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APPEAL PETITION No. P/096/2017
(Present: A.S. Dasappan)
Dated: 26th December 2017

Appellant : Sri. Muhammed Haji
Hotel Whitelines, Kallai Road,
Kozhikode

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Nadakkavu,
Kozhikode

The Special Officer (Revenue)
Vyduathi Bhavanam, KSEBL, Pattom,
Thiruvananthapuram

ORDER

Background of the case:

The appellant is running a hotel M/s Hotel Whiteline, having HT connection with consumer code 16/1631 under Electrical Section, Central, Kozhikode. Since the appellant failed to comply the Board orders to install ToD meter in the premises, he was charged 50% extra over the rates notified for demand and energy and accordingly a penal bill was issued to him amounting to Rs.7,04,980/-, for the period 1/2001 to 9/2005. Aggrieved by this bill, the consumer filed a Writ petition before the Hon High Court of Kerala, in WP (C) 28197/2005 and the Hon'ble High Court of Kerala quashed the demand and ordered that consumer is entitled to get refund of the same and to be adjusted against the future bills of the petitioner, vide its judgment dated 13th April 2012 . KSE Board Ltd filed Writ Appeal No.115/2015 against impugned judgment and on 07-10-2016, the Hon'ble High Court of Kerala vide its judgment dismissed the Writ Appeal.

The appellant again approached the CGRF, Kozhikode, praying that he was entitled to get interest at the rate of two times the bank rate and also raised HT cable fault. The CGRF has ordered as follows:

(1). The respondent can realize the FC of the HT premises under LT tariff during the HT failure period from 2-7-2013 to 21-11-2013.

(2). The demand billed for the previous 5 months prior to the failure of HT supply ie 2,3,4,5 & 6/2013, shall be taken for the billing during the failure period.

II

1. The request of the petitioner for the interest on their excess amount for the period from 10/05 to 09/06 is allowed.

2. The respondent shall pay the interest at prevailing bank rate for Rs.4,57,921/- from 09/06 to 02/14 ie, the month on which the adjustment started and thereafter for the balance amount after adjusting each regular bill till the adjustment is over.

Still aggrieved by the decision of CGRF in order OP No. 182/2016-17 dated 07/07/2017, the appellant has submitted the Appeal petition.

Argument of the Appellant :

The main contentions of the appellant are the following:

Though the CGRF has allowed the petition filed, the Forum has not specified the interest at twice bank rate as allowed under Regulation 72 (3) of the Supply Code, 2014. The orders of CGRF also not contained any direction to pay the interest at the rate of sixteen percent per annum compounded in every six months as provided in regulation 158 (17) of Supply Code, 2014. The appellant has requested specific orders for payment of interest on the above lines as stipulated in the regulations.

Another argument raised by the appellant is that the licensee could not provide HT power supply during the period from 02-07-2013 to 21-11-2013 due to defect of HT cable. It is contended that the licensee is not empowered to impose charges during the above period as the failure to provide electricity supply caused from the defect of HT cable. The appellant utilized the service of LT connection available in their premises and remitted energy charges at commercial tariff resulting heavy loss to him. The appellant requests to refund the amount recovered by the licensee towards the demand charges for 5 months for Rs.106000/- with interest.

Arguments of the respondent:

The consumer M/s Hotel White Line, Kallai is a high tension consumer of the KSE Board Ltd in the jurisdiction of Electrical Circle, Kozhikode bearing Consumer code - 16/1631. There was a special condition in the HT tariff revision order dated 29-01-1997, the special condition was;

(1) All the existing HT/deemed HT/Consumers (other than Agricultural and Seasonal) shall purchase and install TOD meters at their cost with in the time prescribed by the Board. The maintenance and replacement of the defective meters shall be done by them at their cost. If they fail to do so they will be charged 50% extra over the rates notified in the order both for demand and energy. The Appellant did not follow the special condition of the above said tariff order which led to issue the penal bill for Rs.7,04,980/- dated 28-10-2005. M/s Hotel Whiteline challenged the demand before the Hon'ble High Court of Kerala in the WP (C) 28197 /2005. The Hon'ble High Court of Kerala vide its judgment dated 13th April 2012 quashed the demand and the petitioner consumer is entitled to get refund of the same and to be adjusted against the future bills of the petitioner (Copy of the judgment submitted as Exhibit R1) .

