

## STATE ELECTRICITY OMBUDSMAN

Thaanath Building Club Junction Pookkattupadi Road Edappally Toll

KOCHI 682024

[www.keralaeo.org](http://www.keralaeo.org)

Phone 04842575488 +919447226341 Email : info@keralaeo.org

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### REPRESENTATION No: P 54/09

Appellant : Sri N.M.Thomas ,Managing Partner  
NapLatex ,Kottarakkoth ,  
PERUMPALLY 673586 Kozhikode

Respondent: Kerala State Electricity Board  
*Represented by*  
The Assistant Executive Engineer  
Electrical Sub Division THAMARASSERY Kozhikode

### ORDER

Sri N.M.Thomas ,Managing Partner,NapLatex , Kottarakkoth , Kozhikode  
submitted a representation on 24.2.2009 seeking the following relief :

*Waive the Minimum Guarantee Amount above actual consumption for the firm*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 8.7.2009 at Kannur .The appellant submitted an argument note on the day of hearing.

The Managing Partner NapLatex applied for 35HP power on 9/3/2004 .As the existing transformer was 1.7KM away a proposal for 1700M11KV line extension with a100 KVA transformer and 280M 3Ph LT line extension was prepared .The estimate amount with 10% establishment charge was Rs 9,24,000/- . The Appellant executed a Minimum Guarantee Agreement on 9.3.2005. The actual quantum of work was lesser and the revised cost estimate with 10% establishment charges was Rs7, 54,468/- The connection was effected on 23.2.2006. The monthly minimum guarantee liability of the Appellant was fixed as Rs 15720/- instead of the earlier computed amount of RS 19280/- The Appellant approached the KSEB in 7/08 for waiving of the MG liability which was not approved . The Appellant then approached the CGRF with the same plea. The CGRF did not concede the plea and dismissed the plea based on the argument that the agreement do not contain any provision for waiver of MG agreement and that the Conditions of

Supply regulations of 1989 is not applicable for the issue. The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation, argument note and during the hearing are summarized below:

1. The KSEB could have installed a 63KVA transformer to give the power connection to the Appellant thus reducing the cost of the work. But an 100 KVA transformer was installed to provide better voltage to the existing consumers of the area. The KSEB had programmed to install one Transformer in the area for voltage improvement earlier but charged the whole expenditure to the Appellant by way of MG charges
2. KSEB had realized around Rs 13,08,051/- from 215 consumers connected to the LT lines in the area over a period of 3 years which is almost twice the amount expended by the KSEB for the work. .
3. The KSEB did not provide one copy of the agreement to the Appellant in spite of repeated requests ostensibly to cover up the improper activities on the matter.
4. No where in the circular dated 4.12.1989 the condition that only new consumers are to reckoned to calculate whether the line has become self remunerative or not is mentioned.
5. The MG agreement had been executed in Form 7 while the MG agreement in Form 8 was in force at that time. Hence the agreement becomes invalid and null and void.
6. The form 7 do not contain the clause on MG waiver and hence it is found that the Respondent had used this form purposefully to avoid the relief to the Appellant.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

1. The rules and procedures of MG works and OYEC schemes were explained to the Appellant as he approached for getting the power connection.
2. The practice of installing transformers below 100 KVA had been stopped by KSEB as part of standardization.
3. The MG amount can be waived if the line become self remunerative .The decision whether the line has become self remunerative is based upon the conditions laid down in the Conditions of Supply of Electrical Energy dated 14.2.1989.
4. All the service connections in the area are given from LT OH lines in the area existing prior to February 2006.But the LT lines done for effecting service to the Appellant is an UG cable from which no other connections are given.
5. The allegation that higher capacity transformer had been installed to improve voltage in the area is technically wrong. Voltage will not improve by increasing the capacity of the transformer. There was no acute low voltage problem in the area earlier.

6. It is true that there was a delay in handing over a copy of the agreement to the Appellant which was not intentional. But all the provisions of the agreement were readout and explained to the Appellant at the time of signing the agreement.

#### Discussion and Findings:

The contention of the Appellant that the MG agreement had been executed in an old form and since the form was invalid the agreement also become invalid ,null and void is not correct. An agreement signed and executed between two parties shall not become invalid on such weak grounds. The contention is not acceptable.

The complaint of the Appellant that KSEB had proposed and installed a higher capacity transformer , 100KVA instead of 63KVA , to solve the voltage problems in the area is baseless as pointed out by Respondent . Voltage problem will not be solved by enhancing capacity of transformer.

