

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/36/2017

(Present: A.S. Dasappan)

Dated: 14th June 2017

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

Respondent : The Assistant Secretary,
Electricity Wing,
Thrissur Corporation,
Thrissur.

ORDER**Background of the case:**

The appellant is a registered consumer with consumer no. 8459 C under the electricity distribution licensee, Thrissur Corporation. The LT service connection given to the appellant on 30-04-1990 and it was converted to HT connection with effect from 07-04-2014. Initially the LT supply was given from a transformer having capacity of 250 kVA under minimum guarantee scheme agreement on condition that a sum of Rs. 5,406/- payable by every month for a period of 8 years. The appellant had remitted Rs. 11,550/- on 10-10-1998 and Rs. 5,59,741/- on 30-11-2012 as security and additional security deposit respectively. The respondent had dismantled the old outdoor transformer and shifted to another location, on commissioning the HT indoor transformer in the premises of the appellant. The appellant had demanded refund of the security deposit made by him towards the LT connection and also the cost of LT transformer which was installed at his expenses. Further appellant has stated that for shifting the old transformer to the new location, laying the cables including earth works and other associated connected works, the total amount was paid by the appellant which also to be repaid.

The appellant approached the respondent with a request to refund the following amounts with interest vide a number of letters.

Cost of transformer	=	Rs. 5,18,976/-
Amount paid by way of security deposit	=	Rs.6,09,291/-
The cost incurred for cabling and shifting of existing transformer to the new location	=	Rs. 7,55,929/-.

Their request was not considered by the respondent, the appellant had submitted a petition dated 08-02-2016 directly to this Authority without approaching the CGRF, Thrissur Corporation as per the existing rules. The appellant was informed by this Authority that since the Thrissur Corporation filed WP © No. 26882 of 2016 before the Hon'ble High Court of Kerala against the orders dated 29-12-2015 issued in appeal petition No. P/127/2015 and order dated 06-06-2016 in review petition No. P/127/2015, this office is not in a position to take any action in this regard. Challenging this, the appellant approached the Hon'ble High Court of Kerala in W.P. (C) 6771 of 2017. The Hon'ble High Court of Kerala, on 01-03-2017, directed the 1st respondent i.e., this Authority to consider the representation made at Ext. P1 within a period of three months, with notice, after affording a personal hearing to the petitioner and the 2nd respondent. Accordingly notices were issued to the appellant and the respondent and heard both parties on 25-05-2017 and 02-06-2017.

Arguments of the appellant:

The West Fort Hospital had submitted a request dated 02-05-1988 for installation of a transformer after providing new service connection. With regard to the feasibility and clearance, a report was submitted on 17-08-1988 by the 1st grade overseer of the electricity department of Thrissur Municipality. The Asst. Commissioner on 18-12-1989 issued a letter stating that the request for service connection to the above premises is sanctioned subject to the conditions mentioned in the agreement. A 250 kVA transformer was installed and the Service Meter account number of the service connection is 8459-C. It was informed that the West Fort Hospital will have to pay a monthly minimum required for drawing 2 service lines in addition to the usual monthly meter or current charges. The monthly minimum per month is worked out to be Rs. 5,406/- per month. This is over and above the normal charges and is for 5 years. Accordingly an agreement was executed and amount remitted as per Challan No.73 on 10-10-1988.

The cost of the transformer was borne by West Fort Hospital. Hence it is presumed that the transformer is owned by the West Fort Hospital as the entire cost has been paid in instalments as suggested by Electricity Department of Thrissur Municipality and agreed upon by West Fort Hospital Thereafter on 08-09-1988, the Assistant Engineer, Electricity Department, Thrissur Municipality vide letter No: 1673/88 directed West Fort Hospital to produce the installation sanction from health Department of Municipality as

per section 285 of Kerala Municipalities Act so also to produce approval from Regional Electrical Inspector in the case of connected load exceeds 30 KW, involves the installation of neon sign board, X-ray, lift etc., and High Rise Building. Since the estimated amount exceeds Rs. 1,000/- West Fort has to agree to pay Rs. 5,406/- per month for 5 years and above the normal current charges (actually West Fort Hospital has paid Rs. 5,406/- per month for eight years (96 months) and also requested to remit Rs. 11,050/- as security deposit and Rs. 5,000/- as inspection fee.

