

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P 122/10

Appellant : M/s Hankook Latex Pvt Ltd
Plot No 30 Rubber Park,
Irapuram, VALAYANCHIRANGARA 6835566
Ernakulam Dt

Respondent: Rubber Park India [P] Limited
Kautileeyam, Rubber Park,
Irapuram, VALAYANCHIRANGARA 6835566
Ernakulam Dt

ORDER

M/s Hankook Latex Pvt Ltd, Rubber Park, Valayanchirangara ,Ernakulam Dt submitted a representation on 2.6.2010 seeking the following relief :

- 1. Order compensation of an amount of Rs 175000/- from the Licensee Rubber Park India [P] Limited towards illegal disconnection of power supply*
- 2. Order such other reliefs as found just and proper in the facts and circum stances of the case or as may be prayed for during the course of the complaint.*

Counter statements of the Respondent was obtained and hearing conducted on 21.7.2010 and 18.8.2010, 12.11.2010 and 18.11.2010. Both the Appellant and Respondent submitted several documents and argument notes during the process.

Rubber Park India [P] Limited is a licensee for distribution of electricity to supply power to various establishments in the park area from 17th June 2003 onwards. They function as a deemed distribution Licensee under the first proviso of Section 14 of Electricity Act, 2003. The Appellant is a consumer in the Rubber Park.

The power supply to the Appellant was disconnected by the Licensee at around 5.30 PM on 20.11.2009 alleging that their pre paid energy account had become negative. The Appellant claims to have suffered heavy losses due to the interruption. Power supply was

restored at around 9.30 AM on the next day. The Appellant represented to the CGRF against this and asked for compensation. But CGRF upheld the action of the Licensee. 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, argument notes and during the hearing are summarized below:

The current charges from the consumers inside the Rubber Park are being collected through the pre-paid system. The consumers had to purchase recharge voucher and top up their energy account from time to time. When the balance in the energy account becomes very low the consumer gets automatic alert message. But the system was not working properly during the previous few months. The low-balance-alert calls were made manually by the Engineer of the Licensee over phone. The energy account is periodically topped up by the consumers and routinely drained out in proportion to the use of electricity.

On 20.11.2009 at around 4 PM , the Appellant received a communication from the Respondent stating that they had debited Rs 5,54,935.72 from the energy account towards lease rent, reconstruction of damaged compound wall and its penalties .The Licensee also warned that the account would become negative and if payment is not made before 5 PM on the day, the power will be disconnected. The power was disconnected at 5.30 PM. The letter dated 20.11.2009 from the Respondent clearly shows that the energy account had around Rs 48426/- balance on the day. The balance became negative only due to adjusting *the other dues* from the account.

The Licensee has no authority to debit dues other than electricity related charges to energy account. In the Section 4.0 *Dues and Deposits in the Manual of Instructions* it is true that the Licensee is authorized to adjust outstanding dues from any deposit the unit has with the Rubber Park. But the section 4.1 specifies the types of deposits from which such adjustments are to be made, that is, any deposit held with the Rubber Park fetching an interest as paid by the SBI on 1st of every year for a deposit of one year duration. The section 4.0 as a whole is related to the deposits held by the Park carrying specified interest rates and held for 1 year duration. The energy account, on the contrary, neither carries interest nor are held as fixed deposit for 1 year. Hence the Respondent can not debit dues other than electricity dues to the energy account. They can not rely on 'Section 4.0 Dues and Deposits in the Manual of Instructions' for the illegal actions done by them. The licensee had not given notice for disconnection as per the statutes. They had given a letter on 20.11.2010 that the power supply will be disconnected on the same day after 5 PM if payments of other dues not related to electricity charges are not made and the power was cut off on the same day at 5.30 PM. This is violation of the rules.

The Appellant had suffered a total loss of Rs 1,75,094/- due to disruption of power supply which has to be recovered from the Licensee.

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

The Rubber Park is using Automatic Meter Reading system. Prepaid vouchers are available for amounts varying from Rs 10000 to Rs 5 lakhs. System generated SMS are sent to the designated mobile number of the consumer when ever the available balance touches or goes below 50% or 75% or 95% of the monthly average charges. When the available balance become zero or negative the system automatically generates cut off signal . Reconnection Fee is automatically debited from consumers account .The AMR system developed some snags recently. Meter readings were taken manually and consumers alerted on available credit balances in the energy account manually over phone.