KSE Board Ltd filed Writ Appeal No.115/2015 against the impugned judgment of the Hon'ble High Court of Kerala dated 13-04-2012. Meanwhile the Appellant consumer filed Petition OP No.94/2013-14 before the CGRF Northern Region, Kozhikode. The Forum closed the petition with the direction to the respondents to comply the Hon'ble High Court's order subjected to the decision of appeal court and further the respondent is restrained from disconnecting supply of the consumer on arrears of payment till the disposal of the Writ Appeal.

On 07-10-2016, the Hon'ble High Court of Kerala vide its judgment dismissed the Writ Appeal No.115/2014 filed by the Board. Consequent to the dismissal of the Writ Appeal Petition KSE Board Ltd decided to comply the judgment of Hon'ble High Court of Kerala dated 13-04-2012 in WP (C) No.28197/2005. Accordingly vide Order No.SOR/AMU/HTB-16/1631/2016-17 dated, TVPM 12-01-2017 withdrawn the penal demand and adjusted the excess remittance against their arrears for the period from 1/14 to 8/14.

KSE Board Ltd issued the penal bill for non-installation of ToD meter according to the rules then prevailed, consumer challenged this before the Hon'ble High Court and the Court found the rule invalid and quashed the demand ordering to refund of the excess remittance made by the petitioner and KSE Board Ltd strictly followed the judgment. Hon'ble High Court or

Appeal court never ordered for payment of interest. In the subject issue the order of CGRF for interest at bank rate seems not correct, and so it has to be challenged before the Appeal Court.

The arguments of appellant for the refund of interest at compounding rate is not applicable in the subject issue. The above said refund is only applicable to those who approach the Appellate Authority U/s 127 of the Electricity Act 2003 against assessment U/s 126 of the Act.

As per Clause 158, sub clause 17 & 18 of Kerala Electricity Supply Code, 2014. (17) "In case the Appellate Authority holds that no case of unauthorized use of electricity is established, no further proceedings shall be initiated or continued by the licensee in this regard and the amount deposited by the appellant shall be refunded along with interest at the rate of sixteen percent per annum compounded every six months for the period from the date of deposit till the amount is refunded.

(18) In the case the amount payable as determined by the Appellate Authority is less than the amount already deposited by the consumer at the time of filing the appeal, the excess amount shall be refunded along with interest at the rate of sixteen percent per annum compounded every six months from the date of such deposit till the date of refund".

The respondent submits that on being aggrieved by the order dated 07-07-2017 of the CGRF, Kozhikode in OP 182/2016-17, the KSE Board Ltd has decided by its order No.B.O.D(D&IT)2308/2017 (LAW1/HT/2247/2017 dated, TVPM 14-09-2017 (Exhibit R2) to challenge the said order of the CGRF by filing Writ petition before the Honourable High Court of Kerala. Hence it is humbly prayed that this Honourable forum may be pleased to adjourn further proceedings otherwise this opposite party will be caused irreparable damage.

Hence this respondent prays that to dismiss the appeal on the grounds stated above and in the circumstance that these respondents are challenging before the Hon'ble High Court, the original order on which this appeal has been filed.

Analysis and Findings: -

The Hearing of the Case was conducted on 12.12.2017 in my office at Edappally and Sri Muhammed Haji appeared for the appellant, and Sri. Anil Kumar, Asst. Engineer, Electrical Section, Central, Kozhikode, Sri Mohanan K, A.O., O/o the SOR and Sri. Somankutty O/o the LA & DEO, represented

each side. On examining the Appeal Petition, the counter statement of the Respondent, perusing the documents attached and the arguments in the 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.

The CGRF has allowed the petition. The appellant, still not satisfied with the order of CGRF, has claimed interest for the deposited amount of Rs. 4,57,921/- at twice the bank rate or @ 16%, as provided in Regulations 72 (3) or 158 (17), in his appeal petition.

The dispute pertains with regard to the entitlement of interest and the period of interest for the penal amount collected by the respondent and retained by the KSEB till its adjustment and to refund the amount recovered by the licensee towards the demand charges for 5 months for Rs.106000/- with interest.

