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REPRESENTATION No: P 135/10

Appellant : Sri K.S.Biju Prasad
Sreedhareeyam Ayurveda Eye Hospital &
Research Centre (P) Ltd
Koothattukulam

Respondent: Kerala State Electricity Board
Represented by
1. The Special Officer (Revenue)
KSE Board , VaidyuthiBhavanam, Thiruvananthapuram 4
2. The Deputy Chief Engineer
Electrical Circle
Perumbavur, Ernakulam Dt

ORDER

Sri K.S.Biju Prasad, Sreedhareeyam Ayurveda Eye Hospital & Research Centre (P) Ltd, Koothattukulam submitted a representation on 19.5.2010 seeking the following relief

1. *Declare the Scene Mahazar dated 8.9.2009 as null and void*
2. *Direct the KSEB to refund the amount of Rs 3,46,825/- collected in the pretext of excess MD charges*
3. *Declare the Bill dated 5.11.2009 for Rs 19,36,637/- as null and void*
4. *Set aside the Order dated 20.4.2010 of CGRF Ernakulam on Comp.65/2009-10*
5. *Allow Rs 1,00,000/- as expenditure for filing the petition*
6. *Recommend KSERC to proceed against KSEB for non-compliance of directions and Act*

Counter statements of the Respondent was obtained and hearing conducted on 28.7.2010, 3.9.2010 and 8.9.2010. The Appellant submitted additional documents during the hearing and argument notes after the hearing.

The Appellant is an HT consumer (24/3787) under tariff HT IV with contracted demand 50 KVA and the approved connected load 77.92 KW .The Appellant has another HT connection exclusively for the factory. The power from the HT connection 24/3787 was used in the premises for different purposes in the Hospital compound. On 8.9.2009 the APTS wing of KSEB inspected the premises and found additional load as well as

unauthorized extension. The total load on the HT connection was seen to be 263 KW and there was an extension to an ATM counter of Federal Bank with connected load of 4.634 KW . The Assistant Engineer of Koothattukulam Section issued a Provisional Bill for Rs 19,36,637/- on 5.11.2009 for the Unauthorized Additional Load (UAL) and Unauthorized Additional Extension (UAE).In the covering letter dated 5.11.2009 the Assistant Engineer advised the consumer to file objections if any within seven days and to remove the UAL and UAE failing which the assessment will continue till regularization. Meanwhile the consumer had filed a petition before the CGRF on 29.9.2009 seeking for declaring the scene mahazar as null and void and for refund of penal MD charges being collected from the consumer. As per records made available, the consumer had not submitted any objections against the provisional assessment dated 5.11.2009 as per provisions of statutes, but had taken recourse to the CGRF route . The consumer filed additional petition to the CGRF on receipt of the provisional assessment dated 5.11.2009. The CGRF after hearing the concerned parties, on both the petitions, dismissed the same on 20.4.2010.

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 consumer had submitted application for approval of additional load on 31.3.2006 with Application Fee. The Licensee had not informed the deficiencies if any in writing as per statutes. Hence it should be understood that the application had been accepted and they have to provide power supply within one month as per regulations. The Respondent has failed to adhere to these rules.

The Appellant had objected on the site mahazar dated 8.9.2009 and the issue was being heard in the CGRF .Meanwhile the Respondent issued the penal assessment. Hence the bill and letter are ultra-virus.

The consumer has connection at highest tariff and there is no misuse of taking power to other purposes/tariffs. There are several HT connections in the State where the power supply at HT was being used for Mobile towers/Banks etc. The building where the ATM is situated is not a separate premise.

The consumer had already paid penal charges for excess MD and hence dual penalization is unfair and illegal.

The consumer had paid additional CD on several occasions .The Respondent were supposed to regularize the additional load on collecting these additional CD .

KSEB had to disconnect the power supply once the additional load is detected. Instead they had been collecting penal charges and allowing the consumer to use the load . This is against the directions on the matter.

The issues under dispute do not attract Section 126 &127 of the Electricity Act 2003. Hence the Appellant need not submit objections to the Assistant Engineer and Deputy Chief Engineer.

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

The application for enhancement of power submitted by the consumer was not accompanied by proper approval from the Electrical Inspector .Hence the application was returned to the consumer for resubmission.

The consumer had never made complaints on non-sanctioning of additional load based upon the application dated 31.3.2006 until the APTS inspected the premises on 8.9.2009. Hence it is obvious that the allegation that the application papers were kept pending by the Respondent is false. Therefore the allegation on non compliance of statutes on disposal of application papers is also false.

The enhancement of connected load was done by the consumer without appropriate sanction and in violation of agreement conditions.

The penalization calculation was sent to the Assistant Engineer on 21.10.2009 , that is , before the hearing of CGRF on 4.11.2009.

Power supply to ATM counter situated near the main gate facing the public road was provided by the consumer with a sub meter and hence resale of power was going on. The consumer had remedy specified in Section 126 & 127 of the Electricity Act 2003 and Clause 50&51 of the Terms & Conditions Regulations.

