

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.keralaeo.org Ph.0484 2346488 Mob: +91 9567414885
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO: P /244/2011.

(Present: T P Vivekanandan)

APPELLANT : The Deputy Manager (Law)
Indian Oil Corporation Ltd.,
Kerala State Office, Panampilly Nagar,
Kochi

RESPONDENT : The Deputy Chief Engineer,
Electrical Circle, KSEB,Vydyuthibhavanam
Palakkad

ORDER.

Background of the case: -

M/s Indian Oil Corporation had availed a High Tension (HT) electric connection with a contract demand of 50 KVA from Electrical Section, Big Bazar, Palakkad with consumer No.17/1741. While so, in December 2003, the appellant wound up the operation of its Bulk Oil Installation (Depot) for which the connection was availed and thereafter started a retail outlet in its place. While so, on 27-05-2005, the appellant requested the Deputy Chief Engineer (Dy CE) to convert the HT power connection in the premises to a LT connection, with a connected load of 20KW. The respondent in reply asked M/s IOC to inform whether it can surrender the Distribution transformer (T'rfr), used by them free to KSEB. The appellant expressed its willingness but wanted to shift the T'rfr and its auxiliaries from their premises for which the respondent asked the appellant to deposit a sum of Rs. 42,609/- for carrying out the said shifting work. But the appellant preferred in retaining the equipment and allied facilities in the premises and replied that they had no objection in 12/2005.

While steps are being taken by the Dy CE to get sanction from the Chief Engineer, the consumer stopped all their activities in the said property and discontinued paying the electricity charge from the month of 2/2006 onwards. On 21.6.2006, the Special Officer Revenue (SOR), KSEB, raised a demand for Rs.81, 374/- towards the dues of current charges from 2/2006 to 5/2006 and interest as on 15/6/2006. Later in 12/2006, KSEB raised an up to date arrear demand of Rs.2, 02,106/- towards current charge and interest accrued for the period from 2/2006 to 11/2006 vide invoice dated 21/12/2006. In the meantime, the appellant had handed over the land to Southern Railway on 31/3/2007. Thereafter on 4.4.2011, the appellant was served the Revenue Recovery notice by the Tahasildar (RR), Ernakulam, for the arrears of electricity charges with interest after deducting the security deposit, amounting to Rs.3,58,131/-. The appellant filed a complaint before the CGRF, Kozhikode on 8.4.2011, requesting orders to set aside the impugned assessment dated 15/3/2007 and the action taken for the revenue recovery against them and also to limit the assessment to its

original assessment dated 21/6/2006 for an amount of Rs.50874/-. The CGRF dismissed the same on the ground that the petitioner is not entitled to get any benefit as demanded by him in the petition and also found the Petition devoid of any merits. The appellant has challenged the order passed by the CGRF on 22/8/2011 in a Writ Petition WP(C) No.26018 of 2011 before the Hon. High Court of Kerala and the Court disposed the writ petition on 30/9/2011 with a direction to the respondents, to keep the revenue recovery proceedings in abeyance for a period of three weeks, to enable the petitioner to move the Electricity Ombudsman in Appeal and seek appropriate interim orders. Accordingly, the appellant has submitted this Appeal petition before this Authority on 04/10/2011.

Arguments of the Appellant:

The arguments of the Appellant are based on the brief facts and circumstances which are narrated above. Further the Appellant has adduced the following arguments.

The appellant submits that the action of the Licensee, KSEB, in making the impugned assessment is totally arbitrary, highhanded and illegal. The appellant had as early as on 27/5/2005 requested for the conversion of the electricity connection from HT to LT. The letter dated 21/6/2006 issued by the Special Officer (Revenue) addressed to the Deputy Chief Engineer, with the copy marked to the complainant, would clearly establish that only an amount of Rs. 81,374/- was outstanding as dues, as on the date of application made by the complainant to the Licensee for conversion to LT tariff. The licensee had an amount of Rs.30, 500/- as CD with them, that can be deducted from the outstanding dues. Hence as on the date of application only an amount of Rs. 50, 874/- was due from the complainant.