In terms of the same West Fort Hospital remitted the amount on 10-01-1988. Bank guarantee was also furnished for an amount of Rs. 5,39,950/- which was renewed thereafter. But the Electrical Inspectorate after conducting inspection observed that, as the consumption is above the level fixed for LT customers, the connection is to be converted from LT to HT. In such circumstances application for conversion was filed by West Fort Hospital on 28-12-2011.

Since Municipality was not ready to provide connection by converting into High Tension, the matter was taken up with Hon'ble High Court. Hon'ble High Court in WP(C) No. 25010 of 2012 dated 27-11-2012 declared that "since the working of the hospital itself is adversely affected by the continuance of establishment as a LT consumer, there shall be an interim direction to respondents to consider Exh.P-16, request of the petitioner without prejudice to their rights to claim penalty that they have claimed and subject to result of writ petition". Still Municipality was not ready to provide connection by sighting flimsy reasons and arguments. On 30th November 2012, the interim order is extended by two months.

Though all formalities have been complied with by the West Fort Hospital and requested to convert LT into HT, it was in vain. In such circumstances the matter was taken up with Hon'ble High Court by filing IA No.738/2013 in WP(C) No. 25010/2012 (A).

By order dated 21st day of Nov. 2012 the Hon'ble High Court of Kerala in unequivocal terms directed that "the respondents shall comply with interim order dated 27-11-2012 as expeditiously as possible at any rate within a period of one month from today. Accordingly, Municipal authorities directed West Fort on 14-05-2013 vide letter No. EW3-4253/13 to submit all relevant records such as Possession Certificate, Ownership Certificate, Agreement in the proforma, approval from Electrical Inspectorate etc. West Fort Hospital submitted the same on 10-06-2013. Later on 22-10-2013, Asst. Engineer directed West Fort Hospital to submit the site plan, approval for lattice, meter panel, space marked map etc. which was also furnished on 26-10-2013. But on 23-12-2013 the notice was issued by Municipal Corporation for payment of fees as security deposit, amounting to Rs. 5,39,950/- as Bank Guarantee and Rs. 5,39,950/- as a demand draft (totalling amount of Rs. 11,35,500/-) has

already deposited to Municipal Corporation on 30-12-2013. Thereafter the LT connection was changed into HT connection.

The LT transformer which was actually owned by West Fort Hospital was transferred to a different location of the Municipality. The cost of for transportation and installation including cost of the cabling was paid by the West Fort Hospital.

After number of requests and demands, ultimately HT transformer was commissioned on 07-04-2014 and LT connection was dismantled and the transformer was taken possession by the Thrissur Municipality for their use. Since the transformer was installed at the cost of the hospital, the hospital is entitled to get the cost paid by it so also the security deposit.

In this circumstances request was made to the Assistant Engineer in this regard. Though the claim of the hospital was not denied, on 22-08-2014 issued a letter informing that since an amount outstanding towards electricity charges for Consumer No: 8459-C and the matter is a subject matter for litigation before Honourable High Court, the security deposit will be refunded only after a final decision in the case.

The issue of arrears was taken up with Consumer Grievance Redressal Forum as per the direction of the Hon'ble High Court which was later taken up to with Hon'ble Ombudsman. Hon'ble Ombudsman categorically stated without any room for suspicion that as West Fort Hospital has paid all the amount due to the Corporation including principle, interest and an additional sum, there is no question of taking penal interest.

In this context it is submitted that it is a natural justice that security deposit (Rs. 11,590/- paid on 10-10-1988 vide receipt No: 3407 and Rs. 5,97,741/- remitted on 30-11-2012 vide receipt No: 58222) total amount in the form of security already been deposited, is Rs. 6,09,291/- + along with interest as on date is to be repaid with immediate effect. Apart from the deposit, amount was also paid to shift the Transformer with their own request to other site. As the transformer is owned by West Fort Hospital which is taken away by Municipality, the cost of the transformer (Rs. 5,18,976/-) is also to be repaid. Further, shifting the transformer and cabling up to their location, the total amount has been paid by the hospital to the contractor M/s Maxwell Electric Corporation, Thrissur for shifting the Old Transformer, laying the cables including earth work and other associated connected works amounting to Rs. 6,42,900/- on 07-04-2014 apart from this amount, West Fort Hospital has also paid to Thrissur Municipal Corporation an amount of Rs. 1,13,029/- on 28.01.2013 (Totalling Rs. 7,55,929/-).

Hence direction may kindly be issued to the Thrissur Corporation to refund an amount of (a) Rs. 6,09,201 with interest being security deposit, (b)

Rs. 5,18,976/- with interest as cost of transformer and (c) Rs. 7,55,929/- with interest as cost involved for shifting transformer and cabling up to their location. The total amount is Rs. 18,84,106/- + interest till date.

