

THE STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamangalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 95674 14885
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO. P/274/2012.

(Present: T.P. Vivekanandan)

Appellant : Sri. Poulouse M.M.
Vajra Plastic Industry,
IDA, South Angamaly,
Ernakulum Dt. Pin- 683 573.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Angamaly, Ernakulum (Dt).

ORDER.

Background of the Case: -

The appellant is a LT consumer who is running an industry named Vajra Plastic Industry, with consumer No.18433 under Electrical Section, Angamaly. The LT Electric connection was taken under Minimum Guarantee (MG) basis valid for 7 years i.e. for the period of 29.6.2006 to 28.6.2013. While being so, the appellant requested for a HT service by conversion of the existing LT connection and accordingly he was permitted for a HT service connection during June 2011, after agreeing to certain conditions and on remittance of the necessary OYEC charges for the new HT service. The allegation of the appellant against the respondent is that, they are collecting the MG charges for the LT service, @ Rs. 4492/- per month, in addition to the normal monthly HT electricity charges, as he has already changed over from a LT to a HT service connection. Aggrieved by the MG amount in the bills, the consumer approached the CGRF, Ernakulum and filed a petition dated 22/12/2011 requesting to issue necessary direction to stop the collection of the MG charges by the respondent and to refund the MG amount collected in excess after May 2011. The CGRF had dismissed the said Petition in OP No.13/ 2011-12, vide order dated 20/10/2011. Still not satisfied by the decision of the CGRF, the appellant has submitted the Appeal petition before this Forum.

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 feeling of the Forum that 'Petitioner cannot claim the depreciated cost of this materials to adjust in the balance MG portion as these materials have turned out to be a part of the electrical system and unusable', is not convincing because the dismantled materials include the Transformer, AB switch, Lightning Arrester, DO fuse DP structure, etc. Even though the appellant have demanded the details of the dismantled materials, KSEBoard have not submitted the same. Here the Board has

considered that all the dismantled items including the Transformers and other items have become scrap and no evidence was given by KSEBoard for the same. All agreements should comply with the rules and regulations and law of land prevailing at the time of executing the agreement. Nobody can claim an unlawful amount on the ground that somebody has agreed to pay that amount. According to the appellant, the requirement is only genuine, especially after 2005 as there is no provision for executing the MG agreement.

It is also pertinent to note that the minimum amount agreed upon, is based on the current charges which are being used. Once it is ceased and materials are taken back the MG agreement will get cancelled automatically. The appellant requests to declare the executed MG agreement void and null, considering the non utilization of energy through the installed equipments and also for reason that the original agreement itself has no legal sanctity.

Since the material and equipment covered under M G have been dismantled and removed by KSEBoard the collection of further MG may be dispensed with and direction may be given to refund the MG amount collected after May 2010.

Arguments of the Respondent: -

The petitioner was earlier having a LT Industrial Connection under Minimum Guarantee basis with MG No.3/2006-07/dated 29.06.2006 which will end only on 29.06.2013. The new HT Connection was availed on terminating the LT connection but after executing an agreement that he will pay the balance MG Charges as per rules.

As per Board Order No.BO (FM)/ (Genl) No.1516/2010 DPC II/AE/MG 08/2010) dated 10.06.2010, a copy of which is marked as R-(1): the consumer is liable to continue to pay the minimum guarantee charges even if he is converted into a HT consumer from a LT Consumer. The item No. (ii) in the Board Order says that the Minimum Guarantee Liability under LT Connection of the consumer shall continue for the remaining period as specified in the MG agreement for the LT connection. This MG Liability shall be over and above the current charges (demand charge plus energy charge) when the HT connection is taken. As per the above said Board Order, the Minimum Guarantee liability has to be continued by him and is over and above the electricity charges (demand charge plus energy charges) payable by him, when the new HT connection is taken.

The consumer M/s Vajra Plastic Industry had also agreed this clause for retaining the Minimum Guarantee for the balance period up to 28.06.2013 and the MG Amount Rs.4492/- per month, in the HT Agreement which had been executed by him at the time of taking the new HT connection. The concerned clause of the HT agreement is marked as R (2). In the case of HT service connections, all the installation works of the consumer side are done at the cost of the consumer. And hence it is not a reason for exempting the consumer from continuing the old minimum guarantee liabilities undertaken by him.