Discussion and Findings:

It is disgusting to see that both Appellant and Respondents were equally careless in adhering to the agreement conditions and observing the rules and procedures regarding the Maximum Demand , Connected load etc. The consumer had a contract demand of 50KVA and approved Connected load of 77.92 KW on obtaining connection in 11/2001 . But the actual recorded MD had *exceeded regularly from May 2005 onwards* by an average of 30 KVA (60%). The Respondent did not bother to issue notice on the matter to the consumer nor to disconnect the service as provided in the agreement. It is not known whether they had realized 50% extra on the exceeded MD from May 2005. It was obvious that the consumer had connected up additional loads from May 2005 onwards . Exceeding the recorded MD by an *average of 60% regularly for 4 years* should normally alert the billing/accounting agency as well as agreement authority. There is considerable level of *slackness or collusion* on the part of the Respondents in this aspect.

On the part of the Appellant the manner in which the agreement conditions, rules and procedures were violated is equally deplorable. An institution like Sreedhareeyam Ayurveda Eye Hospital & Research Centre, having hired the services of qualified electrical contractors, can not pray ignorance of the rules and procedures.

The Appellant claims that they had submitted the required papers for regularization of additional load on 31.3.2006, that is, after around 11 months they had started to draw around 42 KW excess power over and above the contract demand. It is true that the Respondent has no evidence to show that they had returned the papers pointing out certain anomalies. Nothing moved until the APTS wing inspected the premises on 8.9.2009. Immediately after that inspection, the consumer suddenly woke up to the fact they are paying 50 % extra for the excess power drawal for so many years together , and moved the CGRF for refund of the excess amounts paid from April 2006 and to quash the scene mahazar , alleging that the Licensee had not taken timely steps to comply with the

Section 43 of the Electricity Act 2003, Clause 8 of Supply Code etc on the application papers submitted by them in 3/2006.

It is clear that this was a proactive step to stall the assessment of penal charges by the Respondent. Not a single paper had been produced as evidence to show that the Appellant had followed up the approval of enhanced load by Respondent. Not a single complaint on the so called 'delay' or 'lapse' on Respondent side under Section 43 Electricity Act 2003, Clause 8 of Supply Code etc was produced. No reasonable explanations were available as to why the consumer did not take any action to verify why the request for regularization was not approved by KSEB for the previous six years. Taking the whole situation into consideration, I am not in position to ignore the claim of the Respondent that they had returned the papers for additional load on 2006 with certain objections. The contentions of the Appellant that they had submitted the required papers in March 2006 to KSEB and that the failure of KSEB to regularize the additional load had resulted in the non-regularization of additional load lack credibility and hence are not acceptable.

Connecting up of around 263 KW load against the approved load of 78 KW and drawing around 60% excess power over and above the contract demand of 50 KVA for years together, can not be justified by such claims and contentions.

The claim of the Appellant that they had paid additional CD to regularize the additional load is also found to be without basis. It is true that additional CD had been demanded by the Special Officer (Revenue) from time to time based on increased monthly current charges. But the Appellant could not produce any documents to establish that the Respondents had demanded additional CD and other charges for regularizing additional load and executed fresh agreement as envisaged in the Terms & Conditions Regulations of KSEB .

Under this situation, I do not find any reason for declaring the Scene Mahazar dated 8.9.2009 as null and void as pleaded by the appellant.

How ever I do not intend to examine the issue further. The Kerala State Electricity Regulatory Commission has clarified on 15.6.2010 that the Commission views that '*the Unauthorized Additional Load is coming under Section 126*' of the Act .Under the circumstances noted above I do not intend to enter into the details or correctness of the penal assessment or to pass awards on the matter, since the Ombudsman is not expected to entertain the grievances related to Section 126 of the Electricity Act 2003.

The Appellant shall be free to utilize the remedies envisaged in the Section 126 and 127 of the Electricity Act 2003 or the relevant provisions of the Terms & Conditions Regulations of KSEB .The Licensee is expected to take all the grievances/ facts/contentions put forward by the Appellant before taking decisions on the matter.

The Appellant claimed that they had submitted fresh papers for regularization of additional load and revising contract demand in May 2010 but the Respondent has not taken action on the matter since the dispute on the issue is pending. The Respondents are instructed to regularize the additional load and revise the contract demand *with effect from the date of the new application* as per rules, once the consumer pays the finally settled assessment.

Orders:

Under the circum stances 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 arguments/claims/points raised by the Appellant in support of the reliefs sought for are devoid of merit and hence the reliefs are not allowed and the representation is dismissed*
- 2.No order on costs.*

Dated this the 23rd day of September 2010 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 135 /2010/ 658 / dated 23.09.2010

- Forwarded to:
1. Sri K.S.Biju Prasad
Sreedhareeyam Ayurveda Eye Hospital &
Research Centre (P) Ltd
Koothattukulam.
 2. The Special Officer (Revenue) KSE Board ,
VaidyuthiBhavanam, Thiruvananthapuram 4.
 3. The Deputy Chief Engineer
Electrical Circle
Perumbavur, Ernakulam Dt

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 , Power House , ERNAKULAM

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