

**STATE ELECTRICITY OMBUDSMAN**  
THAANATH BUILDING CLUB JUNCTION POOKKATTUPADI ROAD  
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**REPRESENTATION No: 27/08**

*Appellant :* M/s Saj Flight Services (P) Ltd  
TC 35/803(2) Vallakkadavu (Po)  
Thiruvananthapuram

*Respondent:* Kerala State Electricity Board  
*Represented by*  
The Assistant Executive Engineer  
Electrical Sub Division, Beach, Chakka  
Thiruvananthapuram 695024

**ORDER**

M/s Saj Flight Services (P) Ltd, Thiruvananthapuram submitted a representation on 18.9.2008 and sought the following relief :

*Set aside the Order dated 11.7.2008 of CGRF Kottarakkara and to allow damages to the extent of Rs 10000/- consequent to the disconnection of the service connection by the Assistant Engineer KSEB Sreevaraham on 24.1.2008*

M/s Saj Flight Services (P) Ltd is a Private Limited Company having food processing unit at TC 35/803(2) Vallakkadavu, Thiruvananthapuram with 3 phase LT connection number 3412. They had applied for Power Allocation to the extent of 160KVA during 7/2005 but had to approach the Hon: High Court to get a direction to issue Power Allocation. The KSEB issued Power Allocation on 22.9.2006. Further action on the matter were not taken by the KSEB reportedly due to the non-completion of the required procedural formalities by the Appellant. Mean while the APTS inspected the premises of the consumer on 17.4.2007 and detected unauthorized additional load to the extent of 85KW. An invoice amounting to Rs 76500/- was issued to the consumer towards penal assessment on 18.4.2007. The consumer filed an appeal before the Deputy Chief Engineer against the assessment after remitting the required part payment of Rs 25000/-. The order of the Deputy Chief Engineer dated 16.6.2007 rejecting the appeal was challenged by the consumer in the Hon: High Court. The Hon: High court issued a direction for hearing the consumer again and issue a speaking order on the matter after considering all aspects. The appeal was again rejected by the Deputy Chief Engineer on 15.10.2007 after

conducting detailed personal hearing and adhering to all procedural formalities. The Deputy Chief Engineer also directed the Appellant to remit the balance amount within 15 days from the date of receipt of the order dated 15.10.2007. The amount was not remitted by the Appellant till January 2008. On 08.01.2008 the Assistant Engineer issued a Disconnection Notice to the Consumer. The Assistant Engineer informed the consumer that 'if the amount is not remitted within 15 days of receipt of this notice' the power supply is liable to be disconnected 'without any further notice'. The notice was received by the consumer by around 10 AM on 09.01.2008. The Appellant made a request on 15.01.2008 for keeping the matter under abeyance for one month which was rejected and communicated on 22.01.2008. The power supply was disconnected at around 11 AM on 24.01.2008. The Appellant approached the CGRF Kottarakkara for the Redressal of their grievances. The CGRF in their order dated 11.7.2008 observed that there was no deliberate action on the part of the Respondent which resulted in the grievance raised by the petitioner and hence the forum declined the compensation . The representation is submitted to the under signed in the above back ground. Both the parties were heard on 10.11.2008. The relief sought for was detailed by the Appellant only during the hearing.

- I. The contentions/arguments/points raised by the Appellant in the representation and other documents and during the hearing are summarized below
  1. The notice period specified for disconnecting the electricity supply is 15 days and the 15 days is excluding the date of serving the notice. The service was disconnected within the statutory notice period. The request for waiting even for one hour was not conceded. The 15 days notice will expire only on 24.01.2008 and the service could be disconnected only on 25.01.2008.
  2. The Assistant Engineer Mr Sudhakaran Thampi had the intention to defame and harass the Appellant. He has misused his official authority.
  3. The Assistant Engineer did not accept cheque for the dues. Till date not even a single cheque issued by the Appellant has been dishonored.
  4. The request of the Appellant for one month's time to file appeal against the order of DyCE was not conceded.
  5. In the light of the above the Appellant is seeking for compensation to the extent of Rs 10000/- and refund of reconnection fee.
  6. The CGRF did not consider the fact that the Appellant have filed a Writ Petition in the Hon : High Court against the order of DYCE which is still pending.
  
- II. The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below
  1. The Appellant had been directed by the Dy Chief Engineer in the order dated 15.10.2007 it self to remit the balance amount within 15 days from the date of receipt of the order. The action to recover the amount by penal action was taken only in January 2008. Hence the consumer had got sufficient time to seek remedial measures.

2. The disconnection notice was served at the opening hours of the appellant at around 10.00 AM. on 09.01.2008 and the full day was available for the Appellant. Taking 9<sup>th</sup> also included , 15 clear days time was provided before disconnecting on 24.01.2008 at around 11 AM.
3. The Appellant had not given information on any pending writ appeal against the order dated 15.10.2007 of the Dy CE. No evidence of any pending case on the matter in the Hon: High Court was presented in the CGRF also.
4. The Assistant Engineer had not refused to accept the cheque. He had explained that as per the clause 36(11) and 39(1) of the Terms and Conditions Regulations the reconnection could be effected only after the cheque is realized and because of the bank strike on 25<sup>th</sup> and bank holidays on 26<sup>th</sup> and 27<sup>th</sup> the realization of payment and reconnection could be delayed. This is a normal practice in the section office.
5. The Assistant Engineer had not misused his official powers and had not done anything to harass the consumer. He had performed the official duties as per the rules and regulations. Hence the question of paying any compensation does not arise. The reconnection fee is also not refundable.