Another point of argument of the appellant is that it was only due to the latches and inaction on the part of the Licensee that the electricity connection was not converted, despite repeated requests and reminders made by the appellant. The appellant has produced copies of the entire correspondence between the complainant and the licensee and alleges that it was due to the recalcitrant attitude of the licensee that the conversion did not take place, for which the appellant cannot be held liable. The appellant was not even given an opportunity of being heard or to file an objection to the arbitrary assessment made by KSEB, which is in hostile violation of the principles of natural justice and to the provisions of the Electricity Act, 2003. The present Bill and threatened Revenue recovery of the amount by the licensee is illegal and capricious. The licensee cannot be permitted to take advantage of their own wrong and unlawful action that enriches them. The Firm has not used energy in the said premises since December 2005. Hence the impugned assessment, calculating the energy charges from February 2006 to November 2006, for a period wherein the complainant has not used electricity, is unsustainable in law and per se illegal.

Relief sought: -

To set aside the order passed by the CGRF, Northern Region, Kozhikode and direct the KSEB to levy electricity charges only as per the letter dated 21/6/2006 and to set aside the assessments made by KSEB dated 15/3/2007 and 28/2/2011.

Arguments of the Respondent: -

The respondent states that the averments made by the appellant are not true to facts and hence denies all the allegations contained in the petition.

According to the respondent, request was received on 27.5.2005 to convert the existing electric connection under HT to LT tariff, with reduction in the connected load from 50 KVA to 20 KW. The consumer was informed of the procedures required for the purpose, which was covered by Board Order No.1458/2001 (Plg.Com 3776/1999/TRAC) dated 2.7.2001, of the Licensee, KSEB. As per the said provisions, the applicant has to surrender the T'rfr to KSEB, free of cost. In response the Firm expressed willingness to surrender the T'rfr and its connected installations, but informed KSEB to shift the same from their premises. Based on the letter, an estimate for shifting the structure and allied equipments from the premises was prepared. The work included the shifting of the existing T'rfr to 150M away and construction of a fresh 100 Mt of three phase LT OH line and amounted to Rs.42609/-. This fact was informed to the consumer as per letter dated 20-12-2005 with a request to remit the amount. But on receipt of the same, the consumer changed his stand and informed that they are ready to retain the equipments and allied installation at their premises itself.

Because of the above stated turn around made by the petitioner from their earlier stand, the respondent was caused to inspect the premises once again to ascertain whether the transformer and allied installation are sound enough to cater to the present requirement. After completing the procedural requirements at the field level the matter was taken with Chief Engineer, Distribution North, Kozhikode for sanction along with valuation report on 2-3-2006 and as per order dated 17-4-2006, the Chief Engineer accorded sanction for conversion from HT to LT subject to condition;

- 1). The consumer is to clear dues if any in respect of the old HT connection and
- 2). The consumer has to execute a new LT service agreement for the new connection.

By this time (as on 15-6-2006), an amount of Rs. 81,374/- was outstanding as arrears from the appellant towards current charge and interest for the period 2/2006 to 5/2006. The appellant was requested to clear the dues for acting upon his request. But the consumer has not complied with the said request compelling respondents to disconnect the service on 5-6-2006. After six months, again the consumer was informed of the arrears pending which amounted to Rs. 2,02,106/- including interest. But this request also went unheeded compelling the respondents to resort to take the dismantling of service connection.

Further the respondent submits that the revenue recovery proceedings as per rules were taken against the appellant after dismantling the service connection and because of the failure of the appellant to remit the demand for Rs. 2,17,021/- (deducting the cash deposit). The respondent's version is that they have acted as per rules and there is no deficiency or laches on their part in addressing the demand made by the appellant. On the contrary, it was the appellant, who by his inaction has caused the imbroglio for which he alone has to be blamed. The appellant has neither cleared the arrears on the HT connection nor executed agreement for getting LT supply. In the circumstances, the HT agreement was in force till the date of dismantling of 20-6-2007, and as per rules the consumer is bound to remit the charges as per the agreement in vogue. Even though the service was dismantled on 20-6-2007, the maximum demand charges were levied only for six months from the date of disconnection i.e. up to 12/2006.

