

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/075/2018
(Present: A.S. Dasappan)
Dated: 26th November 2018

Appellant : Sri. Mohan Rajan
Divan PVC pipe, Edattuthazhe,
Villoonni P.O., Kottayam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Gandhi Nagar,
Kottayam

ORDER

Background of the case:

Sri Mohan Rajan, the appellant, had obtained a 3 phase Electric connection with consumer No. 14332 in Electrical Section, Gandhi Nagar under MG (Minimum Guarantee) scheme on 10-03-2008 with a connected load of 38 kW, for running a pipe manufacturing unit under LT-IV industrial tariff. The MG period for which the consumer is bound to pay the minimum amount as per the Agreement was for seven years from 3/2008. The appellant stopped the unit in 2014. The appellant had remitted MG amount up to 02/2014 only and submitted an application for disconnection of the electric service connection on 03-07-2014 since he faced difficulty to run the factory and finally the service was dismantled on 17-11-2014. In order to realize the arrear amount and the balance MG amount a notice was served to the consumer on 11/09/2014 for Rs. 86,443/-. The consumer challenged the arrear before the Consumers Grievance Redressal Forum (South) by filing OP No. 1275/2014 and the CGRF by its order dated 03/02/2015 directed to reassess the impugned amount subject to the self remuneration condition of the line and transformer. The impugned bill for Rs. 86,443/- was revised to Rs. 26,304/- excluding the MG amount of Rs. 60,139/- which includes demand charges for Rs. 25,830/-, meter rent Rs. 474/- and surcharge Rs. 14,993/-. Against the bill the consumer again approached the CGRF and the Forum quashed the bill issued to the appellant and directed KSEBL to revise the bill excluding surcharge portion. Accordingly after waiving surcharge amount, a revised bill

was issued to the appellant on 14/06/2018 for Rs. 26,304/-. Against the bill again the appellant approached the CGRF with a review petition and the same was rejected by the Forum on 4/8/2018. Not satisfied with the decision of the CGRF, the appellant filed this appeal petition before this Forum. This Forum intends to look into the facts of any 'over payment' and whether he is eligible for relief if any.

Arguments of the appellant:

1. The appellant was conducting a pipe manufacturing which was an SSI unit by name Divan PVC Pipes from the year 2003. He is a consumer with Consumer No. 14332 in the Electrical Section, Gandhi Nagar, Kottayam. He applied for 11 kV SLCH line HT/LT-820 m and transformer with a capacity of 50 kVA but was allotted 3 phase LT IVA service connection having a connected load of 38 kW from 10/03/2008. The said connection was obtained by executing a minimum guarantee agreement for constructing 11 kV line and installing 100 kVA transformer against cost to be levied by monthly installments. The appellant deposited Rs. 16,000/- as cash deposit as directed by the respondent.

2. The minimum guarantee amount during the time of executing the agreement was Rs 11,032/- (Rs Eleven Thousand and Thirty Two only) the said amount was paid by the appellant from 10/03/2008 till 01/11/2010. Subsequently he preferred an application before the opposite party to revise the minimum guarantee amount from 10/03/2008 finding it unreasonable. But the Deputy Chief Engineer, Electrical Circle, Kottayam after considering the average demand of two LT Industrial Consumers (Consumer No. 6988 & 8017) ordered for revision of minimum guarantee amount which was revised to Rs 8,356/- with effect from 02/11/2010 only and not from 10/03/2008. The appellant remitted the installment amount continuously for six years (February 2014).

3. Mean while the respondent used the transformer giving power supply to more than two hundred new LT connections which is self remunerative to the respondent.

4. In the year 2014 the appellant suffered a cardiac arrest and had to spend a considerable amount for his treatment. The doctors advised total bed rest for the appellant. Therefore finding it difficult to run the factory the appellant was forced to close the unit.

5. The appellant submitted the application for disconnection of the electric supply on 03/07/2014 due to the incapacity to run the unit. The respondent after receiving the application for disconnection issued the arrear bill on 11/09/2014. Aggrieved by the said bill the appellant approached the CGRF challenging the impugned bill by filing OP No. 1275/2014. The CGRF by its

order dated 03/02/2015 directed the respondent to re-assess the impugned amount subject to the self remunerative condition of the line and transformer and inform the appellant within one month from the date of receipt of the said order.

6. But the respondent never complied with the order dated 03/02/2015 in OP No. 1275/2014. While the matter stood thus as a bolt from the blue the appellant received a revenue recovery notice on 15/02/2018 from the respondent requiring him to remit an amount of Rs. 41,297/- (Rupees forty one thousand two hundred and ninety seven).