The demand charges will be debited to the consumers account on the first day of every month. On November 1 , 2009 while creating energy account , an amount of Rs 500 was debited as Reconnection Fee as there was negative balance.

Due to the unscientific way of management of the run-of-storm water in the Appellant plot , the compound wall was damaged on several occasions. An amount of Rs 5,35,291/- was outstanding towards the construction cost of the damaged compound wall . In addition to the above the amounts towards the lease rent, maintenance charge etc was also due and the total dues as on 20.11.2009 was around Rs 5.54 lakhs.

The Respondents were demanding the consumer to clear the dues for months together. A notice was issued on 22/09/2009 demanding payment of the above dues along with interest at 16.5 percent failing which the amount will be adjusted against deposit available. The reminder was issued on 20/11/2009 again. The Respondent had informed that the amount will be adjusted from the energy account if the payment was not done by 5 pm on 20/11/2009. In accordance with the provisions in the Manual of Instructions issued to the lessee, which was part of Lease Deed, Rubber Park can debit the dues against the deposits available. The consumer is responsible due to his negative attitude for unfortunate disconnection of power supply on 20/11/2009 . They are responsible for any loss they might have incurred due to his.

The Rubber Park had acted on a transparent manner, with objective of recovering the dues from the unit in a legal manner and to send strong messages to all other consumers so that such incident will not be tolerated or repeated.

As per the provisions in Clause 4.2 of the Manual of Instructions '*Any dues, be it lease rent , maintenance charge, water, effluent treatment charge or anything to the Park from a unit, outstanding despite repeated notices, shall be adjusted against any deposit the unit has with the Park, irrespective of the purpose of the deposit*'. This Manual of Instructions form part of the Lease Deed executed between the Consumers and the Rubber Park. In the instant case in the appellant dues were outstanding in spite of the repeated reminders.

It is true that the power connection was cut of at 5.30 pm. The Respondent was under the impression that disconnection after 5 pm would not be harmful to the production.

However the mistake of disconnecting the power after 1 PM , contrary to the provisions of the Electricity Supply Code, is deeply regretted.

Discussion and Findings:

The issue involved in this case shall be discussed in two parts:

- A. Disconnection of power supply
- B. Claims on losses incurred due to disconnection of power supply

A. Disconnection of power supply

1. A number of disputes were going on between the Appellant and the Respondent on the question of construction, reconstruction, repairs etc of the compound wall on the side of the plot allocated to the Appellant. The Respondent had been demanding various amounts on account of cost of reconstruction of the compound wall, lease rent, maintenance charges etc. I do not intend to go in to the details of the disputes nor in to the correctness of the claims and counter claims. The only relevant fact is that the Respondent had been pressing for payment of the claimed dues of around Rs 5.5 lakhs from the consumer. These dues were not related to *electricity charges or the energy account* of the Appellant. The Respondent disconnected the power supply alleging failure in clearing the above dues. The Respondent argues that they are empowered to debit the dues to any deposit paid by the consumer.
2. The most important issue to be decided is whether the Licensee Rubber Park can debit any amounts due from the consumer to the *energy account*. Section 4.1 of the Manual of Instructions reads as follows: '*Deposits made with Park: Any deposit made with us will fetch an interest as paid by the SBI on 1st April every year for deposit of one year duration*'. But the amount paid by the consumer to the energy account for the prepaid vouchers of electricity charges are adjusted on running account basis towards actual energy consumed by the consumers. The consumer has to top-up the energy account using recharge coupons. This account has the nature of a current account with continuous debits and credits. The amounts paid towards prepaid vouchers do not carry interest as specified in clause 4.1 above. Hence by no stretch of imagination the amounts paid by consumers for procuring prepaid energy vouchers can be termed as *deposits specified in clause 4.1 of the Manual*.
3. It follows that the action of the Respondent, adjusting the dues to the extent of Rs 5.5 lakhs from the energy account, is illegal and against the provisions of the Section 4.0 of the Manual of Instructions. It is clear that disconnecting of power supply after adjusting and 'making energy account negative' as above is also illegal.
4. Another intriguing fact is that, even though they had been demanding the payment of the other dues mentioned above repeatedly, the Licensee has issued notice of *adjusting the other dues to the energy account* only on 18.11.2009 and 20.11.2009. The letter dated 18.11.2009 had informed the consumer that the outstanding dues of Rs 5.35 lakhs will be recovered from their account and warned that 'in case by 20th November 2009 if no positive balance is seen in your account, with out any further notice your power connection will be disconnected on 21.11.2009, please note'. But the letter dated 20.11.2009 had warned that if the other dues to the extent of 'Rs 5,54,936/- is not paid by 05.00 pm on 20.11.2009, ie, today, your energy account will show negative balance and automatically power supply to your unit will be severed, please