### III. Discussion and Findings

1. The clause 38 (1)(g) of the Terms and Conditions of Supply specifies that the disconnection in the case of non-payment of dues on electricity charges shall be *after giving not less than 15 clear days*' notice in writing. The legal meaning of the term 'clear day' implies that the day upon which the notice is served and the day of the action cannot be counted. Where there is a reference to a number of clear days or to a number of days between two events, in calculating that number of days, 'the days on which the events happen are to be excluded'. Hence the disconnection of the Appellant's service could be done only on 25.01.2008. This is the strict legal position of the matter. The Assistant Engineer has erred himself to that extent.

But a conclusion on the issue can be reached after considering all the aspects of the matter. The following facts are also to be taken into account:

- Ø The amount was outstanding from April 2007 onwards
- Ø The appropriate authority had reviewed the demand as per directions of the Hon: High Court after hearing the Consumer and considering the various issues involved and issued final orders on the matter
- Ø The Order of the Authority was served to the Appellant as early as in October 2007
- Ø The Authority had directed the Appellant to remit the outstanding amounts *within 15 days from the date of receipt of the order*
- Ø The Appellant had sat upon the above order until the respondents initiated penal action on the matter
- Ø The Appellant had submitted a writ petition in the Hon High Court against the Order of the Dy CE as late as on 26.01.2008 (WP(C) 14895/2008 – Copy produced by the Appellant) , ie, after the service was disconnected , arrears paid and the service got reconnected .

In the light of the above facts it is to be suspected that the Appellant had been deliberately attempting to avoid or postpone the payments due to the Licensee by one reason or other. Under the above circumstances the gravity of the error committed by the Respondents fades to insignificance. The attempt of the Appellant to present the matter as a serious and genuine grievance and demanding compensation of Rs 10000/- can not be accepted considering the totality of the subject matter.

2. Another aspect to be discussed is the question of accepting the cheque. As pointed out by the Respondent, the clause 36(11) of the Terms and Conditions of Supply reads as follows: 'The date of payment of dues will be the date on which the M.O./ Demand Draft./Cheque are realised'. Clause 39(1) specifies that 'If the disconnection is for non-payment of dues, the Board will reconnect the consumer on the same day once he has settled the dues'.

The Assistant Engineer had taken the position that the reconnection could be effected only after the cheque is realized. The CGRF has observed that 'the only intention behind the disconnection of the supply is to recover the amount / arrears due to the Board. Once the consumer is prepared to make payment there is no justification for denying or delaying the reconnection on the mode of payment opted by the consumer'. I concur with the view taken by the CGRF. No order by the Board or Regulations barring the acceptance of cheque and providing reconnection have been presented before the under signed.

More over the Respondents can take more stringent action envisaged in the Terms and Conditions of Supply once the cheque was not realized. As such the action of the Respondents in disallowing reconnection on the basis of the payment by cheque can not be justified. But I am not inclined to accept the contention of the Appellant that payment of arrears by Cash resulted in a serious grievance to the consumer warranting compensation etc .

3. The request of the Appellant for one month's time to file appeal against the orders of the Dy CE was refused by the Respondents .The Respondents are not legally bound to allow such time extension nor was it fair on the part of the Appellant who had got more than 60 days to take action on the matter to seek such time extension.

4. The contention raised by the Appellant that the CGRF had failed to note that they had filed a Writ Petition before the Hon : High Court against the orders of Dy CE is also to be examined. It has been admitted by the Appellant that neither the copy of the Writ Petition nor any interim orders issued by the Hon: High Court on the WP were produced before CGRF. With out such documents it is not proper to expect that a forum like CGRF shall consider the matter. A copy of the WP (C) 14895/2008 filed sometimes after 26.1.2008 was produced before the undersigned. The whole issue under challenge in the WP is the various aspects of the order dated 15.10.2007 of Dy CE. Since the issues agitated in the representation being considered here as well as the OP before CGRF were different from the WP(C) cited , I don't feel it necessary to discuss the matter here.

Upon perusing the above representation and the connected documents and the counter affidavit filed by Respondent and upon hearing the arguments of both sides the only

conclusion one can reach is that the claim of the Appellant that there are genuine and serious grievances which warrant the intervention of the CGRF or Ombudsman can not be accepted.

IV. 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 representation submitted by M/s Saj Flight Services (P) Ltd, Thiruvananthapuram on 18.9.2008 is dismissed .*
2. *No order on costs.*

Dated this the 16th day of December 2008 ,

P.PARAMESWARAN  
Electricity Ombudsman

**No P 27/08/ 112/ dated 08.12.2008**

- Forwarded to:
1. M/s Saj Flight Services (P) Ltd  
TC 35/803 Vallakkadavu (Po)  
Thiruvananthapuram
  2. The Assistant Executive Engineer  
Electrical Sub Division, Beach, Chakka  
Thiruvananthapuram 69502

Copy (by e-mail) to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram 695010
2. The Chairman  
Consumer Grievance Redressal Forum  
KSE Board, Power House buildings  
Power House Road ERNAKULAM 682018

Copy to: The Secretary ,KSE Board,  
VaidyuthiBhavanam ,Thiruvananthapuram 695004

The Chairman  
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Gandhi Road Kozhikode 673032

The Chairman  
Consumer Grievance Redressal Forum  
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KOTTARAKKARA