

STATE ELECTRICITY OMBUDSMAN

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Representation No: P/145/2010

(Present: T P VIVEKANANDAN)

- Appellant: M/S SAJ FLIGHT SERVICES (P) Ltd,
Airport, Thiruvananthapuram.-695008
- Respondent: Kerala State Electricity Board.
(Represented by)
- 1) The Deputy Chief Engineer,
Electrical Circle, KSEB, Thodupuzha, Idukki Dt.
 - 2) The Special Officer (Revenue),
Vydyudhi Bhavanam, Pattom,
Thiruvananthapuram-4 -Pin 695004.

ORDER

M/S Saj Flight Services (P) Ltd, Thiruvananthapuram is a registered HT Consumer, vide No: HTB 16/4137, of Electrical Section, Peerumedu, under the jurisdiction of Electrical Circle, Thodupuzha and is the petitioner in this case. They have filed a representation against the order of CGRF, Ernakulum, having not satisfied with its decision and is the cause of this Appeal Petition.

Background of the case:

The consumer was having a Connected Load of 161.17 KW and contract Demand of 100 KVA under HT IV Commercial Tariff, for its Resort at Vagamon, Idukki Dt. Being so, the Firm submitted an application dated 24/07/2008 to KSEB requesting to reduce the contract demand to 50 KVA from 100 KVA. As there was no favorable decision from the Licensee, they filed a complaint at the CGRF, Central Range, Ernakulum, for redressing the same grievance. The Forum, after hearing both sides, found the grievance as genuine and ordered to give the effect of their request, that is, to reduce their Contract demand to 50 KVA with effect from. 01/02/2009. Further, the Forum had ordered that the MD (Maximum Demand) Charges collected in excess of 50 KVA, if any, from the petitioner shall be adjusted in future bills. Consequently, the Agreement Authority i.e. Deputy Chief Engineer, Electrical Circle, Thodupuzha, entered into an agreement with the consumer on 27/08/2009, for effecting the Contract Demand reduction to 50 KVA from 100 KVA. But the Licensee, KSE Board, gave the effect of reduction in Contract Demand only with effect from 27.08.09, instead of 01.02.09 as ordered by the CGR Forum, which is the basis of the cause of this case filed before this Authority, besides other Grievances.

The second complaint was regarding the levy of LTVIIA Tariff instead of the earlier tariff of HT IV Commercial consequent to reduction in contract demand. It is alleged that, the Licensee on

the pretext of the argument that 'after the reduction of Contract Demand below 100 KVA, it is basically a LT Connection and the corresponding Commercial Tariff is LTVIIA, and therefore changed the existing tariff of HT commercial to LT commercial (VIIA) and billed the consumer accordingly' is not in order.

The third complaint is regarding disconnection of supply without following the rules in force i.e. issue of proper notice. It was also alleged that high consumption bills were issued during the months of Meter faulty periods (11/09 onwards) and they have lodged complaints with **SOR (Special Officer Revenue)** for reviewing the bills as Energy Meter was faulty, but the same was not responded and finally ended in wrong disconnection of their electric service connection.

Argument of the petitioner:-

The main points were as follows:-

1) The CGRF, Ernakulum has ordered in Complaint No 3/2009-10 dated 01/08/2009, filed by the petitioner, that he is eligible to get the reduction in Contract Demand to 50 KVA from 1/2/09 onwards. It also directed the Licensee (KSEB), to adjust the excess amounts collected by way of MD Charges, in the future bills of the consumer. Fresh Agreement has been executed with KSEB for reducing the Contract Demand but they have not refunded the excess amount collected from us. Till Oct: 2009, an excess amount of Rs 145509/- is lying with KSEB towards refund.

2) Board is bound to obey the orders of CGRF unless they file Appeal in Hon: High Court. They have charged LTVIIA Tariff from Nov: 2009 onwards. But CGRF Order did not correct this wrong Tariff change. Strangely, Board itself is charging HT Tariff, for a load of 38 KVA for us, under Kumily Section. Hence the stand taken by SOR to apply LT VIIA tariff is without any basis. For HT Consumers, only HT Tariff is applicable.

