

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/019/2024
(Present A. Chandrakumaran Nair)
Dated: May-21-2024**

Appellant : Sri. Mohammed Khais- Jahangir
Musaliar, M/s Pristine Plastics and
Polymers, R.S Building,
Thrikkovilvattom, Mukhathala P.O.,
Kollam Dist., Pin- 691577.

Respondent : The Special Officer Revenue,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram.

The Deputy Chief Engineer,
Electrical Circle,
KSE Board Limited, Kollam,
Kollam Dist.

ORDER

Background of the Case

The appellant is the owner of M/s Pristine Plastics and Polymers on MSME unit at Mukhathala, Kollam. The HT power connection was availed during 2015 with consumer no. LCN 9/7625 AND WITH THE CONNECTED LOAD 182.176 kw and the contract demand 130 kVA. The power to this factory was disconnected on 31/07/2022 due to non payment of the power charges, invoking the Regulation 138(1) (a) of the Kerala Electricity Supply Code 2014. The power was dismantled on 19/04/2023. The dismantling period was considered a 6 months from the date of disconnection and accordingly the balance amount payable is worked to Rs. 8,35,075/- on adjusting the security deposit. The appellant aggrieved by the above said arrear and claimed that the demand is not as per Electricity Supply Code 2014. Filed petition to the CGRF and CGRF issued order dated 04/03/2024 stating that the appellant is liable to pay the demand raised by the licensee. Aggrieved with the decision of CGRF, this appeal petition is filed to this authority.

Arguments of the Appellant

Our MSME Industrial Unit under your Jurisdiction having Consumer Number 1345790042405 (LCN.9/7625 HT I (A) Industrial) with a contract demand of 130 kVA we under layoff from September 2021 due to financial crises after Covid 19 Pandemic. We were taken all our efforts to keep the unit Live and not succeeded. The unit availed power connection during 2015 and served all KSEB Bills regularly till 31st October 2021 even after the Covid-19 Pandemic lifted with great struggle to sustain in the market.

As per the communication above referred, we are sorry to inform you that the calculation is not as per the "Supply code 2014. (6) *The licensee shall, after disconnection on the grounds mentioned in sub regulation (1) of regulation 138, give intimation to the consumer as per format given in Annexure - 18 to the Code, to remove the cause of disconnection within forty five days, failing which the supply may be dismantled*". 143(3) *If the service connection of the consumer remains continuously disconnected for one hundred and eighty days, except upon the request of the consumer, the agreement may be terminated after giving a notice of fifteen days to the consumer*

Considering the above facts we please to request to revise your demand as per law so as to settle for Termination of Agreement as described by Supply code clause 143.(3) from the date of virtual disconnection of Power supply to our factory building we are not liable to pay any bills after the virtual disconnection affected by the KSEB department Please revise your demand accordingly. (1) *The licensee shall, in the case of disconnection proposed on the grounds mentioned in clauses (a) and (b) of sub regulation (1) of regulation 138 above, issue a disconnection notice in writing, as per Section 56 of the Act, with a notice period of not less than fifteen clear days, intimating the consumer about the grounds for disconnection and directing him to pay the dues with penal charges within the notice period. 141. Charges payable during the period of disconnection.- The consumer is liable to pay the charges if any as approved by the Commission, during the period of disconnection also: Provided that no charge shall be due to the licensee for the period which is in excess of one hundred and eighty days from the date of disconnection if the connection remains continuously disconnected for one hundred and eighty days except on the request of the consumer.*

Considering the above facts we please to request to revise your demand as per law so as to settle for Termination of Agreement as described by Supply code 2014 clause 143. As a relief measure to combat COVID-19, the KSEB has announced a waiver of 25% of the fixed charges for all consumers for the months of the March, April and May 2020 and to defer the payment of balance fixed charges (75%) up to December 2020 without levying interest. A copy of the said Board Order dated 30-05-2020 Even though this was announced, the eligible rebate was not allowed to us, there was no reduction

on account of this subsidy in any subsequent bill. Hence it is presumed that the eligible rebate was not allowed.

Our Caution deposit Rs 3,55,992.00 cash with KSEB Ltd is not reflected in any of the statement made unilaterally by the department and the same is injustice to a customer The interest part is levied with no legal standee without deducting our deposit amount first against our pending bills. Supply code 2014 clearly mentioned in Sec 60. "Failure of the applicant to avail supply due to reasons beyond his control.- *If the applicant fails to avail supply due to reasons beyond his control such as natural calamity, order of a Court or of any other competent authority, public resistance and change in law, the applicant shall not be liable to pay any compensation or charges to the licensee on account of such failure to avail supply of electricity*". Under the above circumstance we pleased to request you to allow us an opportunity to hear our grievance and order one time settlement with due consideration of our eligible deductions without interest.