Arguments of the respondent:

1. With respect to the statements and allegations contained in Para 1 and 2, it is respectfully submitted that the service connection 8459-C was given in the name Mr. K.M. Mohandas, Managing Director, West Fort Hospital on 30-04-1990 after completing the necessary formalities. Supply to the hospital was given from the outdoor transformer installed at that place having a capacity of 250 kVA. The agreement for the connection was given on "condition that a sum of Rs. 5,406/- will be paid every month for a period of 8 years towards minimum guarantee. However the petitioner has not paid the amount agreed to be paid every month with effect from 05/1990. The submission made by the petitioner contrary to that is baseless and it is hereby denied.

With respect to the statement contained in Para 3 it is respectfully admitted that the petitioner has remitted Rs. 11,550/- on 10-10-1998 and Rs. 5,97,741/- On 30-11-2012 as security and additional security deposits. The total SD available now in the petitioner's credit is Rs. 6,09,291/- for which interest is fixed by the Hon'ble KSERC was credited to the petitioner from time to time.

2. With respect to the allegation contained in Para 5, 6 and 7 it is respectfully submitted that the conversion into HT service connection was delayed as the petitioner did not complete the formalities, required as well as not completed the work, which was opted to be done by the petitioner himself.
3. With respect to the statement contained in Para 8 and 9 it is respectfully submitted that the claim of the petitioner regarding the installation of outdoor transformer (250 kVA) is absolutely false. The 250 kVA outdoor transformer was installed by Thrissur Corporation for catching the demands of various consumers located in that area. The transformer was the asset of Thrissur Corporation and the periodical maintenance was carried out by the corporation ever since the installation. So the claim of the petitioner on the cost of the transformer may not be entertained. It is also submitted that HT indoor transformer was commissioned on 07-04-2014. The old outdoor transformer was shifted to another location. Since the cable used for the connection was old, the same was changed as per the request of the petitioner. The old U.G. Cable is still lying at the premises. So the cost for laying the new UG Cable and connected works have to be borne by the petitioner and not by Thrissur Corporation.

4. With respect to the allegations made in Para 10 it is respectfully submitted that the LT connection 8459-C is now dismantled and the SD will be refunded to the petitioner subject to the order of the Hon'ble High Court in the Writ Petition filed by Thrissur Corporation.
5. With respect to the statements contained in Para 11, it is respectfully submitted that the petitioner had been a perpetual defaulter of the dues payable to the Corporation for the electricity supplied to them from time to time. It is also submitted that the petitioner has always been adopting practically ever since the dues arose on account of electricity consumed, embarking vexatious litigations making baseless allegation to somehow delay payment, which resulted in further delay in file proceedings.
6. With respect to the order of Hon'ble Ombudsman, the respondent is of the opinion that the Hon'ble Ombudsman ought to have looked into the merits of the case before passing an order in favour of the petitioner. The Hon'ble CGRF has considered all aspects and reduced the interest to the maximum level possible and passed an order. Instead of upholding the same the ombudsman issued an order to quash the same against which the respondent has of late filed a writ petition.
7. With respect to the averments contained in Para 13, it is respectfully submitted that the SD will be refunded subject to the order of the Hon'ble High court in the writ petition filed by Thrissur Corporation. The outdoor transformer located at the premises is the asset of the respondent and the claim of the petitioner is ridiculous and hence may not be considered. Since the cable used for the connection was old, the same was changed as per the request of the petitioner. The respondent has not taken back the old UG cable and is still lying at the premises. The cost for laying the new UG cable and connected works have to be borne by the petitioner and not by the respondent. So the claim of the petitioner towards the refund of the same is alleged and may not be entertained.
8. As per Regulation 71 (l) of Kerala Electricity Supply Code 2014, the Security Deposit shall be refunded to the consumer on termination of the agreement within 30 days after the settlement of all dues, payable to the licensee.
9. As the dues payable to the license is under dispute and is pending disposal before Hon'ble High Court, the respondent feels that the justice will prevail and the Corporation will get a favourable order from the

High Court. The actual amount due from the petitioner is Rs. 19.79 Lakhs. The CGRF has reduced it into the minimum. As per the order of the Hon'ble CGRF the petitioner has to remit Rs. 6.58 lakhs. Being a local body engaged in the distribution of electricity the existing law does not allow it to write off an amount which is actually due to it from the consumer.

