

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/103/2017
(Present: A.S. Dasappan)
Dated: 29th December 2017

Appellant : Sri. George Antony
Pothanikat House,
Kothamangalam,
Ernakulam

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd., Kothamangalam,
Ernakulam

ORDER

Background of the case:

The appellant, Mr. George Antony is an LT industrial consumer (Consumer No. 19154) under Electrical Section, Kothamangalam. Earlier the appellant had applied for additional power allocation of 75 KVA load on 26-10-2010 under Minimum Guarantee Scheme and an agreement executed on 30-10-2010. As per the MG agreement executed by the appellant, he is liable to pay Rs.10,686/- (Rupees Ten thousand six hundred and eighty six only) per month up to 30.04.2022. Hence the respondent Kerala State Electricity Board Limited has been issuing demand for the Minimum Guarantee amount since 01.05.2015. The appellant has so far remitted an amount of Rs.245778/-. The appellant's firm was closed due to loss and disconnected the connection in 2015. Being aggrieved by the demand MG amount, the party approached the CGRF, Ernakulam by filing petition on 20-04-2017 with request to consider the closure of the MG scheme and to refund the sum remitted with interest. The CGRF had taken the following decision on this.

“The respondent is directed to issue a detailed demand notice after adjusting the amount remitted by the appellant till date, the amount remitted by other consumers who had availed connection from the same transformer and the depreciation amount from the date of installing the transformer to the date of issuing the demand notice”.

Still not satisfied by the decision, the appellant has submitted this appeal petition.

Arguments of the appellant:

The appellant is an industrialist bearing consumer no.19154 with connected load 13550 watts under Electrical Section No.2 Kothamangalam and had requested for additional load of 75 KVA. For that the appellant had executed an agreement on 30.10.2010 for installing a 100 KVA Transformer and extending 220 Metres of 11 KV line. The appellant had approached the Board several times for the additional load. Only after getting the additional load the appellant's cardamom drying unit will become a profitable business. Till then it was incurring loss. As years passed, the appellant met huge financial loss and he was forced to sell the industrial unit at a very low price. Only after 5 years, KSEB directed the appellant to avail the additional load. By this time, the Board has overlooked the MG priority.

This line was drawn through public road and this is now used for public and other consumers & so is presently an asset to the KSEB. The Board is hesitating to explain the reasons for the delay in effecting the connection. During 2015 MG system was not in KSEB. So the amount related to MG will not stand in this case. During the hearing conducted by Hon' CGRF, the appellant had humbly requested to produce the following documents

1. M·G Register
2. Connection affected Register
3. Inspectorate sanction Letter for charging line and transformer.
4. List of consumer that has taken supply from the newly constructed 220M-11 KV OH line.
5. Specify the exact reason for delay in effecting the additional load.
6. Whether this office has over-looked priority for effecting connection .
7. Copy of dispatch Register for the period.
8. Whether the Board is ready to dismantle the 220 M OH 11KV line, drawn to the industry on request. But till date the appellant have not received any reply for this.

The appellant is not at all satisfied with the decisions of the CGRF.

Reliefs sought for by the appellant are the following:

1. To stop the monthly recovery of Rs.10, 686.00 and repay the entire amount recovered from the appellant.
2. To Pay the financial loss incurred to the appellant (15Lakhs)

Arguments of the respondent:

The service connection bearing Con.No.19154 was registered in the name of Sri. George Antony, Johnson Exporters, Kothamangalam under LT IV A tariff with connected load of 13550 watts and the connection was effected on 10.08.2006. The service connection was used for cardamom drying and curing unit.

An application for additional power allocation to the extent of 75 KVA under Minimum Guarantee scheme on 26.10.2010 was submitted and the minimum guarantee agreement was executed on 30.10.2010. (Copy of the Minimum Guarantee Agreement marked as Ext. R1)

As per the Minimum Guarantee Agreement, an estimate amounting to 466300/- {Rupees Four Lakh sixty six thousand three hundred only} was prepared for drawing 220 M single circuit 11 KV over head line and installing 100 KVA transformer at the premises of the consumer.