Consider our grievance on merit and declare the date of disconnection consider the virtual date of lock down. Declare and order for re calculation of pending bills with due consideration of our grievance as per the law of the land. Allow one time settlement without interest for the actual due amount after re consolation of accounts considering the deductions as per Covid-19 reliefs as our industry been badly affected due to pandemic.

Arguments of the Respondent

All the averments of the appellant are hereby denied unless otherwise admitted. hereunder. This appeal is not maintainable either under law or on facts. The matter involved in this appeal has already been heard and disposed on merits by the Hon'ble CGRF, kottarakkara vide op no.75/2023 dated 28-02-2024. This appellant was miserably failed to establish the grounds raised for substantiating his claim and also didn't succeed to produce any documentary evidence before the CGRF, Kottarakkara. The Hon'ble CGRF fully accepted the version submitted by KSEBL and decided that the bill issued is as per rules. Hence the appeal is to be dismissed in limine without entering in to the merits of the case. However the following facts are submitted. The appellant was a HT I(A) (industrial) consumer bearing LCN 9/7625 under the jurisdiction of Electrical Circle, Kollam having contract demand 130 KVA and Connected Load 182.176KW.

The Service Connection of the consumer was under disconnection from 31-07-2022 for default in payment of regular current charges. Disconnection to the consumer was effected invoking Regulation 138 (1) (a) of Kerala Electricity Supply Code.2024. Regulation 138 (1) Reads:- The license shall not disconnect the Supply of Electricity to any consumer except on any one or more of the following grounds. a) If the consumer defaults in payment of the dues payable to the licensee as per the Bill or Demand Notice or any other issued by the Competent Authority, within the period stipulated

therein. After disconnection, Dismantling Notice was issued to the petitioner by the Deputy Chief Engineer, Electrical Circle, Kollam in Annexure 18 invoking Regulation 143 (3) on 29-03-2023. Regulation 143 (3) reads:- If the Service Connection of the consumer remains continuously disconnected for one hundred and eighty days, except upon the request of the consumer, the agreement may be terminated after giving a notice of fifteen days to the consumer. Regulation 139 (6) reads:- The licensee shall, after disconnection on the grounds mentioned in Sub Regulation (1) of Regulation 138, give intimation to the consumer as per format given in Annexure - 18 to the Kerala Electricity Supply Code 2014, to remove the cause of disconnection within 180 days, failing which the supply may be dismantled.

The Dismantling Notice issued to the petitioner was in order. Intimation to the consumer as per Regulation 139 (6) Kerala Electricity Supply Code 2014 was issued to the consumer on 10-03-2023. According to Regulation 2 (58) of the Kerala Electricity Supply Code 2014, minimum charge means the charges payable by the consumer for a billing period as approved by the Commission in the Tariff Order. In view of the General Condition 2 and 6 under Part B of the Tariff Order dated 08-07-2019, billing demand shall be the Recorded Maximum Demand (RMD) for the month in KVA or 75% of the Contract Demand (CD) as per the Agreement, whichever is higher and the monthly minimum charge applies even during the period of disconnection of power supply. As such minimum Demand Charge to be paid by the petitioner firm.

It is also to be noted that as per Clause 18 (a) of the agreement executed with the complainant it was agreed that in cases where the consumer is unable to consume energy, due to lockout strike of employees of the consumer, major breakdown of machinery or plant which to the satisfaction of the Licensee is responsible for the non-consumption of energy or other force majeure conditions over which the consumer has no control, he shall resume consumption of energy as soon as he reasonably can and he shall promptly intimate the Licensee the reasons for such non-consumption. In any event the consumer shall be bound to pay to the Licensee the fixed minimum charge as approved by the Kerala State Electricity Regulatory Commission, irrespective of the question as to whether any energy has been consumed or not, whatever be the reason for non-consumption, however, the Licensee shall have the right to take periodical shut down as and when required for the purpose of routine maintenance after giving reasonable notice to the consumer and no claim for rebate or refund of charges on this account shall be entertained by the Licensee. Hence the petitioner is liable to pay the amount. Termination of agreement as per Regulation 143(2), was issued to the petitioner vide on 31-07-2023. Dismantling Notice was issued to the consumer in time.

