

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P 112/09

Appellant : Additional Divisional Railway Manager
Thiruvananthapuram Division
Southern Railway
Thycaud Thiruvananthapuram

Respondent: Kerala State Electricity Board
Represented by
The Secretary
KSE Board , VaidyuthiBhavanam
PattomPalace(Po)
Thiruvananthapuram 695004

ORDER

Additional Divisional Railway Manager, Thiruvananthapuram Division, Southern Railway, Thiruvananthapuram submitted a representation on 26.11.2009 seeking the following relief:

Direct KSE Board to pay interest on the entire cash deposit towards security including arrears accrued from the date of deposit along with the accrued interest on the arrear amount as on date as per prevailing rates in force.

The representation was forwarded to KSE Board on 26.11.2009 for remarks. Counter statement of the Respondent was obtained on 3.2.2010 and hearing of both the parties conducted on 4.3.2010. Neither the Appellant nor the Respondent submitted argument notes further to the hearing.

FACTS OF THE CASE

Thiruvananthapuram Division of Southern Railway had taken EHT connections at six points , Chalakkudi to Kazhakkuttam , for the operation of AC hauled trains. Railways

were directed to pay two months probable current charges as Security Deposit : 50% as cash or demand draft and the balance 50% as Bank guarantee .But Railways expressed their inability to provide Bank Guarantee and requested to waive the bank-guarantee part of the deposit . Then KSEB directed them to pay the total amount of security deposit as cash. Railways remitted the amount for obtaining the connections. Approximately Rs 13 Crores is being held as security deposit by KSEB towards the six EHT connections. KSEB paid interest only on 50% of the deposit. Railways took up the matter with KSEB officials but did not get the grievance redressed.

The Railways moved the CGRF of KSEB Kottarakkara on the matter with a Petition on 04.02.2009 . The KSEB, meanwhile, issued an order on 28.4.2009 clarifying that 'interest on security deposit will be granted to consumers of the Board only up to the desired level of 50% cash deposit as specified in the rules, if at all, consumers remit 100% security deposit in cash at their own will and choice'. CGRF did not issue any verdict on the matter.

MAINTAINABILITY OF THE COMPLAINT

As noted earlier the Appellant had submitted the Petition to the CGRF of KSEB at Kottarakkara on 04.02.2009. The CGRF heard the Appellant and Respondent on several sittings and collected the relevant documents and recorded statements of the parties concerned. But the CGRF did not pass any award on the matter .The matter was referred to the Ombudsman by the CGRF vide their order No: CGRF(S)/KTR/OP 337/09/64/ dated 19.5.2009 and the file was forwarded to the undersigned.

The statutes do not provide for Ombudsman considering the petitions forwarded by the CGRF without the Forum issuing verdicts on the matter. As such the CGRF was informed on 18.6.2009 that the undersigned shall neither consider nor take any action on the Petition and file forwarded by the Forum.

Subsequently the Consumer filed a representation for redressal of their grievances to this office on 26th November 2009 .This is a unique situation where the CGRF desist themselves from issuing a verdict on a Petition filed by a consumer for reasons best-known to them . The statutes do not provide for any administrative authority to the Ombudsman to issue directions to CGRF against such practice. So I am not in a position to direct the CGRF to pass a verdict on the issue. But I feel that the statutory forums like CGRF constituted under the Electricity Act 2003 shirking from responsibilities in such casual manner would create a very bad precedent.

How ever the Consumer should be able to get his grievances addressed even in such situations. Hence the representation submitted by the Appellant was accepted and registered by the undersigned. The appeal representation was forwarded to the Respondent for their version. The Respondent did not raise any objection on the decision of accepting and registering the above representation of the Appellant at any stage.

Before proceeding further, the maintainability of the complaint will be discussed. The relevant sections of the Electricity Act 2003 read as follows:

42 (5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal

of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission

As per the Electricity Act 2003 the Consumer can make a representation to the Ombudsman for the redressal of his grievance if he is aggrieved by *non-redressal of his grievances* by the CGRF. In the instant case the consumer continues to be aggrieved by non redressal of his grievances due to the CGRF not issuing any verdict on the matter.

This has been explained in the Regulations also. Section 22 of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 reads as follows:

22. Maintainability of the Complaint.- (1) No representation to the Ombudsman shall lie: (a) unless the Complainant has made a written representation in the prescribed form, to the Forum;

(b) unless the Complainant is aggrieved on account of his complaint being not redressed by the Forum within the period and manner specified in these Regulations;

(c) unless the representation against an order of the Forum was made within the period specified in these Regulations and is not in respect of the same subject matter that has been settled by the Ombudsman in any previous proceedings;

(d) in cases where a representation for the same grievance by the Complainant is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.