Kerala State Electricity Board Limited completed the drawing of 11 KV line and installation of transformer and the consumer was requested to avail the additional load. The appellant did not respond positively and he was again requested to avail the additional load through communication No.DB 11/Ae notice/2014-15/182 dated 28.03.2015 of Assistant Engineer, Electrical Section, No.2, Kothamangalam {Ext.R2}.

As per Regulation 59 of the Kerala Electricity Supply Code 2014, if a consumer fails to respond to the 'notice intimating to avail supply, the application of the applicant/consumer shall be treated as withdrawn. Under Regulation 58(2) of the Kerala Electricity Supply Code, 2014 the installation or part thereof constructed will become property of the licensee and the applicant shall have no claim what so ever on such assets. In this case the expense for installing the transformer and allied works was initially met by the Kerala State Electricity Board Limited as per the agreement entered into between the complainant and the Kerala State Electricity Board Limited. As per the clause 3 of the agreement (Ext. R1) the petitioner is bound to remit the entire amount of Rs.5,12,930/- in monthly installments @ Rs.10686/- for seven years or a point of time earlier to it when the total amount is paid.

As per the MG agreement executed by the appellant, he is liable to pay Rs.10,686/- (Rupees Ten thousand six hundred and eighty six only) per month up to 30.04.2022. Hence the respondent Kerala State Electricity Board Limited has been issuing demand for the Minimum Guarantee amount since 01.05.2015.

The allegation and averments raised by the appellant are against facts and hence denied. The Hon'ble Forum is requested to accept the written statement and allow Kerala State Electricity Board Limited to recover the entire amount under Minimum Guarantee Scheme as per the conditions of MG agreement executed by the appellant.

Analysis and findings:

A hearing of the case was conducted in my chamber at Edappally on 30-11-2017. The appellant, Sri George Antony was present for the appellant's side and Sri. Gopi N.K., Assistant Executive Engineer, Electrical Sub Division, Kothamangalam represented the respondent's side. Both sides have presented their arguments on the lines as stated above.

This Authority has deeply gone through the evidence and other materials available on records and written submission by the appellant. The issue that arises for consideration is as to whether the appellant is liable for remitting the minimum guarantee amount for availing additional power to the extent of 75 KVA, after the closure of the firm.

The appellant has submitted an argument note relying on Clause 10(1) of the Supply Code 2005 which reads:

(1). Where the Licensee has completed the work required for providing supply of electricity to an applicant but the installation of the applicant is not ready to receive supply, the Licensee shall serve a notice on the applicant to take supply within sixty days of service of the notice in the case of LT consumers and 90 days in the case of HT& EHT consumers.

(2) If after service of notice the applicant fails to take supply of electricity, the Licensee may charge fixed/minimum charges as per the tariff in force for completed months after expiry of notice till the applicant avail supply."

The petitioner has submitted application for the additional load of electric supply on 26-10-2010 and executed an agreement on 30-10-2010.

Section 46 of the Electricity Act, 2003 authorizes the licensee only to realize reasonable expenditure incurred by it in providing any electric line or electrical plant for the purpose of giving supply to a consumer. Another argument adduced by the appellant is that he had signed an agreement with the licensee under minimum guarantee scheme on 30-10-2010 and the supply was not provided, but MG amount was collected from 01/05/2015. The appellant has not used energy since 19/06/2015 due to closure of the industrial unit.

On the other hand the respondent argued that the appellant failed to avail the supply even after receipt of notice under Regulation 10(2) of Supply Code, 2005. Regulation 10 of Supply Code, 2005 deals with the delay on the part of applicant to take supply. But appellant has refuted this contention by stating that a notice as contemplated in the Regulation was not issued to him.