3) The Meter Readings obtained for Nov: 09 & Dec: 09 and Jan: 10 were high. We have lodged complaints and requested SOR (KSEB) to give average bills for the same period. But SOR did not issue revised bills in time and the revised bills were issued only in May 2010. Meanwhile they have disconnected our service on 1st April- a holiday, without notice as per 38(i) and also in violation of clause 25(3) of Supply code, and next day also happened to be a holiday. The CGRF did not look into these issues, even though we have raised the issue before them.

4) When Rs 145000/- is due to the consumer, how KSEB can disconnect for an amount of Rs 11000/- owed by us, and that too, during the pendency of the case. The statement of Accounts Officer that they will not obey the orders of CGRF has to be taken seriously.

5) On 23.3.2010 we have remitted the February/ 2010 bills. We have a Security Deposit (SD) of Rs 2.5 lacs and a refund amount of 1.45 lacs with Board. Even then, they disconnected our supply. The statement that they issued D/C notice is not correct. This has to be proved. The monthly invoices are reaching late, usually, by the end of the month. The action of SOR in effecting the D/C is without following norms.

Relief sought by the Petitioner: -

- 1) Set aside the order dated 25.5.2010 of CGRF Kochi.
- 2) Take Contempt against SRO for not obeying the Order of the Hon: CGRF to reduce Contract Demand with effect from 1.2.2009. All the bills from 1/2/2009 should be rectified.
- 3) 15 days time is given for remittance of bills.
- 4) Excess amount to be refunded with interest.
- 5) Compensation for Business losses, Reputation damage and hardship due to illegal action of KSEB.
- 6) Litigation Costs.

Argument of Deputy Chief Engineer, Electrical Circle, Thodupuzh

1). The Electric service was provided to the consumer on 24.12.2004 under HT/ IV Commercial Tariff. The consumer sent a request on 24.07. 2008 demanding reduction in contract demand

from 100 kva to 50 kva. The revised Agreement executed and contract demand reduced to 50 kva on 27/08/2009 only.

2). The Executive Engineer inspected the Metering equipments of the consumer and reported them as faulty on 24/02/2010 and advised to revise the bills of 12/2009 and 01/2010. The consumer was intimidated, vide letter dated 25/02/2010, to replace the faulty Meter but the same was replaced only on 31/07/2010. As per rules the consumer is bound to replace the faulty meter within 2 months failing which the consumer is liable to be penalized 50% extra charge.

3). Before disconnecting the electric supply, notices were issued to the consumer on 01/01/10, 02/02/10 and 10/03/10 for the invoices of 11/09, 12/09 and 01/10 respectively, to which the consumer did not respond. Hence the allegation of non issue of notice is false and against facts. As per the message from SOR (KSEB) the service was disconnected on the FN of 31/03/2010 which was a working day. The consumer remitted the dues on 03.04.2010 and reconnection was given on 04.04.2010 even though it was a holiday.

Averments of Special Officer Revenue (SOR):-

1). On 24.07.2008, the consumer applied to the Deputy Chief Engineer, Thodupuzha to reduce the Contract Demand to 50 kva from 100 kva. But Clause 14(a) of the Contractual Agreement was not observed by the consumer and hence the request was not heeded. They approached the Hon CGRF Central Region and filed petition on 24.04.2009. The Hon: Forum after hearing both sides, ordered to reduce the contract Demand to 50 kva w.e. from 01.02.2009 and also to refund the excess amount collected.

2). But as per KSEB observance, minimum, 100 kva is required for HT Connection. The reduction of Contract Demand has become effective, only after signing the Agreement, as per Clause 14(a), i.e. on 27.08.2009 only. The consumer was billed under LT VII A Tariff vide order dated 03.10.2009 and 28.07.2008 of the Board and hence the non compliance of the Hon: CGRF Order. Now the consumer is billed under HT IV- Commercial category from 03/2010 onwards consequent to Board Order dated 20.02.2010.

3). Due to Abnormal Energy Meter readings, the bills for 12/09 and 01/10 were revised as per the recommendations of the Exe. Engr concerned, as the Meter was reported to be faulty. The replacement of faulty Meter from consumer's side was delayed and hence penalty was imposed. The revised bills for 12/09 and 01/10 were Rs 32,653/ each and revised invoices issued on 27.04.2010.