Analysis and Findings: -

A hearing of the Case was conducted in my chamber at Edappally, Ernakulum on 25.7.2012. The appellant's representative, Sri. Shaji Sebastian and the respondent, AEE, Electrical sub division, Angamaly, Sri. N. S. Indrasenan, were present representing for either side. Both parties have argued

and presented the case on the lines as stated above. On examining the Petition, the statement of facts filed by the KSEB, the arguments made in the hearings and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

As per the agreement entered into between the consumer and KSEB, the respondent is collecting the MG charge of Rs. 4492/- per month, in addition to his normal HT bill w.e.f. 1/6/2011. It is clarified in the Board Order No. BO (FM) (Genl) No. 1516/2010 DPC II/AE/MG.08/2010 dated 10.6. 2010, that "the minimum guarantee liability under LT connection of the consumer shall continue for the remaining period as scheduled in the M.G. agreement for the LT connection". Thus it is clear that this MG liability is over and above the monthly HT electricity charges (fixed demand charges plus energy charges), when the new HT service connection is taken, after terminating the existing LT service connection. It was a condition agreed to, by the consumer before switching over to the new HT supply system. A perusal of the revised agreement clearly shows entries regarding this and the appellant is seen to have signed on this agreement which means he was well aware of the conditions stipulated by KSEB. In such an event, the consumer cannot abstain unilaterally from the agreement entered into between the two parties, namely the consumer and the Licensee. It was not a new condition insisted upon the consumer. The consumer was knowing the prevailing rules and after agreeing to it and executing an agreement to the same effect, it is not justifiable to go against it. In such a situation he should have approached the CGRF earlier with the complaint for its Redressal.

However, it is a fact that the electric Line and the transformer, which were installed under MG agreement for the specific use of the consumer, were dismantled and taken back by the respondent as it became redundant. Hence it is natural that the cost of the taken back 'usable materials', at the depreciated value as per rules, have to be assessed and has to be set against the balance MG amount pending against the consumer.

The appellant has the complaint that the dismantled items were not accounted and adjusted. The CGRF has held the view that the petitioner cannot claim the depreciated cost of these materials to adjust in the balance MG portion, as these materials have turned out to be part of the electrical system and unusable items have become scrap. I am of the view that the said decision of the CGRF is not correct.

DECISION: -

As per the MG agreement executed between KSEB and the consumer, the party has agreed to pay 25% of the actual amount incurred by the KSE Board (plus 10% establishment cost) to construct the electric line for effecting the industrial LT electric connection to appellant's premises, per annum for next 7 years. The intention of minimum guarantee is to ensure, that the required minimum 'revenue return' for the expenses incurred by KSEB in constructing the Line and Transformer, is forthcoming. This MG liability will be in force, for the next 7 years after availing supply or until the 'Line' becomes self remunerative as per the norms fixed by the Board, whichever is earlier. Once the line has become self-remunerative, the minimum guaranteed amount can be waived, for the remaining period of the agreement. In all other cases, if a MG service connection has to be dismantled before the expiry of

the 7 year period, he is bound to pay the guaranteed minimum amount, for the rest of the period. That is, this MG payment has to be continued, whether the said Line is dismantled or not, till the consumer completes payments for the guaranteed 7 years.

But once the Line and Transformer (erected under MG scheme) is dismantled and has been taken back by the respondent, then the same has to be properly accounted, with the usable materials being given the 'depreciated value or the salvage value' as the case may be. It is only justifiable to give the benefit of the cost of the taken back material', to the consumer and adjust it against the balance MG amount, owed by the consumer to KSEB. Hence it is directed that the respondent shall prepare the estimated cost of the 'usable taken back materials', obtained on dismantling the Line, and shall adjust the same against the pending balance amount of MG payable by the consumer after availing the HT service connection. But the KSEB can collect the cost of the work needed for dismantling the Line and Transformer from the consumer.

Therefore it is decided that, if the estimated cost of the taken back materials (less the cost of dismantling work) is more than the balance MG amount payable by the consumer, the MG liability after 6/2011 shall be dispensed with and the MG amount collected, if any, from the consumer after effecting the HT connection in 6/2011, shall be refunded. But if there is any liability outstanding, even after the adjustment, it shall be payable by the consumer. The respondent shall prepare the accounts and settle the claim with in 60 days of this order, with communication to the appellant.

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

Dated the 26th of March, 2013.

Electricity Ombudsman

Ref. No. P/ 274/ 2012/1652/ Dated 26.4.2013.

Forwarded to:

- 1). Sri. Poullose M.M.
Vajra Plastic Industry, IDA,
South Angamaly, Ernakulum Dt, Pin- 683 573.
- 2). The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Angamaly, Ernakulum (Dt).

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB,
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Power House Bldgs, Ernakulam-682018.