If the Appellant had found that the KSEB was trying to collect the cost of a voltage improvement scheme from him as MG liability he could have very well kept away from signing the agreement. It is not fair on the part of the consumer, to sign an agreement in stamp paper, obtain the power sought for based on the signed contract, and later to question the terms of the agreement after a few years.

The new regulations Terms & Conditions of Supply of the KSEB framed under the provisions of the Supply Code came in to effect on 1.2.2006. Until that date the old Conditions of Supply regulations shall be applicable in respect of provisions which are not contradictory to the Electricity Act 2003.

The Appellant had executed the MG Agreement on 9.3.2005 and hence he shall be eligible for reliefs available under the Conditions of Supply regulations .So even if there is no clause providing for waiver of MG liability in the agreement, it would not be fair to deny the provision for review of the liability available under the regulations applicable at the time of execution of the agreement. Hence I conclude and decide that the positions taken by the CGRF in this aspect is not correct and fair and that the MG liability can be reviewed under clause 20 of the CSEE Regulations in the instant case.

The Clause 20 of regulations on the matter specify the methodology of computing minimum annual revenue to determine whether the line has become self remunerative for different types of consumers.

The minimum guarantors are to make up the guaranteed amount by way of paying *energy charges* as per the clause 2 of the agreement. Total current charges paid by the consumers which includes fixed charges meter rent, duty etc shall not be reckoned for assessing self-remuneration . This is another wrong under standing of the Appellant. Another important contention raised by the Appellant is that all the services connected to the lines are to be reckoned to compute the revenue return and to review the MG liability. The Appellant has relied upon the wordings in the clause 20 of the CSEE regulations : ‘consumer number and other details of *total consumers connected from the line*’. It is argued that there is no mention of *new connections* in this clause.

The interesting point raised by the Appellant is whether *all the consumers connected* to the distribution system at any point of time or only consumers connected up consequential to the work are to be reckoned for assessing the self remunerative-ness of the work?

The minimum guarantee system had been developed in the early stages of the massive electrification drives in the state. The Line Extension schemes prepared were generally for electrifying isolated areas. There were no 'existing consumers' there. The original guarantors were provided relief as and when KSEB got additional connections and revenue from the area. The MG agreement it self were to be cancelled once the revenue came up to the level of minimum returns. Clearly the concept was realizing returns over a period of time from the beneficiaries. The question of 'existing consumers' in the area which are subsequently connected up to the system did not arise at that stage. Hence neither the regulations nor the clauses of the agreement provide a specific answer to the issue. But the prudent practice is that when the revenue return from any investment is put into scrutiny only the beneficiaries coming up consequent to the investment is to be considered. The existing consumers in the area can not be considered as beneficiaries consequent to the execution of the work. As such it is not reasonable to take the returns from the existing consumers in the area for computing the revenue returns from a new development work.

But in the instant case , on a review of the records, it is seen that even if all the consumers connected up to the line is reckoned as sought by the Appellant, the annual revenue return will not be sufficient to offset the MG liability. Out of the 215 consumers, a vast majority, around 190 numbers are single phase domestic consumers .The revenue to be reckoned from them shall be Rs 125/ per annum per consumer as per clause 20 of the Regulations. As such even if all the consumers in the area connected to the lines are reckoned, as suggested by the Appellant, the aggregate revenue shall not work out to Rs 1,88,617/- as per the approved norms specified in the clause 20 of the CSEE Regulations. Hence it is clear that the consumer shall not be eligible for the relief sought for under any circumstances.

Hence I conclude and decide that the Appellant shall not be eligible for waiving of the MG liabilities.

#### Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The contentions raised by the Appellant are devoid of merits and hence the representation is dismissed.*
2. *No order on costs.*

Dated this the 27th day of July 2009 ,

P.PARAMESWARAN  
Electricity Ombudsman

No P 54 /09/ 299 / dated 27.7.2009

- Forwarded to: 1. Sri N.M.Thomas ,Managing Partner  
NapLatex ,Kottarakkoth ,  
PERUMPALLY 673586 Kozhikode
2. The Assistant Executive Engineer  
Electrical Sub Division  
THAMARASSERY Kozhikode

Copy to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam, Vellayambalam,  
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,  
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,  
VaidyuthiBhavanam  
Gandhi Road Kozhikode 673032