4). The consumer has not remitted the bill of 11/09 for Rs 48,204/- which is a normal bill. Disconnection Notices were issued on 1/1/10, 2/2/10 and 10/3/10 by courier service. The monthly invoices are usually issued in between 10th and 13th of every month with time for payment as 15 days. Due to non remittance of arrears, and after issue of 3 Nos: of D/C Notices, the service was disconnected on 30.03.2010 and the same was reconnected on 3/4/2010, on payment of dues.

5). Arrear due to KSEB: - Rs 1,13,510/-
 Remittance on 3.4.2010 Rs 1, 10,000/-
 Balance to be remitted Rs 3,510/-

Hearings and Depositions:-

The hearing was conducted on 18.2.2011 at PWD Rest house, Kottarakkara, and all parties were present. The arguments of both parties were heard and were on the same lines, as detailed in the Petition and the Statement of facts submitted before this Authority by the parties, gist of which is reproduced above.

Findings:-

On analysis of the case, it is seen that there is some merit in the grievances of the consumer. Earlier, the Central Region CGRF, Ernakulam, after hearing both sides has ordered the relief sought i.e. to give the reduction in Contract Demand to 50 kva from 100 kva (for their HT service connection), with effect from 1.2.09. But this verdict was not complied fully by the Licensee and instead of giving the effective date from 1/2/09 as ordered by CGRF, the Respondent gave the effect from 27/8/2009 only. Either the Hon: CGRF's Order has to be obeyed

by the Licensee or if aggrieved, they should have approached the Hon: Courts for suitable remedies. Without observing these, the Licensee has taken a stand of non compliance of the Order of a statutory body established by Law, which is not in order.

The reason cited by the Respondent for the above action is that as per the Contractual Agreement conditions vide Clause 14(a), which the consumer is also aware, has to execute a fresh Agreement, and the same was done only on 27.8.2009 and hence the petitioner is eligible for Contract Demand reduction from that date only. This is not fully correct. The consumer has forwarded a letter dated 24.7.2008 requesting to reduce the Contract demand to 50 kva for their HT Service connection No HTB 16/4137. The Respondent, the Dy.CE, Ele.Circle, Thodupuzha should have informed the consumer the steps or procedures to be taken for reducing the Contract Demand, upon the receipt of the application. That is to say, the Dy. CE should have responded to the consumer's letter dated 24.7.08. The Clause 14(a) of the HT Agreement condition stipulates that, the consumer should notify the Board, his intentions of alterations, additions etc and obtain the prior approval of the Board before doing any such modifications. Then only the consumer can enter into an Agreement with Board.

Here in this case the consumer has notified the Board his intention of reducing his Contract demand. In normal course, the Board should have watched the consumer's Load Demands in ensuing months and intimated the consumer whether his request is feasible and if not, the reasons thereof. But the Board did not take any action on the consumer's request and the consumer approached the CGRF and obtained favorable Orders. Hence the argument of the Respondents that consumer did not submit the fresh Agreement along with the 'request' for reduction for Contract Demand, as envisaged in the 'Terms and Conditions of electric supply' 2005, and only after receipt of the same, further action from their side will begin, cannot be accepted.

The second complaint is regarding the **Disconnection (D/C)** of the service connection without notice. The averment of the respondents that notices were issued before D/C is disputed by the consumer. Actually, the invoices of monthly energy bills contain a D/C notice incorporated in it. However, SOR was able to show copies of separate D/C notices, for the arrear bills of 11/09, 12/09, and 01/10 issued to the consumer. But it was not seen acknowledged by the consumer. The SOR states that they are dispatching the notices through Courier Service even though notice is marked as 'under Registered Post'. There is no document to prove that the D/C Notices prepared has been delivered to the consumer. Further, no specific D/C notice, as contemplated under clause 38(1)(g) of the 'Terms and Conditions of Supply, 2005', citing the up-to-date arrears pending against the consumer with notice period given for clearing the dues for avoiding D/C etc, was seen issued to the consumer, before carrying out the actual disconnection of service on 30.3.2010.