7. Aggrieved by the said bill this appellant again filed OP No. 24/2018 before the CGRF challenging the impugned bill contending that which was in violation of the order dated 03/02/2015 in OP No. 1275/2014 to re-assess the impugned amount subject to the self remunerative condition of the line and transformer and inform the appellant within one month from the date of receipt of the said order. But the respondent had assessed after a period of 3 years. Finding the laxity and irresponsibility of the respondent, the Forum opined that it was not just and proper to punish the innocent appellant in the way of interest with the fault of the respondent and found that the assessment bill issued on 15/02/2018 is not sustainable and quashed the same and further directed to revise the bill excluding the surcharge of Rs. 14,993/-.

8. In fact the appellant is not bound to pay the principal amount of Rs. 26,304/- respondent had assessed after a period of 3 years. Therefore there is laxity and irresponsibility on the part respondent. As also the amount is demanded after a lapse of 3 years barred by limitation. The act of the opposite party caused severe mental agony and inconveniences to the appellant. Respondents are bound to pay Rs. 77,748/- as the surplus amount paid to the respondent by the appellant from the period from 10/03/2008 to 02/11/2010 (Rs 11,032/- less Rs 8,356/- = 2356 X 33 = Rs 77,748/-). Respondents are bound to return the cash deposit of Rs 16,000/- deposited by the appellant during the time of obtaining the electric connection. Aggrieved by the said bill this appellant again filed OP No. 74/2018 before the CGRF challenging the impugned bill contending that which was in violation of the order dated 03/02/2015. The said case was dismissed finding that the same was filed with the same cause of action as in OP No. 1275 and 24/18. But again the opposite party has again issued a demand notice dated 13/08/18 demanding Rs 26,804/- which is against all the principles of natural justice.

9. Therefore it is most humbly prayed that this Forum may be pleased to order:

1. To direct the respondents to pay Rs 77,748/- as the surplus amount paid to the respondent by the appellant from the period from

10/03/2008 to 02/11/2010 (Rs 11,032/- less Rs 8356/- = 2356 X 33= Rs 77.748/-)

2. To return the cash deposit of Rs 16,000/- deposited by the appellant during the time of obtaining the connection.
3. To exempt from the payment of Rs 26,804/- demanded by the respondent by notice dated 13/08/18.
4. To allow Rs.1,00,000/- as compensation for mental agony and suffering.
5. To pay an amount of Rs. 50,000/- as cost to the appellant
6. To such other order or reliefs which his Hon'ble Forum a deem fit and proper in the interest of justice.

Arguments of the respondent:

The appellant was an industrial 3 Phase consumer under Electrical Section Gandhinagar with a connected load of 38 kW. The service connection was allotted on 10/3/2008 after executing line extension minimum guarantee agreement for 7 years with monthly minimum guarantee amount as Rs. 11,032/-. The appellant remitted the amount till 1/11/2010 and then on at the request of the consumer the Dy. Chief-Engineer, Electrical Circle Kottayam ordered to revise the MG amount and accordingly the amount was revised to Rs 8356 with effect from 2/11/2010. The appellant remitted the MG amount till February 2014 and thereafter defaulted. In order to realize the arrear amount and the balance MG amount a notice was served to the consumer on 11/9/2014, the consumer challenged the arrear before the Consumers Grievance Redressal Forum (South) by filing OP No. 1275/2014. The CGRF by its order dated 3/2/15 directed to reassess the impugned amount subject to the self remuneration condition of the line and transformer. The Board Secretary on 23/2/2017 accorded sanction to comply the directions of the CGRF. Hence in accordance with the order the impugned bill for Rs. 86,443/- was revised to Rs. 26,304/- excluding the MG amount of Rs. 60,139/- and the same was communicated to the appellant on 15/2/2018. The revised bill amount includes demand charges for Rs. 25,830/-, meter rent Rs. 474/- and surcharge Rs. 14,993/-.

Against the bill the appellant again approached the CGRF with a representation and the forum on 27th April 2018 by its order quashed the bill issued to the appellant and directed KSEBL to revise the bill excluding surcharge portion. Accordingly after waiving surcharge amount, a revised bill was issued to the appellant on 14/6/2018 for Rs. 26,804/-. Against the bill again the appellant approached the CGRF with a review petition and the same was rejected by the Forum on 4/8/2018. Here in this case KSEBL had given all

possible assistance to the appellant and hence there is no cause of action to file this case against the opposite parties.