(2) The Ombudsman may reject the representation at any stage if it appears to him that the representation is:

(i) frivolous, vexatious, malafide;

(ii) without any sufficient cause;

(iii) not being pursued by the Complainant with reasonable diligence;

(iv) there is no prima facie loss or damage or inconvenience caused to the Complainant

In accordance with the above Regulations, *the test of maintainability* of any complaint by the Ombudsman shall consist of the following examinations:

1. Whether the Complainant has made a written representation in the prescribed form to the CGRF?
2. Has the complaint been redressed by the CGRF within *the period and manner* specified in these Regulations?
3. Does the consumer continue to be aggrieved on account of his complaint being not redressed by the Forum?

In accordance with the regulations , if the answer to the first and third questions are affirmative and if the answer to the second question is negative , the complaint shall stand before the Ombudsman. In the instant case the CGRF of the KSEB failed to discharge their statutory responsibility and failed to redress the grievances of the consumer. Under the above circumstances, following the principles upheld in the Electricity Act 2003 and Regulations made there under on the matter of protecting the interest of consumers and in the interest of justice, I have decided to accept, register and pass orders on the Representation filed by the Appellant on 26th November 2009.

ARGUMENTS OF APPELLANT AND RESPONDENT

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

1. The Railways were directed to make the full security deposit by cash by the Licensee.
2. The agreements executed between the Appellant and the Respondent provided for payment of security deposit by way of 50% cash and the remaining part in cash or bank guarantee.
3. Amounts equivalent to 50% deposits are being utilized by the Licensee without paying any interest to the Consumer.
4. The Licensee has not cited any satisfactory grounds for denying the interest on the security deposit .
5. The Board Order dated 28.04.2009 is arbitrary and unauthorized .The Board has no authority to issue such an order against the express provisions of the Act and Supply Codes.

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

1. The decision for providing 50% security deposit as bank guarantee is taken for mitigating the difficulties experienced by industries and other consumers for finding fund. Since the Board requires only 50% of the security deposit in cash the Board is not bound to pay interest on it.
2. Board is not a financial institution which accept deposits on interest . KSEB is not bound for paying interest for a sum in cash which the Board never insisted on.
3. Interest is payable only for the portion of the total security deposit for which the Board mandates its deposits by cash. Board has no liability to pay interest on the security deposit which the Board did not insist upon.
4. After having deposited the cash at the will of the Appellant it is not fair and just in law to claim interest.
5. When the Board does not require the Appellant to make 50% of the security in cash Boards liability for payment of interest on it ceases. Interest is applicable to that amount which was mandated by the Board.

DISCUSSION AND FINDINGS

On the matter of Security Deposit the Section 47 of Electricity Act 2003 reads as follows:

47. (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as determined by regulations, for the payment to him of all monies which may become due to him -

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section(2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

Section 16 of the Kerala Electricity Supply Code 2005 reads as follows:

16. Interest on Security Deposits.- *(1) Licensee shall pay interest on security deposit to the consumer at bank rate prevailing as on 1st April of the Financial Year for which interest is due. Payment of interest charges shall be effective from April 1, 2005 onwards.*

(2) The accrued interest on security deposit for each financial year shall be credited to the consumers account during the first quarter of the subsequent financial year and be adjusted against electricity bill.

(3) The Licensee shall pay interest at twice the rate specified under sub-clause (1) above for the delay in making the adjustments for interest on security deposit

As per the Supply Code Section 13(8), the consumer shall remit the security in *any such form as the Licensee may require* as per the approved 'Terms and Conditions of Supply'

The manner of paying Security Deposit or the form of Security deposit by EHT consumers is specified in Section 15(3) (a) of the Terms & Conditions of Supply of KSEB:

For EHT consumers:

- i) *50% of the security deposit shall be remitted by cash or demand draft.*
- ii) *For the balance 50% amount Bank Guarantee is acceptable.*

The mode of payment of security deposit by EHT/HT consumers had been fixed by the KSEB way back in 1996 itself as per the BO 2962/96/(TC1/9314/88) dated 6th December 1996 as given below:

The mode of payment shall be

(a) For EHT consumers :

- (i) One months deposit shall be by cash or DD*
- (ii) For balance one months amount bank guarantee is acceptable*

Over and above the above provisions, it is also noted that ,all the EHT agreements executed between the Appellant and the Respondent , produced before me, had the following sentences in clause 3:

‘Out of the total security deposit equivalent to probable two months current charges 50% of the deposit shall be in cash or DD .The balance 50% security can be either in cash/DD or in the form of Bank guarantee issued by any Nationalized bank’.

For the purposes of clarity we shall treat the security deposit as two parts : Part A shall be by cash or DD and for Part B ‘bank guarantee is acceptable’.