The respondent has produced a copy of the letter dated 28-03-2015, issued to the consumer, as per the rule quoted above as evidence. But the appellant complains that such a notice was issued to him after a period of 5 years by overlooking the MG priority. It is undisputed that the KSEB has written to the Electrical Inspector in 2015 requesting to accord

sanction to energies the new Electric Line but not submitted a copy of the letter addressed to the Electrical Inspectorate. Hence, the party argues that, had a notice was issued while considering the date of completion of work, the petitioner would have the benefit of 60 days' time w.e.f. 28-03-2015, for taking electric supply.

But according to the respondent, the work of KSEB was completed and informed the party. But no evidence produced by the respondent except the letter issued on 28-03-2015. This document proves that a notice was issued to the consumer only on 28-03-2015. But the respondent failed to initiate steps in time to get the approval of the Electrical Inspector to charge the HT Line and T'rfr, in time or subsequently i.e. till 28-03-2015. Without the approval, the Licensee cannot charge the Line and T'rfr so as to provide supply to the consumer.

There is no provision in any of the Regulations or in any order issued by the KSERC enabling the respondent to collect UCM charges. Further the respondent has not submitted any orders issued by KSERC in order to substantiate their claim.

As per BO (FB)(Genl) No. 510/2010 (DPCII/AE/T&C of Supply 02/2009) dated Tvm 24-02-2010, formalities of power allocation were dispensed with. On receipt of application from prospective consumers having power requirement above 10 kVA has to remit advance amount (prescribed for LT, HT/EHT consumers respectively) to ensure the genuineness of the request. The amount shall be adjusted without interest in the estimated amount to be paid by the applicant. This advance amount shall not be refunded in case applicant withdraws the application. Hence, there is no provision for allocation of power envisaged in the Supply Code 2005 or KSE Board Terms and Conditions of Supply, 2005 approved by KSERC.

The Kerala State Electricity Regulatory Commission, in its letter No. 151/Com .Ex / 2015/KSERC/758 dated 09-06-2015, has issued some clarifications regarding the collection of Unconnected Minimum Charges (UCM) by KSEB Ltd. It reads "Neither the Electricity Act, 2003 nor the Kerala Supply Code, 2014 provide for MG scheme or for collection of UCM charges. Section 46 of the Act authorizes the licensee to realize reasonable expenditure incurred by it in providing any electric line or electric plant for the purpose of giving supply to a consumer. The Commission has approved the cost data for recovery of reasonable expenditure by the licensee. Therefore there is no legal sanctity to continue with the erstwhile MG scheme which was introduced prior to the enactment of Electricity Act, 2003 and for the collection of UCM charges in the absence of an agreement to the contrary. When MG scheme was in vogue, UCM charges could be collected by the licensee only as per the terms of the MG agreement. If there is no such agreement, UCM charges cannot be collected, even when such scheme was in vogue". As per Regulation 9 (1) of Supply Code 2005 reads thus "If any person after applying for supply of Electricity with the Licensee withdraws his application or refuses to take supply the amount of security paid under Clause 14 shall be refunded to him. Amount paid for providing electric line or electric plant shall not be

refunded if the Licensee has commenced the work". The respondent had failed to take proper action to complete the work and also to issue timely notice to the appellant.

As per the provisions of Electricity Act, 2003, and Regulations made there under the licensee can realise only the following charges.

1. Fixed charges in addition to the charge for actual electricity supply.
2. A rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensees.

Section 45 of Electricity Act, 2003 dealt with power to recover charges by the distribution licensee for supply of electricity. As per Section 46 of Electricity Act, any expenses reasonably incurred in providing any electric line or electrical plant used for giving the supply. Section 47 of Electricity Act stipulates the power to require security. According to this Section distribution licensee is empowered to recover security deposit as determined by Regulations.

The appellant is liable to pay monthly instalments amounting to Rs.10686/- for seven years for the period from 01-05-2015 to 30-04-2022, as per the agreement executed by him. As per the agreement the total estimate prepared for providing the additional load under MG Scheme was Rs.5,12,930/-. But the total amount for 7 years @ Rs. 10686/- per month comes to Rs. 8,97,624/-. The appellant so far remitted an amount of Rs. 245778/- for the period from 5/2015 to 7/2017. But after getting the orders from the CGRF, the respondent has to limit the MG amount after adjusting the amount remitted by the appellant till date, the amount remitted by other consumers who had availed connection from the same transformer and the depreciation amount from the date of installing the transformer to the date of issuing the demand notice.