The appellant's statement to the extent that "the respondent after receiving the application for disconnection issued the arrear bill on 11/9/2014" is a deviation from fact. The fact is that the consumer remitted the MG amount till February 2014 and thereafter defaulted, but monthly bills as according to the revised MG amount including current charges were served to the consumer on regular basis, later the consumer approached KSEBL for short closing the MG amount. Hence in order to realize the arrear amount and the balance MG amount, a notice was served for Rs. 86,443/- to the consumer on 11/9/2014. But the consumer challenged the arrear before the Consumers Grievance Redressal Forum (South) by filing OP No. 1275/2014. In accordance with the order of CGRF dated 3/2/15 to reassess the impugned amount subject to the self-remuneration condition of the line and transformer, the impugned bill for Rs. 86,443/- was revised to Rs. 41,297/- excluding the MG amount of Rs. 60,139/- and the same was communicated to the appellant on 15/2/2018.

KSEBL had complied the directions of CGRF and in accordance with the order, the impugned bill for Rs. 86,443/- was revised to Rs. 26,304/- + surcharge excluding the MG amount of Rs. 60,139/- and the same was communicated to the consumer on 15/2/2018. The appellant then approached the CGRF with a representation and filed OP No. 24/2018 and the Forum on 27th April 2018 by its order quashed the bill issued to the appellant and directed KSEBL to revise the bill excluding surcharge. KSEBL in accordance with the order revised the bill for Rs. 41,297/- to Rs. 26,804/- and the same was communicated to the consumer on 14/6/2018.

The appellant himself in his contention mentioned that he is not liable to pay the principal amount of Rs. 26304/-. These are current charge arrears which the appellant is liable to be paid for which monthly bills were served promptly to the appellant during the period, instead of remitting the same the appellant approached various forum and now came up with a new contention "the amount is demanded after a lapse of 3 years barred by limitation" for gaining unlawful benefits. In this connection it may be noted that in judgment dated 9-2-2012 of WA No. 211/2012 in WPC No: 34768/2011 the Hon'ble High Court of Kerala held that "the question of normal period of limitation is not applicable both, towards electricity and water charges" hence the bill issued is legal and is strictly in line with the order dated 27/4/2018 of the CGRF

The MG amount paid by the consumer is strictly as per norms, the Consumer Grievance Redressal Forum by its order exempted the appellant from further payment of MG amount after February 2014. Hence the appellant's claim may be rejected.

The appellant's security deposit amount was adjusted to his dues while closing his account during 12/2014. The appellant did not remit his MG amount as well as current charges from 2014; hence the security deposit was forfeited and adjusted to the dues.

The appellant now is trying to get relief for the current charges which he is liable to be paid from March 2014 to December 2014. The Forum also upholds the rights of KSEBL to realize this amount hence the appellants prey may be rejected. Here the appellant himself is creating mental agony by filing case over case against KSEBL, hence his plea may be rejected.

Analysis and Findings:

The hearing of the case was conducted on 30-10-2018 in my chamber at Edappally, Kochi. The appellant Sri. Mohan Rajan appeared for the hearing and Sri. Viji Prabhakaran., Assistant Executive Engineer, Electrical Sub Division, Gandhi Nagar, Kottayam has appeared for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing 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 MG agreement executed between KSEB and the consumer, the appellant has agreed to pay 25% of the actual amount incurred by the KSEB (including 10% establishment cost) to erect the transformer and to construct the electric line for effecting the industrial 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 seven years 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 payment for the guaranteed 7 years.

The minimum guarantee amount originally fixed was Rs 11,032/- (Rs. Eleven thousand and Thirty two only) and the said amount was paid by the appellant from 10/03/2008 till 01/11/2010. This amount was revised to Rs.8356/- w.e.f 10-03-2008 on the request of the appellant. In this case the appellants version is that the appellant is entitled to remit @ Rs. 8,356/=- only as MG amount for the period from 10/03/2008 to 02/11/2010 as two other connections were effected from the said transformer and line as on 10-03-2008 itself. Another

contention of the appellant is that around 200 connections were provided from the transformer during the period. The appellant remitted the MG amount till February 2014 and thereafter defaulted. He had submitted application for disconnection of the electric supply on 03-07-2014 due to the incapacity to run the unit. The appellant had also remitted an amount of Rs. 19,000/- as cash deposit.

The respondent submits that in order to realize the arrear amount and the balance MG amount a notice was served to the consumer on 11/9/2014, the consumer challenged the arrear before the Consumers Grievance Redressal Forum (South) by filing OP No. 1275/2014. The CGRF by its order dated 3/2/15 directed to reassess the impugned amount subject to the self remuneration condition of the line and transformer. Accordingly, the impugned bill for Rs. 86,443/- was revised to Rs. 26,304/- excluding the MG amount of Rs. 60,139/- and the revised bill amount includes demand charges for Rs. 25,830/-, meter rent Rs. 474/- and (surcharge Rs. 14,993/-).

