

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P 88/09

Appellant : M/s GTN Textiles Ltd
Erumathala ALWAYE 683112

Respondent: Kerala State Electricity Board
Represented by
The Special Officer (Revenue)
Thiruvananthapuram

ORDER

M/s GTN Textiles Ltd Alwaye submitted a representation on 18.8.2009 seeking the following relief:

To direct the KSEB to refund the entire amount claimed by the petitioner in the complaint filed before the CGRF except Head No 3 (which was remanded) and allow the complaint filed before this Authority.

The relief sought by the Petitioner before the CGRF in the petition dated 12.1.2009 are reproduced below to make the above pleas clear:

- To direct the KSEB to refund the amount Rs 52,38,095/- collected from the complainant as alleged arrears as above with interest applicable
- To declare that the KSEB has no right to collect the above amount of Rs 52,38,095/-

CGRF Ernakulam issued orders on the petition on 27.7.2009 allowing only partial reliefs. The representation with the pleas noted above is submitted to the under signed in the above back ground. Counter statement of the Respondent was obtained and hearing conducted on 20.01.2010

The Appellant had been an HT consumer which subsequently was converted to EHT. The Appellant was reported to be compelled to remit the above amounts under protest for obtaining power at EHT.

The Appellant stated that the above amount was claimed by the Board in 5 different heads and the issues involved are seen to be independent and different. Hence the analysis related to the 5 issues will be done separately and independently.

ISSUE No 1

The CTPT unit of the metering system of the consumer was defective from August 1992 to April 1995. The demands raised for the period based upon 3 months' average was subsequently revised by the KSEB taking 3 'normal' preceding months average as per agreement conditions. The consumer was allowed to remit the arrears of Rs 36,41,857/- in Ten monthly installments from 15.4.1994. The Respondent claimed interest to the extent of Rs 4,74,375/- for 'the belated payment'. The Appellant submitted petition before the CGRF for refund of the amount on 12.1.2009.

Meanwhile the Respondent issued another demand amounting to Rs 36,11,949/- on 15.6.2009 related to the same matter revising the mode of apportioning the payments towards electricity charges and interest for the same period. The action of the Respondent in issuing such a demand notice when the matter was pending orders from CGRF is itself highly deplorable and exhibits the disregard the Licensee maintains for the statutory forum of CGRF.

The Appellant moved the Hon: High Court with WP(C)19417/2009 challenging the demand for Rs 36,11,949/- which was marked as Exhibit P 6 in the WP.

On a preliminary review it is seen that :

- The demand for Rs 4,74,375/- was raised by the Respondent apportioning the payments made from 15.4.94 to 15.01.1995 towards the amounts due towards current charges and computing interest for the current charges from 15.2.1994 to 15.01.1995 subsequently.
- The demand for Rs 36,11,949/- was raised apportioning the payments made from 15.4.94 to 15.01.1995 partly towards the interest portion initially and carrying over the unpaid current charges as arrears.

It can be seen that the two demands narrated above relate to the same matter, for the same periods and related to them same 'default'.

It is clear that the central issue agitated by the Appellant before the CGRF and the Ombudsman was *whether interest is payable on the amounts allowed to be paid as installments* as per letter dated 9.2.1994/15.2.1994 of the Respondent. The Appellant had agitated the same issue in the WP(C) 19417/2009 before the Hon:High Court also. The above WP(C) had been filed before the Hon:High Court on 9.7.2009, that is, 'after the matter was finally heard by the CGRF and orders reserved'. The Appellant did not reveal, either in the representation nor during the hearing, the fact that the Respondent had issued a revised demand related to the same matter and the matter was being agitated in the Hon: High Court separately. The fact was brought to my attention by the Respondent during the hearing.

The Appellant subsequently submitted a note trying to substantiate *the silence* arguing that the issue pending before this Authority and the Hon : High Court are not the same. I have carefully gone through all the documents concerned including the Writ Petition

before the Hon: High Court and come to the conclusion that issues agitated in the representation before the undersigned and the WP(C) 19417/2009 before the Hon:High Court are same . The only difference is in the amounts demanded by the Respondent and the methodology of assessing the interest amounts.

As such I feel it is improper to enter into the issues at this stage and shall not consider and decide on the matters related to Issue No:1 raised by the Appellant.

I am surprised to note that, besides being silent on the Writ Appeal before the Hon:High Court , the Appellant has submitted, the statutory declaration along with the representation before the undersigned, that :

'The subject matter of the present complaint has not been pending / decided by any Forum/Court/Arbitrator/any other authority'.

I desist myself from making further comments on the matter.

It is not known whether the above facts were brought to the attention of the CGRF before they issued the orders on the matter. It is not proper that the issues pending before the Hon : High Court are settled by an order by the CGRF. I am constrained to direct that the CGRF order on this issue *shall be set aside.*

ISSUE No 2

This is related to the KVA MD charges for the month of May 99. The tariff was revised from 15th May 99 and there was up ward change in KVA MD charges also. The recorded MD (RMD) on 15.5.1999 was 2758.4 KVA and that on 1.6.99 was 2789.4 KVA. The Respondent took the higher of the two as the applicable MD for the month which happened to be that of the second half of the month, that is 2789.4 KVA . For the same reason, they applied the revised MD charges for the whole month . This was disputed by the Appellant. The Appellant claims that the revised rates should be made applicable for the MD recorded after 15.5.1999 only. The Appellant also claim that KVA demand for the two parts of the month should be taken separately and separate rates shall be applied.

