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APPEAL PETITION No. P/053/2017  
(Present: A.S. Dasappan)  
Dated: 13<sup>th</sup> September 2017

Appellant : Sri. Jose Joseph  
Managing Partner, Universal Rubbers,  
Cherppunkal P.O., Pala,  
Kottayam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd, Pala,  
Kottayam

### **ORDER**

#### **Background of the case:**

The appellant is a High Tension consumer under Electrical Section, Kidangoor vide Consumer No. HT/15/1954, with a contract demand of 140 kVA. The appellant is the Managing Partner of M/s Universal Rubbers which is a partnership firm engaged in the manufacture and sale of tread rubber. The appellant had submitted a complaint dated 20-10-2004 to the respondent on certain defects in the metering of electrical energy for the month of September 2004 as there was a huge increase in the recorded maximum demand without any additional load used in the premises. As directed by the official of TMR unit Pallom the CT/PT unit was repaired and the CT/PT unit and a new ToD meter were produced before the TMR Division for testing on 24-08-2005. The respondent rejected the CT/PT unit on the ground that the ratio of CT/PT was not matching with the contract demand and the appellant was asked to replace the same with a new one. An amount of Rs. 26,077/- (50% of the electricity bill of August 2005) towards penalty for faulty CT/PT was issued to the appellant. Again the appellant was issued another arrear bill amounting to Rs. 82,859/- with interest 24% per annum towards the penalty for faulty CT/PT and ToD meter for the months of 09/2005, 10/2005 and 11/2005. Aggrieved by this demands, the appellant approached the Hon'ble High Court of Kerala in W.P. (C) No. 8867 of 2006 which was disposed of with a direction to make an appropriate application before the CGRF having Jurisdiction over the area in question and to re-connect the electricity supply of the petitioner's premises on condition of payment of Rs. 40,000/- within a period of one month, vide judgment dated 17<sup>th</sup> August 2016. Accordingly, the appellant filed a petition before the CGRF, Kottarakkara, requesting to quash the letter dated 24-08-2005 of the respondent directing to replace the CT/PT

and to return the amount with interest to the petitioner which was illegally collected in the name of penalty and interest for the delay in installing CT/PT unit, with Petition No. OP 260/2016 and the Forum dismissed the petition due to lack of merit vide its order dated 30-03-2017. Aggrieved by the decision, the appellant has submitted the appeal petition before this Forum.

**Arguments of the appellant:**

1. The appellant is a partnership firm engaged in the manufacture and sale of tread rubber. It is a registered sick unit. The firm is having its registered office at the address mentioned above and is represented by in proceedings by its managing partner who is authorized and competent to do so.

2. The appellant had started its business in 1990 and in order to avail a high tension connection the appellant had entered in to an agreement with the opposite parties on 20-07-1990 by which the opposite parties had agreed to supply 140 kVA of electricity as contract demand and the appellant's consumer number is 15/1954. As per the clause 14A of the said agreement the appellant had been given the liberty to increase or decrease the contract demand on certain condition. As per said agreement whether consume or not the appellant is bound to pay 75% of the charge of the contract demand. There was request for decreasing contract demand and the Hon'ble High Court has directed the opposite parties to consider the request of the appellant.

3. When the appellant requested for HT electric connection in 1990 he was asked to install a combined transformer/ potential transformer (hereinafter called CT/PT unit) and also ToD meter for measuring the electricity consumption. So the appellant purchased a new CT/PT unit of Intranse Systems of Aluva but when it was surrendered to opposite parties for installation, the appellant was informed that it was not of correct ratio and the same was replaced with CT/PT unit of Auto Electric Company by the Opposite Parties. This CT/PT unit has been installed and since 1990, the appellant has been using it.

4. When there was a defect in metering in September 2004 the appellant submitted a complaint to the opposite parties. In that complaint the appellant had informed the opposite parties that there was a huge increase in the record in the maximum demand without any additional load consumed in the factory. There was no action taken on the matter by the opposite parties and a reminder was sent in 19-11-2004.

5. After several months of that complaint dated 20-10-2004 and reminder dated 19-11-2004 a team from TMR Division, Pallom of the opposite parties inspected the CT/PT unit and ToD meter and the appellant was asked to repair the CT/PT unit and ToD meter. So on the appellant requested the opposite parties to make arrangements for taking the CT/PT unit for repair through a letter dated 06-08-05. On the same day, the

appellant got dismantled the CT/PT unit and repaired the same and a new ToD meter was also purchased and both were produced before TMR division Pallom for inspection on 24-08-2005 and CT/PT unit was rejected on the ground that ratio of CT/PT unit was not matching with the contract demand and was asked to replace the same with a new one through a letter dated 24-08-05. The appellant had placed the order for a new CT/PT unit and one month had been taken to get the new one and to install the same. It is pertinent to note here that the appellant was using the CT/PT unit since 1990 and there was no increase in consumption of electricity.