Charges payable to the consumer during the period of disconnection up to 180 days from the date of Disconnection. KSEBL vide B.O (FTD)

No.363/2020 (KSEB/TRAC-D/Covid Pandemic-Tariff Concession/2020-21) dated 30-05-2020 decided to waive 25% of the fixed charge applicable to Industrial/Commercial and Private Hospitals for the months from 03/2020 to 05/2020 and to defer the payment of balance fixed charge upto 15-12-2020 without levying interest during the deferred period. Accordingly the petitioner was allowed rebate of Rs.25,245/- on 09-06-2020. The Security Deposit of the petitioner has already been deducted from the pending arrears of the consumer. The proceedings in this regard has been issued to the consumer. The statement of the petitioner that the caution deposit is not reflected in any of the statement is false and denied.

It is also worthwhile to note that more than 75% of the power requirement of the State is being met through the power purchase. KSEB Limited will have to pay the fixed charges regularly to the Generations. The monthly fixed charge commitment to KSEB Limited is around Rs.330Crores, where as the fixed charge receivable to KSEB Limited is only Rs.200 Crore per month. There is no rebate or relief on these fixed charges payable by KSEB Limited and KSEB Limited has to pay these amount in time for providing uninterrupted power supply to all consumers including the HT/EHT consumers who are the back bone of the State. It is pertinent to note that KSEBL had passed on all the benefits extended by Government of Kerala during the pandemic period on the strength of Section 108 of the Indian Electricity Act, 2003 to the petitioner firm. No other benefits can be extended to the petitioner firm irrespective of Section 65 and 108 of the Indian Electricity Act, 2003. Hence the petitioner is liable to clear the existing arrear.

Also, the agreement of the appellant quoting Regulation 60 of the Kerala State Electricity Supply Code 2014 has no relevance in this issue and it indicates only for availing new connections. All the actions taken by KSEBL till date is as per rules prevailing and the same has been upheld by the Hon'ble CGRF, Kottarakkara in its order dated 28-02-2024. None of the reliefs sought for in the appeal petition can be allowed. In the light of the facts stated above and the arguments urged at the time of hearing this Hon'ble Forum any dismiss the appeal with cost to these respondent. All the facts stated above case true and correct to the best of by knowledge information and belief.

Analysis and Findings

The hearing of the case was conducted on 15/05/2024 at 03:00 p.m. in the KSEBL, IB, Paruthippara, Thiruvananthapuram. The hearing was attended by the appellant's representative Sri. Rajan M. Menon and the respondents Sri. Vijayakumar V., Superintendent, O/o Special Officer Revenue and Sri. Asokan S., Senior Superintendent O/o Special Officer Revenue, KSEBL, Vidyuthi bhavanam, TVPM and Smt. Jasmin M., AEE, Electrical Sub Division, Kottiyam.

The appellant was running an MSME unit named as Pristine Plastics & Polymers manufacturing Plastic PET bottles which is used as the containers for the drinks. They have availed 3 phase HT power supply during 2015. The unit was running properly and was paying the power charges without delay up to August 2021. The unit was under lay off from September 2021 due to financial crisis after Covid-19 Pandemic. The appellant stated that they are regular in payment till October 31st. Then the payment of November 2021 onwards was defaulted. There was no consumption of power as the unit was laid off. The electricity Act 2003, Section 45 states about the power to recover the charges.

45(1) *“Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity, him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.”*

45(2) *“The charges for electricity supplied by a distribution licensee shall be –*

(a) Fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) Published in such manner so as to give adequate publicity for such charges and prices.”

45 (3) *“The charges for electricity supplied by a distribution licensee may include-*

(a) a fixed charges in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.”

45(5) *“The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission”.*

According to this Section Kerala State Electricity Regulatory Commission regularly used to fix the two part tariff which includes fixed charges and the charge per unit of consumption. Then the fixed charges is applicable even the power consumption is nil. The Section 56 of the Act states about the disconnection of supply in default of payment.

56(1) *“Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days’ notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any*

electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid but no longer :

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,

- a) An amount equal to the sum claimed from him, or*
- b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.”*

This Section was vividly explained that the consumer would have given notice of 15 days before the disconnection of power in case of default in making the payment. The Regulation 131 of the Kerala Electric Supply Code 2014, describes about the payment of bills and penal interest.

131 (1) *“The consumer shall pay to the licensee the full amount of the bill on or before the due date indicated therein, for which the licensee shall issue a receipt.”*

131(2) *“If the consumer fails to remit the bill amount on or before the due date, the licensee is entitled to recover interest on the amount of the bill at the rates specified in the Schedule of Miscellaneous Charges as per schedule 1 of the Code”*

131(3) *“The consumer shall be permitted to remit the amount of the bill with interest as specified in the sub regulation (2) above within an extended period of fifteen days from the due date specified in the bill.”*

131(4) *“If the consumer fails to remit the amount even within such extended period, the licensee may disconnect the supply in accordance with the procedure specified in Chapter V111 of the Code.”*

If the consumer fails to remit the amount even within such extended period of 15 days, the power supply is to be disconnected. The regulation 138 is speaking about the grounds for disconnection.