Another contention is that the notice informing dismantling issued on 15-3-2007 was returned noting the addressee had left the premises. Again the notice was served to consumer's office at Kochi during May, 2007, but not responded. Left with no alternative, the respondent dismantled the connection on 20-6-2007. In this context, it is specifically submitted that the transformer and

allied structures in the premises of the consumer has gone into dilapidated condition and the metering equipment was not found at the site. The consumer has not intimated the closure of their unit at the said premises till that date contrary to the averments made in the representation. Dismantling of the said service was informed by the respondent vide his letter dated 16-7-2007.

The respondent concludes that there is no reason either under law or on facts to interfere with the findings of the CGR Forum's Order, which is perfectly in order.

Analysis and Findings: -

On examining the Appeal Petition, the statement of facts of the Respondent, the additional note filed by both, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

The Hearing of the case was conducted on 3.1.2012 and 27.6.2012 in my chamber at Edappally, and Mr C S Dias, Learned Counsel appeared for the Appellant's side and the Dy Chief Engineer, Electrical Circle, Palakkad, Asst. Executive Engineer, Electrical Sub Division, Sultanpet, and Asst. Engineer, Electrical Circle, Palakkad, represented the Respondent's side.

The appellant is a Govt. of India Public Sector Undertaking having a HT electric connection for its Palaghat Unit for running a Bulk Oil installation (Depot). In December 2003, they wound up the Unit (Depot) and started a retail Outlet in its place and continued with the HT supply for the same. On 27-05-2005, may be realizing that their Demand of Power is less bit is paying huge charges for the HT service, the appellant requested the respondent to convert the existing HT to a LT service with reduced Load. The respondent by letter dated 10-06-2005, asked the appellant to surrender the T'rfr free to the Licensee, which was agreed by the consumer by letter dated 21.12.2005. As per the rules existing at that point of time, the consumer was required to surrender the T'rfr, for the conversion from HT to LT service. The procedures followed till that date seems to be in order, even though much time, about six months, was lost for mutual correspondence only.

An argument of the appellant is that it was only due to the latches and inaction on the part of the licensee that the electricity connection was not converted, though despite repeated requests and reminders made by the complainant. The respondent denies this contention of the appellant and according to them, the consumer was informed of the procedural formalities required for the conversion to LT and due to IOC's request to shift the T'rfr from their premises and also due to non remittance of electricity arrears pending against them (M/s IOC), paved the way for the delay.

Till 1/2006, things went smoothly. The consumer has paid the bills regularly and has also agreed to retain the T'rfr and its accessories there itself. The consumer (IOC) has to present the Papers (LT Wiring installation Completion report, LT service Agreement etc.) to KSEB and remit the Fees like Security Deposit etc. to register the new LT connection. The appellant does not seem to have submitted the Papers to KSEB or the KSEB is not seen to have intimated IOC to produce the same. I am of the opinion that, had a discussion been arranged between the parties, instead of resorting to sending letter after letter, the issue could have been sorted out easily. Moreover, if there was delay for conversion to LT service, M/s IOC should have gone for terminating the existing HT service and taken a fresh LT service connection for their retail outlet there.

The Chief Engineer, Distribution (N), accorded sanction to convert the HT to LT connection with certain conditions on 17.4.06 only. The reason for the delay of almost 4 months cited by the KSEB as checking the healthiness of T'rfr, does not deserve merit, as the T'rfr was in service till 6/06

supplying power. But it is also true that the consumer failed to pay the electricity charge of the HT Service connection to KSEB after 2/2006.

It is also noted that M/s IOC has left the site in 2/06 without giving notice to the Licensee. The consumer is not supposed to abandon an Electric connection he has availed and leave the place. M/s IOC should have given notice to KSEB to terminate the HT service connection Agreement they entered with KSEB, before discontinuing the payment of electricity charges and leaving the site, since they are bound to abide the conditions agreed, while availing the said Electric connection.