The contention of the Appellant that the RMD for the two parts of the month has to be taken separately is not correct since the agreement and the statutes provide for the Billing demand as the recorded maximum demand *for the month* in kVA . Hence the Billing Demand for *the month* shall be 2789.4 KVA.

But the action of KSEB in having applied the revised rates for the whole month is unfair and illegal. The rates are to be applied pro-rata for the two periods: The billing shall be at pre-revised rates up to 14.5.1999 and revised rates from 15.5.1999 , both on the KVA demand of 2789.4 KVA. The excess realization is to refunded/adjusted.

ISSUE No 3

The decision of CGRF on the matter is not challenged by the Appellant and hence the issue is not opened here.

ISSUE No 4

This is related to the interest charged for the short remittance for 3 months from August 1988 to October 1988. The Respondent had demanded an amount of Rs 5,39,197/-

towards penal interest for the short remittance. The CGRF had given relief by reducing the principal amount after endorsing certain corrections in calculations. The interest rates taken by Respondent was 18% and 24% for the applicable periods. Appellant now seeks for relief in the interest rates stating that the rates are exorbitant and excessive and the claims were hit by limitation.

Since the claims on the short remittance have been reviewed by the CGRF and the Appellant seems to be satisfied by it , the question of interest only shall be dealt here. The amounts were *due from 1988 onwards* and the Respondent has charged the prevailing rates of penal interest for the periods. These rates were statutory for the periods concerned and the all the consumers including the Appellant had to pay it as per the supply agreement. Hence it is not appropriate to question the rates at this stage . The Appellant being a corporate entity had the full knowledge that the amounts demanded by the Licensee for the months in 1988 had not been fully settled all these years. Had they taken the initiatives to settle the two-decade-old disputes earlier , the interest burden could have substantially reduced.

The plea for revising the interest charges stands dismissed.

ISSUE No 5

This is related to the demand of interest for the delay of payment of surcharge on the energy charges . The KSEB had to collect surcharge @2.5 paise per unit of consumption on behalf of the State Government from 1.10.1984 .The Appellant along with a number of HT/EHT consumers resorted to protracted legal battles on the matter from 1984 onwards. Ultimately the Hon: Supreme Court dismissed their SLP on 2nd February 1996 .The KSEB sent arrear demand notices to all consumers including the Appellant in 1996. Installments were also allowed for the payments.

The Respondent had later claimed interest for the periods from 1984 to the date of payment. The Appellant disputes this with the contentions that :

1. The payments were delayed due to court stay
2. There was no will full or deliberate delay on the part of Appellant
3. There was no contract to pay any interest when the installment facility was granted

It is an undisputed fact that the payment was delayed from 1984 to 1996 *due to court cases filed by the Appellant* . The claim of the Appellant that it was ‘not a will full or deliberate’ act and that they could not make payment ‘due to court stays’ do not merit any serious consideration. The Licensee /public exchequer have every right to collect statutory interest on the delayed payments. Regarding the 3rd contention it would suffice to mention that the collection of interest for belated payments has statutory and contractual backing.

The contention that there was ‘no contract to pay any interest’ when the installment facility was granted is seen to be very peculiar. The sanctioning of installments by a Licensee for payments of arrears by a consumer can not be conceived as ‘a contract’, on the contrary , it was a concession allowed to a defaulter.

The Respondent shall be eligible to claim interest at statutory rates for such defaulted amounts.

SUSTAINABILITY, LIMITATION Etc

The Appellant has claimed that the delayed claims of the Respondent in respect of all the issues discussed have been hit by limitation.

It is not known whether the Respondent had engaged in correspondence with the consumer regarding the various claims from time to time. If not, it is a serious dereliction on the part of the Respondent Special Officer to have allowed the claims to sleep in the ledger for years together. Why the interest claims were not put forward to the consumer in time by the Respondent is not explained anywhere. For example, the consumer had cleared the arrears in respect of item 5 above, related to surcharge, as early as in 1997. Was the demand towards interest sent to the consumer in time? Similarly the demand towards interest in respect of other issues are also seen delayed for years together. The Respondent has not provided any reasons before me for such inordinate delays. Why consolidated claims towards such dues were not sent to consumer from time to time is not known.

But I do not think that such lapses on the part of the Respondent Special Officer would exonerate the HT Industrial consumer from paying interest at statutory rates on defaulted amounts. A number of court orders have upheld the rights of Licensees to realize the dues towards electricity charges without limitations of time. Even the Electricity Supply Code made after and as per Electricity Act 2003 uphold the right of the Licensee to review assessments and realize the under charged amounts from consumers without any time limit, subject to certain conditions.

Hence the contention of the Appellant that the claims in the above issues are hit by limitation can not be approved.

Orders:

Under the circumstances 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 on the issues raised by the Appellant:

1. *Issue No 1 : No orders on the matter in view of the case pending in the Hon:High Court. The order of CGRF on the matter is set aside.*
2. *Issue No 2 : Partial relief allowed as per the guide lines given above.*
3. *Issue No 3 : No pleas, No orders*
4. *Issue No 4 : The plea for revising the interest charges stands dismissed*
5. *Issue No 5 : The plea for revising the interest charges stands dismissed*
6. *No order on costs.*

Dated this the 17th day of February 2010 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 88 /09/496/ dated 17.02.2010

- Forwarded to: 1. M/s GTN Textiles Ltd
Erumathala ALWAYE 683112
2. The Special Officer (Revenue)
VaidyuthiBhavanam KSEB
Pattom , Thiruvananthapuram

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 ,
PowerHouse Ernakulam 682018