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REPRESENTATION No: P 30/08

Appellant : M/s Saj Flight Services(P) Ltd ,
Airport, Thiruvananthapuram

Respondent: Kerala State Electricity Board *Represented by*

The Deputy Chief Engineer
Electrical Circle(Urban)
PowerHouse Building
Thiruvananthapuram 36

ORDER

M/s Saj Flight Services(P) Ltd ,Airport, Thiruvananthapuram submitted a representation on 22.10.2008 seeking the following relief :

1. *Reduction of Contract Demand from 01.05.2005 onwards*
2. *Refund of excess amount paid*

Counter statements of the Respondent was obtained and both parties were heard on 22.12.2008 .The Respondent submitted an argument note on 31.12.2008.

The Appellant is a private limited company having registered office at Chennai engaged in flight catering services from various airports like Thiruvananthapuram, Kochi, Calicut Chennai etc. They have an HT Connection under Electrical Section Sreevaraham Thiruvananthapuram. The facts of the case can be summarized as given below based upon the copies of the documents submitted by both the parties:

The company lost the catering contract of Air India in April 2005. Consequently they informed the KSEB on 29-04-2005 that they will not be 'availing the HT Connection' from 1.05.2005 onwards and 'will not be using the agreed demand load'. The KSEB on 16.5.2005 informed them that 'it is not clearly mentioned' whether the HT supply 'is to be disconnected or dismantled' and informed the conditions for dismantling the service. In another letter dated 19.5.2005 the company informed that 'the unit have been locked out' and wanted to invoke Para 16(b) of the agreement which dealt with lock-out and wanted to discontinue charging 'the minimum agreed connected load'. They also wanted permission for shifting the connection to some other premises. In reply to the above

KSEB on 8.6.2005 informed them that shifting of a connection from one premises to another is not allowable as per rules and advised them to contact the Special Officer Revenue on lock-out-period billing concessions. On 30.11.2005 the company again addressed KSEB with a complaint that KSEB have not reduced demand charges even after 6 months and again requested 'to reduce the demand load'. On 22.05.2006 the company again addressed the KSEB and reminded of the letter dated 29.4.2005 and requested to 'disconnect the supply' and to give credit to the amounts paid from 01.06.2005 onwards. The correspondence continued in the above manner with letters from the company to KSEB on 18.7.2007, 1.8.2007, 24.9.2007, 2.11.2007, 12.1.2008 etc and from KSEB to Company on 27.7.07, 25.8.2007, 31.12.2007 etc. Nothing else happened. Ultimately the company moved the Hon: High Court with WP(C) 3693/08 on 26.1.2008 and obtained a direction to CGRF to decide on the matter. The CGRF in their order dated 11.7.2008 found that the company is eligible for reduction of contract demand wef 1.2.2008 based upon the communication dated 1.8.2007 from the Company.

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

I.The contentions/arguments/points raised by the Appellant in the Representation and associated documents and during the hearing are summarized below

1. The consumer had informed the Assistant Engineer regarding non-usage of agreed load vide the letter dated 29-04-2005.The request was specific and clear. This communication has to be taken as the notice under Para 14(a) of the agreement. The Respondents were denying justice to the company on silly excuses.
2. The consumer is Saj Flight Services(P)Ltd and the number 20/3697 and the Invoices issued by the Respondent is in the name of the Company. The General Manager Sri P.N.Babu had signed the agreement with the KSEB for and on behalf of the company. The contention of the Dy Chief Engineer that the request for reduction of contract demand has to be made by the same person who had signed the agreement is not correct. Even though the contention of the Respondent was not acceptable a request from the GM was submitted on 19.5.2005
3. The Appellant is retaining the HT connection and the machinery in good condition as they are expecting resumption of air-line catering contract. The reason for showing consumption of around 5000 units in the unit is for maintaining the machinery in good condition.
4. The contention of the Respondent that the requests were not clear is not correct since they had personally met the officers of KSEB and explained the situation on several occasions.
5. The decision of the CGRF in reckoning 01.08.2007 as the date of notice is not correct. The Forum itself has noted that the communication on 30.11.2005 was clear and specific and has pointed out that the Assistant Engineer has not taken appropriate action on the matter. The Forum has said the matter was not properly followed up by the consumer. The objections raised as well as the letters after 30.11.2005 was not considered by the Forum.