The SOR (KSEB) vide its letter dated 21.6.2006 informed the Dy. CE, Palaghat, the details of the outstanding arrears amounting to Rs. 81,374/-, pending against the appellant towards 'electricity charges' with interest for the period from 2/2006 to 5/2006.

As per the letter dated 22.12.2006 of the SOR, KSEB, to the appellant, it reads as follows;
The power supply was disconnected on 5.6.06,

Arrears of Current charges from 2/06 to 11/06 = Rs 1,86, 173/-

Interest on arrears as on 30.11.2006 = Rs 15,333/-

Total arrears as on 30.11.06 = Rs 2,02, 106/-

The Dy CE, Palaghat, then issued another notice to the appellant on 15.3.2007, for an amount of Rs.2, 44,789/- (may be with out adjusting the Security deposit), asking to clear the arrears or to face the dismantling of the HT service connection and initiation of RR action. Again in a letter dated 16.7.2007 addressed to M/s IOC, the Dy CE, has intimated that the HT service agreement is in force and the consumer has not intimated KSEB, the closing of its Palaghat unit till that day.

In a subsequent Notice dated 30.7.2007 of the SOR, it is seen mentioned that the Service was dismantled on 20.6.2007 and the Security Deposit of Rs 34, 270/- was adjusted against the arrears and KSEB will initiate RR Action if the balance amount of Rs 2,17, 021/- is not paid with in 31.7.07.

Another contention of the respondent is that, the 'dismantling notice' dated 15.3.2007 informing the consumer, was returned noting the addressee had left the place. Again the notice was said to be served to consumer's office at Kochi during May, 2007, which was also not responded. It is argued that they left with no alternatives, had dismantled the Service connection on 20-6-2007.

Now the main point of dispute is, the determination of the electricity charge arrears owed by M/s IOC to the respondent for the period from 2/2006 to 5.6.2006 (the date of disconnection), and thereafter. According to the appellant, they have stopped their 'retail outlet' in the premises from December 2005 onwards, but they were charged under HT category though their electricity usage is below Rs.2500/- per month. Further, due to delay in converting the HT connection to LT, from KSEB side caused the billing of electricity under HT category. I find that there is no merit in the said argument of the appellant because if he uses the HT service, he is bound to pay the rates fixed for it, as per rules. Otherwise he has to terminate the HT service by paying the up to date dues and get the service connection dismantled by the Licensee.

The question to be decided is what is the amount due to KSEB by the Consumer, M/s IOC Ltd?

DECISION: -

From the analysis done above and the Findings and conclusions arrived at, I am taking the following decisions.

The appellant had stopped the operation of Bulk oil installation (Depot) in December 2003, for which the HT Connection was taken from KSEB. Thereafter they started a 'retail Outlet' there and continued with the HT supply for the same. On 27.5.2005, they wanted a LT supply with reduced connected Load of 20 KW to run the retail outlet instead of HT connection as their power demand has already got reduced from 12/2003 by stopping the operation of Depot. Since there was delay for the conversion to LT category, the consumer stopped all its activities (retail Outlet) there and discontinued payment of electricity charges from 2/2006 onwards and also left the site.

It is not correct on the part of M/s IOC to contravene an agreement entered between them as consumer and the Licensee, KSEB, on the other side, by deciding not to pay the electricity charges henceforth, for a HT Electric service connection they availed, on the pretext that their request for conversion was got delayed or they need only an LT connection now. They could have given notice and terminated the existing HT service connection in 2/06 itself, if they so desired, by paying one more month's charges as they have already paid the electricity charges up to and including 1/06.

It is found true that there was delay from KSEB's side to accord sanction to convert the HT service into a LT service. The consumer agreed to surrender the T'rfr and structure in 12/2005. The KSEB should have accorded sanction, at most within two months i.e. by 2/06, after completing all the formalities. By this time, the consumer is also required to be ready with the 'Papers' like ; 1) Completion Report of the Wiring of LT installation, 2). The Agreement for LT service and also pay the Fees for registering the LT service connection. But it is found that the appellant has not produced any Papers for LT connection before KSEB nor does it have an argument to that effect before this Forum. As said above I find difficult to understand how the conversion is possible without submitting any 'Papers' for the LT connection. Either the party does not aware of it or KSEB did not inform them properly. I find lapses on both sides. However, the consumer should not have abandoned a service connection it has availed without intimating the KSEB and terminating the Agreement made for Supply of Energy with it.