Though the appellant is not using the additional energy, he had already paid the monthly installments of MG amount @ Rs.10686/- for the period from 05/2015 to 07/2017. The average monthly consumption of electricity by the appellant up to 11/2014 was 462 units and thereafter it was zero units. The total estimated amount calculated by the licensee was Rs. 512930/-. But the respondent has not furnished the actual expenditure incurred for providing the additional load.

Even though MG agreement had been executed on 30-10-2010, the respondent intimated the readiness of the line and transformer to the appellant on 28-03-2015 only for availing additional power within 30 days. The appellant started payment of MG amount fixed for monthly instalments from 01-05-2015. In the hearing the respondent reported that the line and transformer were not energized so far. The appellant is paying the monthly amount on the ground of executing MG agreement dated 30-10-2010. He has not received any benefit for the amount remitted so far.

At the same time the respondent made an investment for the installation of the transformer and line. The CGRF, Central region observed that there was no follow up action for the completion of the work either from the part

of the respondent or the appellant. As such both respondent and appellant are responsible for the present situation.

Details such as date of completion of the work, detailed estimate of the work, whether any notice was given to the appellant other than issued on 28-03-2015, whether transformer and line can be used for other consumers etc are not received from respondent so far and hence it is understood that the work was completed or ready for energisation just before 28-03-2015.

As per the agreement executed, the respondent is eligible for fixed charges if after service of notice the applicant fails to take supply of electricity, as per the tariff in force for completed months after expiry of notice till the applicant avail supply, pursuant to Clause 10 of Supply Code, 2005. In this case, the respondent has implemented the MG agreement in 2015 after the Supply Code 2014 came in force and issued notice only on 28-03-2015. There is no clause in the Code 2014 for collecting charges under MG scheme. As per Regulation 59 of the Supply Code, 2014, "(1) Where the licensee has completed the work required for providing supply of electricity to an applicant and the installation of the applicant is not ready to receive supply, the licensee shall serve on the applicant a notice directing him to take supply within sixty days of service of the notice in the case of LT consumers and within ninety days of service of notice in the case of HT and EHT consumers and intimating him that the application will be treated as withdrawn if he fails to respond to the notice within the notice period.

(2) If the applicant fails to respond to the notice within the notice period, his application may be treated as withdrawn and further steps taken in accordance with regulation 58 of the Code".

I find total negligence from the side of the KSEB in all the said dealings with the consumer, within the time frame prescribed in the Code. There is no dispute that the appellants' firm was closed during these periods.

The reason stated by the appellant for the sale of property is the delay in getting additional power cannot be accepted. The appellant is not required additional power from the transformer in future, the respondent shall look into the possibility of retaining the line and transformer as a part of distribution system with transferring load of existing consumers/new consumers or both.

Decision

The appellant has not availed the additional load requested by him under MG scheme and the service was found disconnected during the notice period. But once the Line and Transformer (erected under MG scheme) is not in use by appellant and not required in future, the respondent has to utilize it effectively. It is only justifiable to give the benefit of the cost of the line and transformer, which was collected from the consumer.

Therefore it is decided that, the MG amount payable by the consumer shall be dispensed with and the MG amount collected shall be refunded

after deducting the portion of the labour charge in the estimate of Rs.466300/- and 10% of administrative expenses of Rs.466300/- towards the construction of 220 metre 11 KV line and erection of 100 KVA transformer. The appellant's claim for compensation is not allowed.

The respondent shall prepare the accounts and settle the claim within 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. The order of the CGRF in 19/2017-18 dated 25-08-2017 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/103/2017/_____/Dated _____

Delivered to:

1. Sri. George Antony, Pothanikat House, Kothamangalam, Ernakulam.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Kothamangalam, Ernakulam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.