take notice of'. The disconnection dates in the above two letters are contradicting. The letter dated 18.11.2010 warns that the power supply will be disconnected on 21.11.2009 where as the letter dated 20.11.2009 advances the date of disconnection to 20.11.2009 itself. The energy account of the Appellant had *artificially* been made negative at 5 PM on 20.11.2009 and the power supply disconnected immediately.

5. It must be noted and emphasized that none of the two letters provide for a clear notice period of 15 days as specified in the statutes. If the letters dated 18.11.2009 and 20.11.2009 can be conceived as disconnection notices, the disconnection was done without adhering to the minimum days specified in the statutes. The Respondent had not shown any other statutory notice issued to the consumer before disconnecting power supply at 5.30 PM on 20.11.2009.
6. The Rubber Park India [P] Limited function as a distribution Licensee under the first proviso of Section 14 of Electricity Act, 2003. The functioning of the Respondent Rubber Park in relation to the supply of electricity to the consumers has to be governed by the Electricity Act 2003 and the rules and regulations framed under the Act by the appropriate authorities.
7. The Electricity Act 2003 provides for disconnection of power supply on default of payment by the Licensees under Section 56:

‘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
8. The Licensees are not empowered to cut off the power supply to any consumer for non payment of any dues other than those provided in the Section 56 above. In the instant case the Licensee Rubber Park has grossly violated the Section 56 of the Electricity Act 2003.
9. The energy account of November 2009 prepared by Rubber Park was produced by the Appellant. It is surprising to see that the energy account of November 2009 do not show any actual debit of an amount of Rs 5.5 lakhs from the energy account as claimed by the Rubber Park. . The account show the total monthly charges as Rs 1,17,617.49 and credit amount of Rs 2,57,657.99 with a closing balance of 1,40,054.50. The energy account do not show any debit of Rs 5.5 lakhs. It shows that the Licensee had not actually debited the other dues to the energy account, as claimed by them, or they have fabricated the energy account later by reversing the entry. Then how could they disconnect the power supply on 20.11.2009? In response to the query during the hearing, in the Note submitted on 12.11.2010, the Licensee admits that they had actually debited the amount of Rs 5,54,935.72 as per the letter dated 20.11.2009, but ‘by an oversight on our part this fact was not mentioned in the energy statement issued to’ the Appellant. This statement seems to be the result of an after thought. Only conclusion one can arrive is that the disconnection of power supply on 20/11/2009 was actually an arm-twisting-technique done by the Licensee in an arbitrary manner.

The Respondent Licensee has clearly committed the following errors:

- A. Diverted the electricity charges paid by a consumer to other accounts and artificially created a negative balance in the energy account
- B. Disconnected the power supply alleging that the energy account had become negative.
- C. Disconnected power supply to the consumer without issuing notice as provided under the statutes
- D. Disconnected the power supply after 1 PM against the provisions of the Kerala Electricity Supply Code
- E. Manipulated or fabricated the energy account of November 2009 issued to the consumer

Under above circumstances I have reached the conclusion that all the contentions raised by the Respondent, to justify the action of disconnecting the power supply on 20/11/2009, are without any substances and the disconnection was totally illegal and arbitrary .

