragging the issue for further litigation. In the above review petition there was mentioned that the West Fort Hospital is litigious who regularly prefer petitions one after another. It is submitted that the illegal, unethical and unjust action of the Corporation is forcing to defend the stance in the legal Forum which cannot be treated as a crime or an offence.

5. It is very clear example that the Corporation has generated a demand on a baseless method and when a question came from the Honourable High Court as well as from Honourable Ombudsman, there was no appropriate document to prove review petitioner's demand.

6. The CGRF directed Corporation to reduce the rate of interest from 18% to 6% as there is provision for reduction under One Time Settlement Scheme. The CGRF have not gone into the merit of the case and hence West Fort preferred an appeal before Honourable Ombudsman. It is apparent that even when 'One Time Settlement Scheme' is available the Corporation Authorities are not ready to offer the facility to West Fort Hospital. This is an indication of their negative stance and bend of mindset.

7. It is submitted that no material facts were suppressed by West Fort Hospital for creating confusion in Honourable Ombudsman. The statement made in the review petition that "the Honourable High Court have categorically found out that the Corporation is entitled to recover any

amount baseless and false. Actually in the WA No. 51 of 2009 dated 24-03-2003 against the judgement in order OP 19756/1998 dated 17-09-2008 it is stated that the entire arrears of energy charges including interest claimed by the Municipal Corporation have been paid. The relevant portion of the judgment is reproduced as under.

*"It is admitted position that the entire arrears of energy charges to the tune of Rs. 29,66,125.00 including interest claimed by Municipal Corporation have been paid. Therefore, the surviving question is only with regard to penal interest. That according to us, is a matter for the Municipality to consider in the background of the regular remittance of admitted energy charges by the petitioner and also the wiping off entire arrears as on today. Therefore, we dispose of the writ appeal directing the Respondent to consider afresh the liability of appellant to pay penal interest in the light of the observations contained in this judgment, with notice to the appellant and pass appropriate orders thereon."*

8. Further in the Writ Appeal it was stated that "the Honourable Ombudsman failed to consider the view of Hon'ble High Court regarding payment of due amount" is not true which is clear from the portion of the judgment noted above. Honourable Ombudsman after considering the details made it clear that the question of charging penalty does not arise. It is submitted that Assistant Secretary of the Thrissur Corporation is trying to create further confusion and lead to litigation causing hardship to the hospital.

Hence it is humbly prayed that the statement filed by review petitioner is not justified, created on the basis of baseless facts because of vendetta against West Fort Hospital because of the fact that the review respondent is trying to get the grievance redressed through legal Forum such as Court and Honourable Ombudsman and hence requested that the review petition may be turned down.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam on 04-05-2016. Sri K.M. Mohan Das and Sri R.M. Ramanuany appeared for the review respondent's side and Sri Vibin Chacko, advocate was present for the review petitioner's side. Both parties have presented their arguments on the lines as stated above.

On perusing the review petition, the statement of facts filed by the review respondent, the arguments of both sides in hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

In the review petition nothing is pointed out which escaped the notice of this Authority while disposing the appeal petition. The review jurisdiction is limited to rectify a mistake or an error which is apparent on the face of

records and it cannot be used as appellate jurisdiction. The arguments now raised cannot be considered for a review as it was considered, decided and order issued accordingly. Hence there is no cause or sufficient reason established by the review petitioner. A decision once rendered by a competent Authority/ Court on a matter in issue between the parties after a full enquiry should not be liable to be agitated over again before the same Authority/Court.

***“Fundamental legal doctrine that, once a lawsuit is decided, the litigant parties are barred from raising the same issue again in the courts (unless material new evidence has become available). They are also barred from raising another issue arising from the same claim or transaction (or a series of claims or transactions) that could have been but was not raised in the decided suit. It is based on the principle that court cases cannot be allowed to go on forever and must come to an end.”***

### Decision

In view of the above discussions I hold that the review petition is found devoid of merits and not maintainable, hence rejected.

**ELECTRICITY OMBUDSMAN**

P/127/2015/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. The Assistant Secretary, Electricity Wing, Thrissur Corporation, Thrissur.
2. K.M. Mohandas, Managing Partner, West Fort Hospital, Thrissur.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Vibhagam, Thrissur Corporation, Thrissur - 680001.