It is clear that as far as part B is concerned the option is left to the consumer. No where in the Board Orders or Regulations or agreements the KSEB had insisted that Part B *should be in the form of Bank Guarantee.*

It is true that the consumers pay the Part B as cash or DD ‘at their own will and choice’. The Part A was not the ‘desired level’ of the deposit, it was the mandatory part. On the contrary, Part B was a concession allowed to applicants to reduce their cash burden. One should remember that the KSEB had earlier allowed the total security deposit of EHT consumers as cash, DD or Bank guarantee. Can KSEB deny interest on the cash deposits pertaining to that period on the grounds that the desired level of cash deposit was zero?

The contention of the Respondent that they had not mandated for payment of Part B as cash is partially true. The option was left to the consumer. But the statutes do not make any difference in payments of cash as security deposit on a mandatory nature or on an optional basis. Even the Terms& Conditions of Supply of KSEB only says that *Bank Guarantee is acceptable.* The Respondent do not argue that the acceptability of bank guarantee was mentioned in the regulations to avoid payment of interest on the deposit. No where in the Statutes or Agreements was it mentioned that interest will not be paid if Part B is paid in cash.

It is obvious that the BO dated 28.4.2009 was issued only *after the Appellant approached the CGRF to get interest for the Part B deposits.* The Licensee KSEB had over looked the basic fact that interest on security deposit was not a matter of solicitation but a right of the consumer conferred by Section 47(4) of the Electricity Act 2003 . I am constrained to conclude that the BO (CM) No 128/2009/HTB1/143 dated 28.4.2009 clarifying that ‘interest on security deposit will be granted to consumers of the Board only up to the desired level of 50% cash deposit as specified in the rules, if at all, consumers remit 100% security deposit in cash at their own will and choice’ is against the provisions of

Electricity Act 2003 and connected Regulations. The Licensee has no right or authority to issue such an order against the provisions of the Electricity Act 2003 .

The single question to be decided is whether the Part B deposit paid by the consumers can be classified as *Security Deposit* under the relevant provisions of the Electricity Act and the Supply Code.

There can be no dispute that the licensee KSEB had directed Railways 'who requires a supply of electricity' to pay the deposits to them 'as determined by regulations', for the payment of all monies which may become due to them in respect of the electricity supplied .The Appellant had requested for waiving the Part B of the deposit on the plea that they can not organize Bank guarantee. Then the Respondent had instructed them to pay the Part B as cash. Hence it was not even a deposit made at their 'own will and choice' as claimed by the Respondent. These deposits can be nothing other than security deposit as specified in the Electricity Act 2003. The Electricity Act or Supply Code do not differentiate between 'desired levels' of deposits or payment made at consumers 'own will and choice'. All the deposits collected by the Licensee as security '*for the payment of all monies which may become due to him*' can only be classified as Security Deposits.

Under the above circumstances the only conclusion that can be derived is that the Licensee KSEB has to pay interest for the full security deposit realized from a consumer.

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:

1. *The Licensee KSE Board shall pay interest for the full security deposit collected from the Respondent in cash/DD as per the provisions in Section 16 of the Kerala Electricity Supply Code 2005 and Section 47 of Electricity Act 2003.*
2. *The accrued interest on security deposit till 31.3.2010 shall be credited to the consumers account before the end of the current quarter of the financial year and adjusted against future electricity bill.*
3. *The Licensee KSEB shall pay interest at twice the rate specified under sub-clause (1) of the Section 16 of the Kerala Electricity Supply Code 2005 from the date of this order , as provided in the Sub Clause (3), if the above adjustments are not completed as instructed above .*
4. *No order on costs.*

Compliance :

If the Licensee do not comply with the above orders, the Appellant may report the matter to the undersigned with copy to the Compliance Examiner, Kerala State Electricity Regulatory Commission, KPFC Bahaman, Vellayambalam, Thiruvananthapuram 695010 for further action.

Dated this the 28th day of April 2010 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 112 /09/ 543 / dated 30.04.2010

- Forwarded to:
1. Additional Divisional Railway Manager
Thiruvananthapuram Division
Southern Railway
Thycaud Thiruvananthapuram
 2. The Secretary
KSE Board , VaidyuthiBhavanam
PattomPalace(Po)
Thiruvananthapuram 695004

- Copy communicated to :
1. The Special Officer (Revenue)
KSE Board VaidyuthiBhavanam
PATTOM Thiruvananthapuram
 2. Adv.N.Mohanan Pillai,
Advocate for Southern Railways
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RBK Nair Road, East Gate Of Court,
VANCHIYOOR, Thiruvananthapuram 35
 3. The Compliance Examiner,
Kerala State Electricity Regulatory
Commission, KPFC Bahaman, Vellayambalam,
Thiruvananthapuram 695010

Copy to :

1. The Secretary,
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Thiruvananthapuram 695010
2. The Chairman
Consumer Grievance Redressal Forum
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Gandhi Road Kozhikode673032

3. The Chairman

Consumer Grievance Redressal Forum
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