B. Claims on losses incurred due to disconnection of power supply

1. Now the question of compensating the losses incurred by the Appellant has to be taken up. The Appellant has pleaded for a compensation of an amount of Rs 175000/- from the Licensee Rubber Park India [P] Limited towards illegal disconnection of power supply. The calculation of loss by the Appellant as per the note submitted on 18.8.2010 was as follows:

Condom former left side moulds 235 nos @ Rs 225/-	Rs 52875/-
Condom former right side moulds 259 nos @ Rs 185/-	Rs 47915/-
Compounded Latex damage 960KG @ Rs 77.40	Rs 74304/-
TOTAL LOSSES	Rs 175094/-

2. But in a detailed report by the technical expert submitted on 18.11.2010 the Appellant furnished the following details: On 20.11.2009 at about 5 PM the electrical power supply was disconnected. At that time the condom production process was going on in the condom dipping machine, dehydrator, and vulcanizing machine. Due to power failure the conveyor chain stopped in the dipping tank and latex coated glass formers in the drying chambers. Also the wet condoms produced were entrapped in the dehydrators as well as in the vulcanizing machines. Dipping tank could not be lowered from the dipping position. The chilled water supply to dipping tank stopped due to power failure. The latex temperature remained at higher levels until the power was restored at 9.30 AM on 21.11.2009. So the cure of latex became higher and SDT(Swelling Diameter Test) value was 7.2 cm against the requirement of 7.6 cm. This SDT value was not suitable for condom production. The film coated glass formers in the drying chambers were over dried and later taken for cleaning purpose. During the cleaning process some glass formers were broken /damaged. Along with the above report the Appellant submitted another calculation with the following details:

Loss due to dipping tank latex over curing 1400 Kg @ Rs 77.40 Rs
108360/-
Condoms wasted due to power cut : 65 Kg: 419358 pcs @ Rs 1.20 Rs
50322/-
No of glass formers broken during cleaning process : 89 nos @ Rs185/- Rs
16465/-
TOTAL LOSSES Rs 175147/-

3. The quantum and nature of damages computed and claimed in the two calculations are very different. The variations in the number of glass formers damaged, quantum of latex damaged etc in the two calculations can not go unnoticed. The total amount claimed as losses are same in the two calculations. The representative of the Appellant had no satisfactory explanation on the huge variations in the quantity of damaged items in the two calculations. One can not believe that the company had not computed the quantum of damages/losses incurred on 20.11.2009 on a realistic manner and appropriate records should have been maintained to document it. But the Appellant miserably failed even to present a credible statement on the damages/losses incurred by the company. As such I do not admit any claim on the damages incurred due to power failure on 20.11.2009 based upon the statement of the Appellant.
4. But the illegal and arbitrary disconnection of power by the Respondent Licensee can not be exonerated on the basis of the above failure/lapse of the Appellant. The communication from the parent Korean company named Hankook Latex Gongup Co Ltd dated 23.11.2009 shows the strong feelings of the foreign investor on the issue. The communication declared that they will not run the factory unless the Respondent Rubber Park provides a satisfactory explanation on the matter. The communication also advises the workers to claim their lost wages from the Rubber Park. The fact that the workers of the plant were agitated consequent to the disconnection is a reflection of the injustice done to the plant and the consumer. It is true that the losses incurred by the company could not be computed, or the correctness of the Appellant claim for Rs 175000/- compensation could not be verified, due to the failure of the Appellant to provide a credible statement of claim with supporting documents. But one can not conclude that the Appellant consumer had not suffered any loss in their plant due to sudden disconnection of power supply on 20.11.2009. Hence in the interest of justice and to provide relief to the Appellant, I conclude and decide that the Respondent shall pay an amount of Rs 10000/- to the Appellant as a token relief towards the losses incurred due to illegal disconnection of power supply on 20.11.2009.

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 Respondent Licensee Rubber Park shall pay an amount of Rs 10000/- (Rupees ten thousand only) to the Appellant company as a token relief towards the losses incurred due to illegal disconnection of power supply on 20.11.2009 within one month from the date of receipt of this order.*
2. *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 Bhavanam, Vellayambalam, Thiruvananthapuram 695010

Dated this the 23rd day of November 2010 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 122 /2010/ 710 / dated 24.11.2010

Forwarded to:1. M/s Hankook Latex Pvt Ltd
Plot No 30 Rubber Park,
Irapuram, VALAYANCHIRANGARA 6835566
Ernakulam Dt

2. Rubber Park India [P] Limited
Kautileeyam, Rubber Park,
Irapuram, VALAYANCHIRANGARA 6835566
Ernakulam Dt

Copy to : The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram 695010

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