10. Therefore it is humbly prayed to look into the merits of the case and pass an order which does not adversely affect the interests of the respondent.

For these and other reasons that may be permitted to the urged at the time of hearing it is humbly prayed that the Hon'ble Ombudsman be pleased to dismiss the above complaint.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally, Ernakulam on 25-05-2017. Sri K.S. Anil, Advocate was present for the appellant's side and Sri. Shine M.V., Assistant Engineer, Electricity Dept. Thrissur Corporation represented the respondent's side. During the hearing the respondent has been asked to furnish the present status of the case filed by them before the Hon'ble High Court of Kerala. This Authority has directed both parties to furnish further details and documents if any required. For furnishing the details, one week time was granted and a further hearing was allowed.

Accordingly next hearing was conducted in my chamber at Edappally, Ernakulam on 02-06-2017. Sri K.S. Anil, advocate was present for the appellant's side and Sri. Shine M.V., Assistant Engineer, Electricity Dept. and Sri. Jomon C.J. Thrissur Corporation represented the respondent's side. Both sides have presented their arguments on the lines as stated above.

On examining the appeal petition, the statement of facts filed by the respondent and the argument note filed by the appellant, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The appellant has submitted a representation dated 08-02-2016 before this Authority claiming the reliefs mentioned hereunder:

For issuing directions to the Thrissur Corporation

- i. To refund an amount of Rs. 6,09,201/- with interest being security deposit.

- ii. To refund an amount of Rs. 5,18,976/- with interest as cost of transformer and
- iii. To pay an amount of Rs. 7,55,929/- with interest as cost involved for shifting transformer and cabling up to their location.

Though the LT connection dismantled, the respondent denied refund of the security deposit on the grounds that as the dues payable to the licensee is under dispute and a writ petition filed by the respondent against the orders of this Authority is pending disposal before Hon'ble High Court. The respondent's version is that as per Regulation 71 (l) of Kerala Electricity Supply Code 2014, the Security Deposit shall be refunded to the consumer on termination of the agreement within 30 days after the settlement of all dues, payable to the licensee. The petitioner aggrieved by this stand of the Thrissur Corporation has approached Electricity Ombudsman for issuing direction for refund of security deposit and mentioned above for refund of other amounts.

The facts of the appeal filed by the appellant in appeal No. P/127/2015 and orders issued, in brief, are the following:

The petitioner is the appellant in the appeal petition in P/127/2015 before this Authority and 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 petitioner/appellant 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 petitioner to approach the Consumer Grievance Redressal Forum for redressal of his grievance.

Accordingly the petitioner/appellant filed a petition before the CGRF, Thrissur which was disposed by ordering therein that the petitioner 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 respondent for an amount of Rs. 6,58,447.00 as penal interest. Against the above order of the Forum, the petitioner filed an appeal before this Authority. Since the appeal petition filed is found having some merits, this Authority allowed the appeal by quashing the order of CGRF, vide order No. P/127/2015 dated 29-12-2015. Against the above order, the respondent has approached this Authority with a plea to review the decision taken on the appeal petition, which was also dismissed. The respondent filed a writ petition WP © No. 26882 of 2016 before High Court of Kerala against the orders issued by the Forum and the same is pending for disposal.

The petitioner's contention is that security deposit (Rs. 11,590/- paid on 10.10.1988 vide receipt No: 3407 and Rs. 5,97,741/- remitted on 30-11-2012 vide receipt No: 58222) total amount in the form of security already been deposited, is Rs.6,09,291/- + along with interest as on date is to be repaid with immediate effect as the LT connection was dismantled. The respondent has also admitted the receipt of the above said amounts by him as security deposit. His only objection is that the decision of this Forum, quashing the pending dues, was challenged in the High Court and decision is awaited.

While disposing the appeal petition in P/127/2015, it was held by this Forum that "The appellant had remitted an amount of Rs. 29,66,125/- 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 Hon'ble High Court while disposing the Writ Appeal No. 51/2009 categorically observed the above fact that the entire arrears of energy charges to the tune of Rs. 29,66,125/- 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 the issuance of bill dated 23-07-2011 levying penal interest for Rs. 19,75,342/- which was reduced to Rs. 6,58,447.00 vide demand notice dated 21-05-2015, as per the order of CGRF is hereby quashed". It is noted that the Hon'ble High Court of Kerala has not issued any stay orders on the orders of this Forum, in the writ petition WP © No. 26882 of 2016 filed by the respondent.