6. When there was a sum of Rs. 26,077.50/- is seen adjusted in the bill of September 2005 the appellant requested for the details of the same and the appellant was given an explanation and copy of the gazette notification. The appellant submitted a complaint to Sri Rishiraj Sing, Inspector General (Vigilance), KSE Board. On 28-02-2006 the opposite parties issued a notice calling upon to appellant to remit Rs. 82,859/- or they will disconnect the supply of energy. In notice it has been stated the amount demanded by way of penalty (A true copy is attached herewith. Without considering the complaint the opposite parties on 21-03-06 disconnected electric supply to the appellant. The action of the opposite parties is contrary to the law governing the matter. When there was no delaying in installing new CT/PT unit, the opposite parties went wrong in demanding interest at the rate of 24% and also penalty. There is no reason to reject the repaired CT/PT unit. The reason that ratio of CT/PT unit was not matching with the contract demand of the electricity is not correct. In fact, it was used for the last 14 years without any complaint and at that time, the opposite parties have no case that the ratio of CT/PT unit was not matching with the Contract Demand. The Gazette Notification has no application in the matter and it does not provide for demanding interest or penalty for the delay in installing the CT/PT unit and in fact there was no delay in installing the unit.

Aggrieved by the disconnection of electric supply and the notice demanded the amount the appellant filed writ petition before the Hon'ble High Court as WP(C) No. 8867 of 2006 (E). On 17-08-2016 the Hon'ble High Court passed an order and directed to this appellant that to make an appropriate application before the CGRF having jurisdiction over the area in question. Appellant has already remitted the amount as per notice of the opposite parties. Opposite parties are not entitled to retain the same since they have no right over it. Appellant is entitled to get the said amount back and opposite party is liable to return the same.

As per the order of the Hon'ble High Court the appellant filed this complaint before the Consumer Grievances Forum, Kerala State Electricity Board- Southern Region, Vydhyuthi Bhavanam, Kottarakkara as OP No 260/2016. But the forum dismissed the case of the appellant. Hence this Appeal filed.

Reliefs sought for:

The order in OP No 260/2016 of the Consumer Grievances Redressal Forum, Southern Region, may be set aside and following relief may be granted.

1. Pass an appropriate order and quash the letter dated 24-08-05 of the opposite parties directing to replace the CT/PT unit.
2. Direct the respondent to return the amount with interest to the appellant which was illegally collected in the name of penalty and interest for the delay in installing new CT/PT unit.

**Arguments of the respondent:**

1. The appellant was an H.T Consumer with Consumer Code 15/1954 under Electrical Section, Kidangoor. The averment made by the appellant that the above unit is a registered sick unit may be put to strict proof as the same is not known to this defendant.

2. The appellant executed HT agreement No: HT 6 of 1990 on 23-07-1990 with KSEB Ltd with the Contract Demand of 140 kVA with H.T Code 15/1954. It is admitted that the appellant filed W.P. 1168/2004 before the Hon'ble High Court of Kerala and the same was disposed of with a direction to Deputy Chief Engineer, Electrical Circle, Kottayam to pass appropriate orders in accordance with law within a period of one month. The Deputy Chief Engineer, Electrical Circle, Kottayam passed order No: DB1/HT.gl/04-05/6 dated 02.04.2004 directing the appellant to approach Deputy Chief Engineer, Electrical Circle, Pala under whose jurisdiction the appellant service connection was transferred with necessary documents in order to reduce contract demand. But the appellant failed to adhere to the required formalities and submit the application with relevant documents for reducing contract demand.

3. Anyhow as a licensee it is incumbent upon KSEB Ltd to ensure that the service connection is effected with correct meter. The ToD meter and CT/PT units were found defective subsequently and the appellant was asked to replace the same.

4. As per letter dated 20-10-2004 (Exhibit D1), the appellant complained to the Special Officer (Revenue) that there is a huge increase in the Maximum Demand without any alteration in the connected load. Based on the above the experts from TMR Division, Pallom inspected the premises and directed the appellant to replace the defective CT/PT unit and ToD meter. Later as per (Exhibit D2) communication dated 08-06-2005, the appellant was formally directed to replace ToD meter and CT/PT unit within one month by the Deputy Chief Engineer, Pala. Hence the averment made by the appellant that no action is taken on the complaint made by him is against facts hence denied. On the other hand there is gross negligence from the part of the appellant in replacing the ToD meter and CT/PT unit as instructed.