138(1) *“The licensee shall not disconnect the supply of electricity to any consumer except” & (a) “if the consumer defaults in payment of the dues*

payable to the licensee as per the bill or demand notice or any order issued by a competent authority, within the period stipulated therein;”

139(1) *“The licensee shall, in the case of disconnection proposed on the grounds mentioned in clauses (a) and (b) of sub regulation (1) of regulation 138 above, issue a disconnection notice in writing, as per Section 56 of the Act, with a notice period of not less than fifteen clear days, intimating the consumer about the grounds for disconnection and directing him to pay the dues with penal charges within the notice period”.*

(2) *“If the consumer fails to remit the dues within such notice period, the licensee may disconnect the service of the consumer on the expiry of the said notice period, by cutting off the supply in the manner as the licensee may deem fit:*

Provided that the licensee shall not disconnect the supply to a consumer under this sub regulation, if the consumer deposits under protest, an amount equal to the sum claimed from him or equal to the electricity charges due from him for each month, calculated on the basis of the average charge for electricity paid by him during the preceding six months whichever is less, pending disposal of any dispute between him and the licensee:

Provided further that the supply shall not be disconnected after 1:00 PM on any day or on holidays so that the consumer is not deprived of a chance to remit the dues on the same day and get re-connection”.

The Regulation 138(1) (a) and 139 explained about the disconnection of power in case of default in payment. In the monthly current bill itself the disconnection date was mentioned. This date would have been 15 days after the due date of payment. As such the bill itself is treated as the bill cum disconnection notice. If the consumer would have defaulted the payments since November 2021, the due date of payment would have been mid of December 2021 and that of the disconnection date would have been end of December 2021. The power supply would have been disconnected by 31st December 2021 and this should be treated as the date of deemed disconnection.

The Regulation 141 speaks about the charges payable during the period of disconnection and 144 about the grounds for dismantling of service.

141. Charges payable during the period of disconnection.- *The consumer is liable to pay the charges if any as approved by the Commission, during the period of disconnection also:*

Provided that no charge shall be due to the licensee for the period which is in excess of one hundred and eighty days from the date of disconnection if the connection remains continuously disconnected for one hundred and eighty days except on the request of the consumer.”

144(1) *“The service shall be dismantled on the following grounds:-*

- a) on the termination of the agreement;
- b) if the grounds on which the supply was disconnected are not removed or rectified within the notice period.”

(2) “If the agreement is terminated or if the consumer does not remove or rectify the grounds for disconnection, the licensee shall arrange dismantling of the service connection:”

After the disconnection of power the fixed charges is chargeable only for 180 days and 181st day is to be treated as the deemed date of dismantling. The licensee should charge the fixed charges till the deemed date of dismantling. Then the deemed date of dismantling would have 30th June 2022. The reason for delay in disconnection of power and hence that of dismantling were not clearly explained by the licensee. The delay from the part of the officials of the licensee should not be a penalty to the consumer.

The appellant was arguing about the applicability of Regulation 60 of the Supply Code 2014. This regulation is about the failure of the applicant to avail power supply due to reasons beyond his control. This is applicable only for the new applicant who cant avail the power and not applicable to consumers who is already consuming the power. Hence, this clause is irrelevant to this case. The Government of Kerala has issued a circular for waive of 25% of the fixed charges for March, April and May 2020 and also one month on 2021. The licensee has extended this concession to the appellant as he is eligible to get the concession. The Security Deposit also have been deducted from the pending arrear by the licensee.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The licensee has to revise the demand notice considering the deemed disconnection date as 31/12/2021 and the deemed date of dismantling as 30/06/2022.
2. The concession declared by the Government is also to be considered and the security deposit is to be deducted from the arrear to be payable.
3. The appellant is liable to pay as per the revised demand notice which will be issued as per 1. and 2. above.
4. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/019/2024/ dated : 21/05/2024.

Delivered to:

1. Sri. Mohammed Khais- Jahangir Musaliar, M/s Pristine Plastics and Polymers, R.S Building, Thrikkovilvattom, Mukhathala P.O., Kollam Dist., Pin- 691577.
2. The Special Officer Revenue, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram.
3. The Deputy Chief Engineer, Electrical Circle, KSE Board Limited, Kollam, Kollam Dist.

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.