Another demand of the petitioner is to refund an amount of Rs. 5,18,976/- with interest as cost of transformer which was expended by him. The petitioner and the respondent have agreed the fact that the connection under minimum guarantee scheme was given on "condition that a sum of Rs. 5,406/- will be paid every month by the petitioner. As per the statement of the respondent the period is 8 years and according to the petitioner it is 5 years. A copy of the agreement is not furnished by the either parties. It is contented by the respondent that the petitioner has not paid the amount agreed to be paid every month with effect from 05/1990. On the other hand, the petitioner claimed that he had paid the amount in every month for 96 months without fail. For proving this argument, the petitioner has not produced any substantiating evidences like receipts during the period. The respondent is duty bound to recover the MGS amount in every month and if any default for remittance, it is his responsibility to take proper action as per existing rules. Hence the dispute to be settled is whether the petitioner had paid the cost of the transformer and is eligible for refund of the money expended, if any. The monthly minimum payable shall be the minimum guarantee amount as per minimum guarantee agreement or the recorded maximum demand for the month in kVA or 75% of the contract demand (as per agreement) whichever is higher. The petitioner has submitted photocopies the following five receipts issued by the Electricity Department, Thrissur Municipality.

1. Receipt dated 27-04-1991 for cheque dated 21-04-1991 for Rs. 38,383.90
2. Receipt dated 24-06-1991 for cheque dated 22-06-1991 for Rs. 38,383.90
3. Receipt dated 05-09-1991 for cheque No. 0419860 for Rs. 38,383.90
4. Receipt dated 27-10-1994 for cheque No. 0461248 for Rs. 74,736.50
5. Receipt dated 23-12-1994 for cheque No. 0464148 for Rs. 74,736.50

According to the petitioner, no separate demand was made by the respondent in preference to MG amount, since a common bill was issued which includes the MG amount, fixed charge, energy charge, electricity duty and inspection fees. In this instant case, in the absence of the agreements and monthly bills and payment details of the period in question, it is difficult to arrive a conclusion on the dispute of the period of remittance and the amount so far remitted by the petitioner, and whether the petitioner paid the minimum guarantee amount as per minimum guarantee agreement or the recorded maximum demand for the month in kVA or 75% of the contract demand (as per agreement) whichever is higher. The respondent has admitted that the old transformer was taken back and reinstalled in some other place. The respondent has adduced the argument that the transformer is the asset of Thrissur Corporation and the periodical maintenance was carried out by the corporation ever since the installation. The petitioner has not produced any documents to prove the purchase of transformer or remittance of the cost of transformer.

Another contention of the petitioner is that the respondent is liable to give an amount of Rs. 7,55,929/- with interest as cost involved for shifting transformer and cabling up to their location. The petitioner has produced a copy of the agreement executed by him with a third party named M/s Maxwell Electric Corporation, Thrissur amounting to Rs.6,42,900/- on 29-01-2013. Further it is stated that the petitioner also paid an amount of Rs. 1,13,029/- to the respondent on 28-01-2013. On going through the agreement, it is found that the agreement executed is for the supply, installation and commissioning of the HT transformer and Electrification. As per rules, the petitioner is bound to bear the expenses for laying the new UG cable and connected works for the HT connection. The amount of Rs. 1,13,029/- remitted by the petitioner on 28-01-2013 by cheque dated 25-01-2013 is for the HT connection towards material cost, SOC, supervision charges and AF. The consumer is liable to pay the charges for the HT connection at the applicable rates fixed by the Hon'ble Regulatory Commission. Being so, the party's argument against it, for refund of the amount, is not sustainable. For the above reasons, the reliefs sought under item 2 & 3 above are not maintainable.

Decision

In view of the above discussions, it is decided to reject the request of the petitioner for the cost of transformer and shifting charges. Here in this case, a Writ Petition is seen filed by the respondent, Thrissur Corporation before the Hon'ble High Court of Kerala vide W.P. (C) 26882 of 2016 and is pending for its decision. Hence it is further decided that the request of the petitioner for the refund of Security Deposit is subject to the judgment of the Hon'ble High Court of Kerala in the said Writ Petition. The respondent will consider the request for refund of the security deposit on the basis of the disposal of the writ petition filed by them. The appeal filed by the appellant is disposed of accordingly. Having concluded and decided as above it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/36/2017/_____ /Dated: _____

Delivered to:

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

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Electricity Department, Thrissur Corporation, Thrissur – 680 001.