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REPRESENTATION No: P 120/10

Appellant : M/s Precot Meridian Ltd
C&D Units , Chandrapuram, (Po) ,
Walayar Dam 678624 , Palakkad Dt

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

ORDER

M/s Precot Meridian Ltd ,Chandrapuram , Palakkad submitted a representation on 4.1.2010 seeking the following relief:

Allow EHT Tariff from the date of execution of the agreement , ie, from 17.11.2006 onwards.

Counter statement of the Respondent was obtained and a hearing conducted on 19.5.2010.

M/s Precot Meridian Ltd is a 110KV consumer . They had two HT connections previously which were merged into one unit and they had taken 110 KV supply from KSEB on 6.12.2006 based on an EHT agreement executed on 17.11.2006 with contract demand 2200KVA.The two HT connections were terminated. KSEB insisted that since the contract demand was less than 3000KVA the new 110KVconsumer will be treated as HT consumer and billed accordingly. Necessary provisions were inserted in the standard agreement, which the Appellant had agreed, to obtain 110KV supply. Later they enhanced the contract demand to 2700KVA and again executed a revised agreement with similar conditions on 17.9.2008.Mean while they started to agitate for EHT tariff for

the 110 KV supply. KSEB refused their plea. Later when the KSEB issued a general order on 28.7.2008 allowing the appropriate tariff based on voltage of supply, the Appellant was allowed to execute a revised agreement on 16.10.2008 and got EHT tariff. The CGRF allowed EHT tariff from the date of the general order, ie, from 28.7.2008. The Appellant wanted EHT tariff from the date of effecting the 110KV supply ie, from 6.12.2006.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

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

The action of the KSEB in revising the formats of the standard agreement approved by the Regulatory Commission is illegal. The Appellant had submitted undertaking for accepting HT tariff for the EHT connection and executed EHT agreement with similar conditions under duress, having no alternatives to obtain power connection. But these actions of the Respondent were against the rules and regulations.

When the KSEB measures energy on 110KV bus and applies rates applicable to 11KV the losses on the Power transformer and other equipments are included in the bill even though the cost to serve at 110KV bus is exclusive of these losses.

As per the Kerala Electricity Supply Code Chapter II Clause 4 the supply voltage for different connected loads shall be as follows:

Supply voltage 240V	Maximum CL 5 kW
Supply voltage 415V	Maximum CL 100KVA
Supply voltage 11KV	Maximum Contract Demand 3000KVA
Supply voltage 110 KV	Maximum Contract Demand 40000KVA

and so on.

This obviously means that only 110KV supply shall be given for contract demand more than 3000KVA. That does not mean that 110KV supply shall not be given for loads less than 3000KVA. The reasons for prescribing the maximum loads for a given supply voltage is technical. Minimum loads are never prescribed in the regulations. More over KSEB them selves have agreed and declared that 'the cost of supply as well as the transmission and distribution losses are low when supply to consumers are provided at higher voltages' in the BO dated 28.7.2008. The order also observes that it is beneficial to provide supply at higher voltages of EHT and HT instead of lower voltages.

Hence the Appellant is eligible for EHT tariff from the date of connection at 110KV.

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

The supply code mandates KSEB to provide only 11KV supply for loads upto 3000KVA. The KSEB had not compelled the Appellant to convert to 110KV and to club the loads of two HT consumers into one. The Appellant had been enjoying the power at 11KV for the two units and working smoothly. It was their choice and decision to go for drawing power at 110KV. Section 4(2) of the supply code empowers the Licensee to change the supply voltage with the written consent of the consumer. In the instant case the Appellant

had taken initiative to change the supply voltage of an existing service to 110KV. What KSEB has done is to incorporate the consent of the consumer in the agreement. The power had been allocated to the Appellant on 28.4.2006 with the explicit condition that only HT tariff shall be applicable even though the delivery voltage may be 110KV. The Appellant had submitted written under taking and executed the agreement on two occasions incorporating these conditions. Hence it is not fair to question the tariff after receiving all the concessions.

Discussion and Findings:

The first point to be examined is the claim of the Respondent that the Appellant was not eligible for an EHT connection since the contract demand was less than 3000KVA. The statutes specify a supply voltage of 11KV for a maximum contract demand of 3000KVA. The technical reasons for specifying such a maximum value are obvious. The argument of the Appellant is that specifying such a maximum demand do not imply that only 11KV supply should be given for loads below 3000KVA. This view point seems to be reasonable. The interpretation of the Respondent that the supply code mandates KSEB to provide 11KV supply only, for loads upto 3000KVA, do not have any statutory basis. If the rule makers had such an intention they would have framed the regulations with minimum values also.