5. The expert team from TMR Division inspected the premises of the appellant on 08-02-2005 and the appellant was advised to replace the CT/PT unit erected with single CT Ratio 10/5A then and there itself and later as per formal communication dated 20-07-2005 (Exhibit D3), the appellant was asked to replace the meter and CT/PT unit failing which penal charges as per rules will be levied. Earlier as per the letter dated 09-07-2005 (Exhibit D4), the appellant informed KSEB Ltd that he intends to repair CT/ PT Unit against the direction to replace the same. As per (Exhibit D3) letter dated 20-07-2005, the Deputy Chief Engineer, Electrical Circle, Pala, the appellant was asked to replace the CT/PT unit and ToD meter and allowed one month time for the same. The appellant was not serious in complying with the directions issued by the KSEB Ltd. As per Exhibit D3 communication, the appellant was also informed that in case the appellant fails to replace the CT/PT and ToD meter 50% extra over and above the demand and energy charges will be charged as per tariff revision order clause X (d) (page 9 of gazette) in part II HT- in B.O. (FM) No:1462/02/TRAC/To-1/2002 dated 24-10-2002 published in Kerala Gazette dated 01-11-2002. The rectification of faulty CT/PT unit and ToD meter was done by the appellant only on 21-11-2005 with inexcusable delay.

6. The appellant was charged as per the provisions of tariff notification for the failure in replacing faulty CT/PT Unit and energy meter as detailed below.

| CC Month     | MD + CC          | 50% extra for MD+CC | Duty          | Surcharge     | Total         | Remitted Amount | Short        |
|--------------|------------------|---------------------|---------------|---------------|---------------|-----------------|--------------|
| 09-2005      | 52154.62         | 26077.5             | 793.5         | 198.38        | 79224         | 53145           | 26079        |
| 10-2005      | 52154.62         | 26077.5             | 793.5         | 198.38        | 79224         | 53150           | 26074        |
| 11-2005      | 49907.75         | 24954               | 718.6         | 179.65        | 75760         | 50806           | 24954        |
| <b>Total</b> | <b>154216.99</b> | <b>77109</b>        | <b>2305.6</b> | <b>576.41</b> | <b>234208</b> | <b>157101</b>   | <b>77107</b> |

The factual position is that there are no adverse remarks or findings from the part of the Vigilance wing on the complaint filed by the appellant till date. Therefore it is apparent that there is no basis in the grievances raised by the appellant. A detailed explanation was given to the appellant as per (Exhibit D5 and Exhibit D6), communications dated on 28.11.2005 and 28.02.2006 respectively.

As per special condition (4) in HT agreement the consumer has the responsibility to repair and maintain the CT/PT unit and ToD meter and the cost for the same has to be met by the consumer. The penalization for lapse in replacing the defective CT/PT and ToD meter is as per the tariff order and same were imposed on serving notice to the appellant.

The fee for belated payment was demanded for realisation from the appellant as per approved rates of Tariff Regulatory Commission and there

is no lapse in this regard. The appellant is bound to install CT/PT Unit of required ratio and ToD meter as per the specifications. The complaint made by the appellant about huge increase in demand and insisting to continue with the defective CT/PT unit and ToD meter were in paradox hence cannot be admitted. As on date the service connection is dismantled for non clearance of dues and Revenue Recovery process are in progress for the realization of dues.

The chronological chain of events related to subject case is produced (Exhibit D8) and the same clearly indicates that there is no lapse from the part of KSEB Ltd. None of the reliefs sought for is allowable to the appellant. The findings of CGRF, Kottarakkara is as per rules in force and sustainable. Hence it is humbly prayed that the Appeal Petition may be dismissed with costs to this defendants.

**Analysis and Findings: -**

The hearing of the case was conducted on 21-07-2017, in the office of the State Electricity Ombudsman at Edappally, Kochi, and the appellant was represented by Sri. Jose Joseph and the respondent by the Assistant Executive Engineer of the Pala Sub Division, Sri Baby Y and they have argued the case, mainly on the lines stated above.

On examining the Petition and argument notes filed by the appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

The appellant has approached the Hon. High Court of Kerala seeking orders not to collect penalty and interest for the delay in installing a new CT/PT unit in his premises. The Hon'ble High Court of Kerala in the judgment dated 17-08-2016 in WP (C) No. 8867 of 2006 have directed the appellant to make an appropriate application before the CGRF having jurisdiction over the area in question and the CGRF to pass appropriate orders on the said complaint within a period of three months from the date of receipt of such application. The appellant had filed a petition before the CGRF. The CGRF had arrived at a conclusion that the impugned bill issued is genuine and sustainable and the appellant is liable to pay the amount. The appellant approached this Authority against the orders passed by the CGRF.