The contention of the respondent is that the claim of interest is a settled matter by the judgment of the Hon. High Court and there exists no grounds to reopen the matter. The respondent also contended that the refund of interest at compounding rate under Regulation 158(17) is only applicable to those who approach the Appellate Authority U/s 127 of the Electricity Act 2003 against assessment U/s 126 of the Act.

Hence the first point to be examined is whether the issue of interest on 'deposited amount' had already been settled or render a bar of subsequent claim for interest, in view of the Hon. High Court judgment issued. As per the judgment, though the Court has not granted the 'interest for excess amount' but the appellant can agitate his claim for interest in appropriate proceedings. Considering this fact, CGRF entertained the complaint claiming interest and I also view that the appellant's claim for interest need to be considered as he has deposited excess amount. Therefore, as far as the question of the maintainability of the case is concerned, there is no merit in the averment of the respondent.

The appellant has raised another argument regarding the applicability of Regulation 158 (17) of the Supply Code, 2014. The appellant's case not pertains under the purview of Section 126 and any action was initiated against the appellant by the respondent under Section 126. Reg. 158 (17) necessitates that, if after the review of the bill, the consumer is overcharged, the excess amount paid by the consumer shall be refunded to him with interest against assessment under Section 126. Similarly regulation 72 (3) of the Supply Code, 2014 relates to interest on security deposit. Since the excess amount collected from the appellant is not a security deposit, this provision is also not applicable in the appellant's case.

The consumer has remitted a sum, as penal amount for installation of TOD meter, raised by the respondent. Hence, the amount so deposited, if found excess, needs to be refunded with interest as per Regulation 134 (2) and (3), which reads as

“(2) If, after payment of any bill, it is established that the licensee has overcharged the consumer, the excess amount shall be refunded to the consumer with interest at bank rate as on the date of remittance of such excess amount.

(3) The licensee may refund such overcharged amount along with interest at bank rate as on the date of remittance of such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque”.

It is undisputed that the penal bill claimed by KSEB was an overcharged bill and that is why the party was forced to deposit excess amount. When over charged amount is refunded, the consumer is surely eligible for interest. The definition given for bank rate is ‘means the rate at which the Reserve Bank of India is prepared to buy or rediscount bills of exchange’. It is not the commercial Bank’s Interest rate for deposits. I learn the Bank rate as 6.25% only and so the consumer is eligible for 12.50 % interest for excess amount.

Regarding the appellant’s contention to refund the amount recovered by the licensee towards the demand charges for 5 months for Rs.106000/- with interest, the CGRF, in its first part of the order, has directed the respondent to realize the fixed charge of the HT premises under LT tariff during the HT failure period and also directed the demand billed for the previous 5 months prior to the failure of HT supply shall be taken for the billing during the failure period. In the above circumstances, as I felt it as correct decision, no need to change this decision.

The respondent submits that the licensee has decided to challenge the said order of the CGRF by filing Writ petition before the Honourable High Court of Kerala.

But the respondent has neither furnished a copy of the writ petition nor given a petition number. A mere sanction from the licensee to file a writ not restricts this Authority to take a decision on this case. Hence their request for adjourn the proceedings is not admitted.

Decision: -

From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

The orders issued by the CGRF in OP No.182/2016-17 dated 07-07-2017 is upheld. It is decided that the appellant is eligible to get interest @ 12.50 % (twice the bank rate) for the complete excess amount paid, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount

in full by cheque. The respondent may prepare an interest calculation statement accordingly and adjust the interest amount so arrived at, in the next bill or subsequent bills of the consumer. The KSEB has to implement this within 60 days of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed to the extent ordered. No order on costs.

Electricity Ombudsman

Ref No: P/ 096/ 2017 dated _____

Forwarded to:

1. Sri Muhammed Haji, Hotel White Lines, Kallai Road, Kozhikode.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Nadakkavu, Kasaragod.
3. The Special Officer (Revenue), Vydhyuthi Bhavanam, KSEBL, Thiruvanathapuram

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvanathapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum, Northern Region, Vydhyuthi Bhavan, Gandhi Road, Kozhikode