Against the bill the consumer again approached the CGRF and the Forum by its order dated 27th April 2018 quashed the bill issued to the consumer and directed KSEBL to revise the bill excluding surcharge portion. Accordingly after waiving surcharge amount, a revised bill was issued to the appellant on 14/6/2018 for Rs. 26,304/-. Another contention of the respondent is that the appellant's security deposit amount was adjusted to his dues while closing his account during 12/2014.

The respondent has furnished a statement showing the details of arrears pending against the consumer as on 12/2014. As per the statement demand charge is Rs. 25,830/-, meter rent is Rs. 474 and LEMG is Rs. 60,139/-. The bill was seen revised excluding MG amount of Rs. 60,139/-. It is not revealed from the statement whether any adjustment of cash deposits was done or not. Further it is found that in compliance with the orders of CGRF, the respondent had issued a revenue recovery notice dated 15-02-2018 to appellant after a period of three years. A revised bill is not seen issued on time to the appellant before issuing the revenue recovery notice, as ordered by the CGRF.

A question to be answered in this case is that when the transformer and line became self remunerative and whether two connections were provided on 10-03-2018 or a subsequent date as claimed by the appellant and also the appellant is eligible for refund of cash deposit or the cash deposit was adjusted against the pending liabilities?

The appellant's electric connection was disconnected and dismantled on 17-11-2014. According to the respondent, the arrear amount to be collected from the appellant on date of dismantlement was Rs. 86,443/- for the period from 04/2014 to 12/2014 and he has furnished a statement on this regard. Though the respondent has been asked to furnish the calculation details of the security

deposit adjusted/refunded, the details are not given. The respondent has stated that the arrear amount Rs. 86,443/- was arrived after forfeiting the SD amount. The respondent has purposefully misleading this Authority by not giving the details correctly.

The CGRF, in its order dated 03-02-2015, had directed the respondent to re-assess the impugned amount subject to the self remunerative condition of the line and transformer. The respondent was directed to furnish the details of total number of service connections provided from the transformer till 02/2015 and the date of self remunerative, if any. But the respondent has submitted that a total number of 127 connections were provided from the transformer till date and not furnished the self remunerative date of the appellant's MG connection. It is revealed that the respondent is not aware of the self remunerative date of the MG connection. Further it is found that there occurred grave lapses on the part of the respondent by not taking any action on the basis of the order dated 3/2/2015 of CGRF for a period of 3 years.

The Deputy Chief Engineer had revised the MG amount from 2/11/2010 onwards from Rs.11032/- to Rs.8356/-. The revision might have been done considering the self remunerative aspect and the appellant had not raised any objection till the date of submission of the present complaint. Now it is not proper to consider the request of the appellant to refund the difference in MG amount for the period from 10-03-2018 to 01-11-2010, since there is no evidence to establish the self remuneration during that period.

Decision

The service was found dismantled on 17-11-2014. The MG period expires on 02/2015 and the appellant remitted the MG amount up to 02/2014. The Line and Transformer (erected under MG scheme) is not in use by appellant and not required in future. A total number of 127 consumers were given connections from the transformer and the line so far. As per rules, the Assistant Executive Engineer shall review whether the line has become self remunerative, if the minimum guarantor give an application for termination of minimum guarantee agreement considering the details of total consumers connected from the line. The KSEBL is not supposed to penalize the consumer once the MG line has become self remunerative. In this case the respondent has not correctly assessed when the line has become self remunerative. Instead the respondent simply removed the MG amount from the short assessment bill for the months from 04/2014 to 12/2014 issued by him, without conducting review of the self remunerative period. The respondent had not submitted the relevant basic data used for the preparation of demand charge, details of self remuneration, if any, details of adjustment of security deposit. Further the meter rent shown in the statement is not reliable. Considering the above facts, the bill for Rs. 26,304/- is not sustainable and hence quashed. The respondent shall also take action to review the MG period by considering the new

connections given from the transformer and Line and declare as Line self remunerative and settle the claims accordingly. The adjustment details of the Security Deposit of Rs. 19,000/- are also not furnished by the respondent. Hence the respondent is directed to refund the Security Deposit Rs. 19,000/- to the appellant with interest admissible.

The appellant's claim for surplus amount remitted under MG scheme for the period from 10-03-2008 to 01-11-2010 is not allowed.

The respondent shall 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 24/2018 dated 27-04-2018 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/075/2018/ _____ /Dated: _____

1. Sri. Mohan Rajan, Divan PVC pipe, Edattuthazhe, Villoonni P.O., Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Gandhi Nagar, Kottayam

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, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.