Though the Consumer did not pay the electricity charges from the month of 2/2006 onwards, it is seen from the Bill statement produced by KSEB, that M/s IOC has used energy sparsely, till the service was disconnected in 6/06. Once the consumer uses energy he is bound to pay the charges for it. As per rules, the consumer is legally bound to pay the minimum charges (Fixed Charges) for the next 6 months after disconnection (in 6/06), if the service is not reconnected or dismantled in between. So in this case the consumer is liable to pay the fixed charges @Rs 17500/- per month for six months i.e. from 6/06 to 11/06. It is noted that the service was disconnected on 5.6.2006 and hence the minimum charges need be payable from that month onwards. The letter dated 4.06.2007 of the appellant suggest that they have represented for dismantling the service only on that date and not earlier. As per SOR's letter dated 22.12.2006, the arrears pending against the consumer as on 30.11. 2006 was Rs.2, 02,106/-, produced in italics above.

It is noted that as per SOR's letter dated 21.06.2006, the arrears pending against the consumer as on 15.6.2006, was Rs.81374/-. This amount is not disputed by the consumer. As per rules the Licensee is also eligible for six months fixed charges, after disconnection of service (in 6/06) and adding this amount i.e. (Rs 17500 X 6 = 1, 05,000/-), it will come to Rs.1, 86,374/-. The interest portion is not taken since the same has to be added at the time of payment or revision of Bill only. From the above, I decide that the consumer is bound to pay an amount of Rs.1, 86,374/- less the

Security Deposit as on 30.11. 2006. The party is also liable to pay interest for the Balance amount @ 18% per annum for the default of making the payment of electricity charges in time, as per Clause 23 of Electricity Supply Code, 2005, for belated period of 1.12.2006 to 31.12.2010, the date up to which the accounts were prepared for R R action.

The respondent is ordered to issue the consumer a revised Bill as per this order, with 30 days time given, for making the payment (Due date). If the party fails to pay the Bill by that date, the KSEB is free to take further steps as per rules.

It is made clear that no interest is payable by the consumer for the Petition pending period, before CGRF, Kozhikode and this Forum of Electricity Ombudsman and up to the revised Bill due date as per this order.

The CGRF/Kozhikode Order No 1/2011-12 dated 22.8.2011 stands quashed. The assessment dated 15.3.2007 of Dy CE, Palghat for Rs 2,44,789/- is a notice of arrears issued by the Agreement Authority to the consumer for making payment and has already been superseded by the notices issued thereafter by the SOR. The letter No HTB-17/1741 dated 28.2.2011 of SOR, addressed to the Tahsildar (RR), Ernakulum, requesting initiation under Revenue Recovery of Rs 3, 58,131/- requires modification of amount as per this order, if the appellant fails to pay within the due date of the revised bill.

The appellant may also seek the advantage of 'one time settlement scheme', at reduced interest rate, instead of 18% stated above, offered by KSEB during Adalaths, to settle the arrears, if it so desires .

Having concluded and decided as above it is ordered accordingly. No order on costs.

Dated the 12th of September, 2012,

Electricity Ombudsman.

Ref No P/ 244/ 2011/ _____ Dated

- Forwarded to
- 1).The Deputy Manager (Law)
Indian Oil Corporation Ltd., Kerala State Office,
Panampilly Nagar, Kochi-682036.
 - 2).The Deputy Chief Engineer,
Electrical Circle, KSEB,Vydyuthibhavanam
Palakkad
- Copy to: - -
- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10
 - 2). The Secretary, KSEBoard,
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
 - 3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Vydyuti Bhavanam, Gandhi Road, Kozhikode-32.
 - 4). The Special Officer (revenue), KSE Board,
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram-4.