Heavy investment required for availing EHT supply would generally deter applicants from taking EHT supply at low loads. More over every distribution licensee would normally encourage consumers to avail connection at higher voltages since it would result in reducing losses. Hence technically as well as legally the applicant should be able to avail EHT supply for loads less than 3000KVA if they desire so. The Section 4 of the Kerala Electricity Supply Code or the Clause 45 of the Terms & conditions of Supply by KSEB do not empower the licensee KSEB to deny EHT supply for loads less than 3000KVA. The KSEB themselves have accepted this view point finally in the BO dated 28.7.2008 and BO dated 20.02.2010 on the matter.

Under the above circumstances the contention of the Respondent that they had provided certain 'concessions' to the Appellant is not acceptable. Naturally all the arguments and contentions stemming out of this become irrelevant.

Now the validity of the special conditions imposed by the Respondent for providing EHT supply to the Appellant are to be examined. As noted earlier the Respondent had issued power allocation on the condition that HT tariff will be applicable for the 110KV supply and obtained under taking from the Appellant accordingly. Similar special conditions were incorporated in the EHT agreements also.

The tariff orders issued from time to time by the KSEB as well as KSERC had a common and basic feature which linked *supply voltage with the tariff classifications*. Every classification and categorization was voltage specific. Cost of service was linked to voltage levels and the voltage specific rates had been the most important feature of every tariff order. The basic issue to be examined is whether the Licensee KSEB can enter into such a 'special agreement' with a consumer and apply tariff rates at its own will and pleasure. Here the basic reality is that the Licensee KSEB is delivering power at 110KV and charging the consumer with HT tariff. I have not come across any provision

in the Electricity Act 2003 or the statutes framed under it which empowers a Distribution Licensee to incorporate special clauses in the supply agreement and tamper with the approved tariff pattern, even by mutual agreement. Distribution licensees have no mandate to enter into any agreement with any consumer/applicant and enforce tariff structures contrary to the Schedule of Tariff and Terms & Conditions for Retail Supply issued by the Regulatory Commission under the prevailing regulatory regime. Moreover every tariff notification issued by the authorities, including the Notification dated 27th November 2007 of the KSEERC, declares that the tariff rates shall be applicable to every consumer 'notwithstanding any thing to the contrary contained in any agreement entered into with any consumer' ---. Obviously the special conditions in the agreements under reference in this case shall be irrelevant in every respect.

As such I have come to the conclusion that the special clauses inserted in the standard agreement to provide differential treatment to the Appellant are arbitrary and illegal. These clauses shall be treated as null and void.

The power connection to the Appellant had been provided at 110KV and hence the Appellant shall be eligible for appropriate EHT tariff from the date of the 110 KV connection.

The Appellant has argued that they had been forced to accept the conditions of the Power allocation order, execute agreements with special conditions etc under duress. They had no alternative but to accept the conditions. But KSEB has a case when they state that objecting to mutually agreed conditions in two agreements, entered in series, after availing the concessions, is against natural justice and Appellant is estopped from the violating of the agreement, even though the rules and regulations do not empower them to enter into such special agreements. I am also inclined to conclude that it was not a question of compulsion or duress, but a strategic submission to obtain power connection, overlooking an existing practice.

But this does not preempt the right of the consumer for eligible relief. Hence I am ordering the reliefs cited. However claims for interest, costs etc can not be allowed under the circumstances noted above.

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 Appellant shall be eligible for the Appropriate EHT tariff from the date of energisation of the 110KV service.
2. The excess amounts collected from the Appellant shall be adjusted in future bills in Twelve equal monthly installments. The Appellant shall not be eligible for any interest on the excess payments if the above adjustments commence within Three months from the date of this order.

3. If the refund is not effected as ordered above , the Respondent shall pay interest for the excess payments as per clause 24(6) of the Supply Code from the date of the actual realization of the excess amounts.
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

Dated this the 20th day of May 2010 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 120 /10/ 561 / dated 20.5.2010

- Forwarded to:
1. M/s Precot Meridian Ltd
C&D Units , Chandrapuram, (Po) ,
Walayar Dam 678624 , Palakkad Dt
 2. The Secretary
KSE Board , VaidyuthiBhavanam
PattomPalace (Po)
Thiruvananthapuram 695004

Copy to :

1. The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram 695010
2. The Chairman , CGRF,
KSE Board , Vaidyuthibhavanam ,Kozhikode