Similarly the action of the SRO to impose LT VIIA Tariff, consequent to reduction in Contract Demand below 100 kva, was not a correct step. There is no basis for such a decision and the Board Order dated 28.7.2008 presented before this Forum is ambiguous and does not direct to levy LT VIIA tariff for existing HT consumers. I think the said Board Order is meant for existing LT consumers who opt to receive power at higher voltage (HT/EHT) for better voltage conditions at their end.

Moreover, in a similar situation under Kumily section during the same period, SOR was seen issuing HT Tariff (instead of LT VIIA Tariff) to the same consumer for a Contract Demand of 50 kva. Thus the stand taken by SOR is contradictory in two similar cases. Further, there is no specific tariff order approved by the Commission, authorizing the Licensee to change the tariff of a HT Consumer to LT tariff, upon Contract Demand reduction to below 100 kva. Therefore the imposition of LT VIIA tariff, consequent to Contract Demand reduction to 50 kva, by the respondents was found arbitrary and a wrongful act.

Decisions:-

On a detailed perusal of the averments contained in the Petition and the Statement of Facts submitted and the subsequent arguments done in the Hearing on 18.2.2011, by both parties and based on the analysis and findings of the same as detailed above, I come to the following conclusions and decisions thereof. The Hon:CGRF Order dated 25.5.2010 stands modified to the extent noted below;

- 1). The consumer is eligible to get the benefit of reduction in Contract Demand to 50 kva from 100 kva w.e. from 1.2.09 as ordered by Hon:CGRF. The MD Charges collected in excess thereof, shall be adjusted in the future monthly invoices due to the consumer. The consumer shall also be eligible for interest for this excess amount (MD Charges) collected, from the date of remittance till the day of adjustment, at the rate of interest applicable for Security Deposit kept with the Licensee. The adjustment of excess MD Charges shall begin from the next monthly invoice issued, after receipt of this order.
- 2). The direction for disconnection of HT Service No HTB 16/4137 under Electrical section, Peerumedu, was seen issued by SOR in violation of the clause 38(1) (g) of the Terms and Conditions of Supply,2005 and hence shall pay the consumer a compensation of Rs 1000/- thereof.
- 3). The action of Board to impose LT VIIA Tariff on the HT Consumer consequent to reduction in Contract Demand to 50 kva, on the pretext that HT Consumer should have a minimum load of 100 kva and further that if it falls below 100 kva, it belongs to LT Category, is without any basis and hence rejected. The bills prepared under LT VIIA (commercial) tariff, for the period 11/09 to 2/10 is to be withdrawn and revised bills issued, based on the HT Tariff rate itself. The excess amount collected, if any on the same (under this para (3)), may be refunded within forty-five days from the receipt of this order, with interest as specified under para(1) above, failing which double the interest rate shall be payable by the respondents.
- 4). The SOR shall endeavor to issue bills in time so that the consumer gets 15 days clear time for remittance. The Board may also try to send the monthly invoices through E-mail, to avoid delay in delivery of bills, if consumers also have the required e mail facility at their end.
- 5). The Respondents may give Rs500/- as Litigation cost to the petitioner.
- 6). There is no order for compensation on account of Business losses or Reputation Damage as it is not proved.

The Appeal petition filed before this Authority is decided as above and stands disposed of accordingly.

Electricity Ombudsman.

No P/ 145/ 2010/ 833 / dated 25.04.2011.

Forwarded to: 1) M/S Saj Flight Services Pvt Ltd,
Airport, Thiruvananthapuram-695008.

2) The Deputy Chief Engineer,
Electrical Circle, KSEB,
Thodupuzha, Idukki Dt.

3) The Special Officer Revenue,
KSE Board, Vidyuthi Bhavanam, Pattom, Thiruvananthapuram.695004

Copy to: 1. The Secretary, KSERC, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.

2. The Secretary, KSE Board, Vaidyuthi Bhavanam, Pattom, Thiruvananthapuram- 695004.

3. The Chairperson, CGRF, KSEB, Power house Building, Cemetery mukku, Ernakulam.