The appellant has contended that he had made a complaint before the respondent on alleging certain defects in the metering of electrical energy. Subsequent to this complaint, the officials of TMR Division, Pallom inspected the CT/PT unit and the ToD meter and noticed some defects in the ToD meter and CT/PT unit. The appellant was directed to replace the ToD meter and CT/PT unit, by the letter dated 8/6/2005 of Deputy Chief Engineer, Electrical Circle, Pala, within one month from the date of receipt of the letter. In letter dated 24/7/2005 of the Deputy Chief Engineer,

Electrical Circle, Pala, the appellant was further allowed one month time from the date of the letter to replace the faulty unit by new one. The repaired CT/PT unit and a new ToD meter were produced in the TMR Division for inspection on 24-08-2005. The Meter Testing Unit rejected the CT/PT unit on the ground that the ratio of CT/PT was not matching with the contract demand and the appellant was asked to replace the same with a new one. According to the appellant, the mystery for rejecting the CT/PT unit which was working for the last 14 years has led to the unnecessary delay and expenses. There was no intentional delay for replacement of the CT/PT unit, though orders were placed for purchase, but it took more than one month for the supply of the new CT/PT unit. It is averred by the appellant that the new CT/PT unit was produced at Testing Unit Pallom and received back after testing, but the commissioning of the ToD meter was done by the KSEB officials only on 21-11-2005. An amount of Rs. 26,077/- (50% of the electricity bill of August 2005) towards penalty for faulty CT/PT was issued to the appellant. Again the appellant was issued another arrear bill amounting to Rs. 82,859/- with interest 24% per annum towards the penalty for faulty CT/PT and ToD meter for the months of 09/2005, 10/2005 and 11/2005. The appellant's contention is that there is no reason to reject the repaired CT/PT since it was used for the last 14 years without any complaint and at that time, the respondent had no case that the ratio of CT/PT unit was not matching with the contract demand.

The respondent, in reply to the above contentions of the appellant, has argued that as per special condition (4) in HT agreement the consumer has the responsibility to repair and maintain the CT/PT unit and ToD meter and the cost for the same has to be met by the consumer. The penalization for lapse in replacing the defective CT/PT and ToD meter is as per the tariff order and same were imposed on serving notice to the appellant. The appellant is bound to install CT/PT Unit of required ratio and ToD meter as per the specifications.

On going through the documents submitted by both parties, the appellant had produced the repaired CT/PT for testing on 24-08-2005, but rejected the CT/PT unit on the ground that the ratio of CT/PT was not matching with the contract demand and the appellant was asked to replace the same with a new one. The appellant purchased a new CT/PT unit on 19-10-2005 and the same commissioned only on 21-11-2005 by the respondent. As per tariff revision order clause X (d) (page 9 of gazette) in part II HI- in B.O. (FM) No: 1462/02/TRAC/To-1/2002 dated 24-10-2002 published in Kerala Gazette dated 01-11-2002, "the maintenance and replacement of the defective meters shall also be done by them at their cost. They shall also do the maintenance and replacement of defective CT/PT and all other equipments owned by them at their cost. If they fail to do so, within one month of notice of intimation, they will be charged 50% extra over the ratio notified in this order both for demand and energy". Here the appellant purchased the new ToD meter on 23-08-2005 and the repaired CT/PT unit produced for testing on 24-08-2005. Later as per direction received from the respondent purchased a new CT/PT unit and produced for testing on 19-10-2005. There occurred some delay on the part of the appellant to procure the

CT/PT unit and there was also delay to commission the same by the respondent. The appellant was allowed one month time for replacement of the faulty items, vide letter dated 24-07-2005 by the Deputy Chief Engineer. Considering the above facts, I am of the opinion that the 50% extra charged may be limited from 25-08-2005 to 19-10-2005.

### **Decision**

The appellant was allowed one month time for replacement of the faulty items, vide letter dated 24-07-2005 by the Deputy Chief Engineer i.e., time allowed till 24-08-2005 and the appellant produced the repaired items within the time specified which was rejected on some technical grounds. The appellant purchased the new CT/PT on 19-10-2005 and produced for inspection as directed by the Dy. Chief Engineer, Electrical Circle, Pala, but the commissioning of the same delayed up to 21-11-2005 not because of the fault of the appellant. In view of the above discussions, the issuance of bills for Rs. 26,077/- and Rs. 82,859/- is hereby quashed. Penalty of 50% extra charged is limited from 25-08-2005 to 19-10-2005 and the respondent shall issue revised bills accordingly. Excess amount if any, collected shall be refunded with bank interest applicable. The revised orders shall be issued within a period of 15 days from the date of receipt of this order.

The order of CGRF in OP No. 260/2016 dated 30-03-2017 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/053/2017/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Jose Joseph, Managing Partner, Universal Rubbers, Cherppunkal P.O., Pala, Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Pala, Kottayam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.