

THE STATE ELECTRICITY OMBUDSMAN
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REVIEW PETITION No. RP/04/2018 in APPEAL No. P/096/2017
(Present: A.S. Dasappan)
Dated: 27th June 2018

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

Review Respondent : 1. The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Nadakkavu,
Kozhikode

2. The Special Officer (Revenue)
Vydhyuthi Bhavanam, KSEBL,
Pattom,
Thiruvananthapuram

ORDER

Background of the case

The gist of the appeal petition preferred by the appellant/review appellant before this Authority is as follows:

The appellant is running a hotel M/s Hotel Whitelines, 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 i.e. 1, 2, 3, 4, 5 & 6/2013, shall be taken for the billing during the failure period.

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 and the same was disposed of by upholding the orders issued by the CGRF, vide order dated 26-12-2017. It was 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 and also directed the respondent to prepare an interest calculation statement accordingly and adjust the interest amount so arrived at, in the next bill or subsequent bills of the consumer. Still aggrieved by the decision, the review appellant has submitted this review petition with a plea to review the orders and to allow the reliefs sought for.

Argument of the Appellant

The main contentions of the appellant are the following:

The review appellant was penalized wrongly by KSEBL alleging unauthorized use of electricity measured without providing a ToD meter. The review appellant approached the Hon. High Court of Kerala against the above allegation and acquired order in favour of him. As such the appellant is eligible for 16% interest compounding in every six months as per Section 158 (16) of Supply Code and requested for the same. The appellant produced the reply received from Reserve Bank of India under Right to Information Act pertains to the rate of interest. If the review appellant is not eligible for 16% interest as per Section 158(16) of Supply Code twice the rate fixed by RBI may be granted under Section 72(3) of Supply Code.

Arguments of the respondent

(1) The Review Petition filed by the Petitioner/Review petitioner is not maintainable before this Hon'ble Electricity Ombudsman since the Petitioner/Review Petitioner had not raised any mistake or apparent error on the face of the record in the order dated 26-12-2017 of this Hon'ble Authority. Moreover, the Review Petition is hit by limitation. An application for Review petitioner is to be filed by the complainant within 15 days from the date of receipt of the order. In this case, the order was pronounced by this Hon'ble Authority on 26-12-2017 and delivered the same to the Petitioner/Review petitioner. But the Petitioner/Review Petitioner approached this Hon'ble Authority on 07-05-2018 without specifying any reason for the delay in filing the Review Petition.

(2) The KSE Board Ltd, the respondent in this petition has examined the order dated 26-12-2017 of this Hon'ble Authority and decided to challenge the same before the Hon'ble High Court of Kerala. Vide B.O.D(F) No.351/2018 (LAW1/HT/2247/17) dated 06-02-2018 and are taking steps for the same.

Analysis and Findings

The hearing of the case was conducted on 19-06-2018 in my office at Edappally. Sri Muhammed Haji, the appellant informed his inconvenience to attend the hearing on 19-06-2018 as he was admitted to hospital and requested to issue final order without personal hearing on the review petition. Sri. E. Manoj, Assistant Executive Engineer, Electrical Sub Division Nadakkavu, Kozhikode and Sri. P. Pradeep, Superintendent, O/o the Special Officer (Revenue) represented the respondent's 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 review petition submitted by the appellant is time barred. An application for Review petitioner is to be filed by the complainant within 15 days from the date of receipt of the order. In this case, the order was pronounced by this Authority on 26-12-2017 and the Review appellant approached this Authority on 07-05-2018 without specifying any reason for the delay in filing the Review Petition.

The refund of interest at compounding rate under Regulation 158 (16) and (17) are 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. 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 the non-installation of ToD meter, raised by the respondent. Hence, the amount so deposited, if found excess, needs to be refunded with interest at bank rate as per Regulation 134 (2) and (3).

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 '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 (twice the bank rate) for excess amount.

Decision

In view of the above discussions, I hold that review petition is not maintainable as there is no cause or sufficient reason established by the review appellant, for the review of the order already issued. Hence the review petition is dismissed and disposed of accordingly.

ELECTRICITY OMBUDSMAN

Ref No:RP No.04/2018 in Appeal 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, Kozhikode.
3. The Special Officer (Revenue), Vydhyuthi Bhavanam, KSEBL, Thiruvananthapuram

Copy to

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