6. The actual demand in the HT connection was much less than 50KV A from 01.05.2005 onwards.

II. The contentions/arguments/points raised by the Respondent in the Counterstatement, associated documents, during the hearing and in the argument note are summarized below:

1. The application dated 29-04-2005 was not for contract demand reduction but an intimation that they will not be availing HT Connection as they are shifting to Vallakkadavu property and will not be using the demanded load. The application was not specific. The Respondent informed the consumer that the request was not clear.
2. They were also informed that the request for disconnecting/dismantling has to be made by the agreement authority. Further communications on the matter from the consumer was also not clear. The extent to which the contract demand was to be reduced was not mentioned anywhere. Even in the letter dated 30.11.2005 the extent to which the contract demand was to be reduced was not specified.
3. The Respondent had requested to reduce contract demand only by the letter dated 01.08.2007. All prior requests were not clear as the same were for reducing connected load/non availing HT connection/not to charge minimum connected load etc. None of the requests were from the agreement authority. The Application fee was remitted only on 26.09.2007 and a proper request was made on the same date and hence the reduction in contract demand can be considered after six months from 26.09.2007.
4. The decision authorizing the Manager of the Company to execute the agreement was taken by the Board Of Directors only on 10.09.2007. Hence the decision of the CGRF to treat the request dated 01-08-2007 by the Manager as the application to reduce contract demand is defective.
5. The Manager was not a party who had executed the agreement and hence the request for reduction in contract demand by him was not acceded. The KSEB can not make changes in the agreement executed by the General Manager unless the Board of Directors entrust the manager to officiate the powers of the General Manager. The company did not submit any such authorization in spite of repeated requests.
6. The claims of the company that they were under lock-out from 01.05.2005 was not correct as they were using power during this period.

III. Discussion and Findings

The procedure for reduction of contract load of consumers under KSEB is not seen specified in any regulations or rules. The matter is covered under Para 14(a) of the agreement between the Appellant and Respondent which reads as follows:

Should the consumer desire an increase or decrease in the contract demand provided for under this agreement at any time during the currency of this agreement, the consumer shall give six months previous notice in writing to the Board specifying the increased/reduced quantity required and the Board upon execution of a fresh agreement for the whole supply on terms and conditions mutually agreed upon, supply such requirement provided that the Board is satisfied

about the bonafides and technical feasibility of such a change in contract demand and provided also that sufficient surplus power is available at the corresponding point of supply at the specified time.

As per this clause the consumer has to take two steps for *reduction of contract demand*:

1. Give six months previous notice in writing to the Board specifying the increased/reduced quantity required
2. Execute a fresh agreement for the whole supply on terms and conditions mutually agreed upon.

The second step is to be taken only with the concurrence of the Board and the terms are to be mutually agreed. But obviously and in contrast to an addition of load which involves checking/adding system capacities, the consumer become eligible for reduction of contract demand once he gives a notice as above and the actual usage is reduced .The bonafides of the request shall be verified from the actual demands registered in the notice period.

In the instant case the points to be examined are:

1. Whether the consumer had given notice as per the agreement?
2. Whether the Letter dated 29.4.2005 of the Appellant can be reckoned as a notice ?
3. Whether the KSEB can insist that the notice is to be issued only by the official of the Company who had signed the agreement with KSEB?

The letter dated 29.4.2005 signed by the Manager for M/s Saj Flight Services(P) Ltd reads as follows:

We would like to intimate you that from 1-05-2005 onwards we will not be availing the HT connection as we are shifting the same to our Vallakkadavu property. So for the time being we will not be using the agreed demand load.

The technical terms in the above letter lack accuracy and clarity . But the consumer has communicated that, with effect from 1.05.2005, he will not be utilizing power to the extent he had agreed to use earlier. The words ‘we will not be using the agreed demand load’ makes it clear that they will not be utilizing the Contract Demand . It is true that the quantum of decrease in contract demand has not been specified. But the statement that they will not availing the HT connection and that they will not be using the agreed demand load is a notice on reduction of Contract Demand for all practical purposes. If the HT connection and HT agreement is continued, the minimum contract demand of 50KV A for retaining the Agreement and HT Connection, is to be agreed upon. In their letter dated 19.5.2005 the consumer requests ‘not to charge the minimum agreed Connected Load’ . In their letter dated 30.11.2005 the consumer states that ‘even after 6 months’ the KSEB have not reduced demand charges. The letter dated 30.11.2005 was clear and more or less specific .As pointed out by CGRF the Respondents could have taken appropriate action at least on receipt of the letter dated 30.11.2005.

On a plain reading of these communications it is clear that contention of the KSEB that the letter dated 29.4.2005 can not be conceived as a Notice under Para 14(a) of the agreement is not correct.

It is true that the consumer had failed to utilize the appropriate technical term of 'reducing the Contract Demand' in their communications. It is also true that the communications from the consumer are marked by utter confusion and misunderstanding on the meanings of the technical terms. Had the Company officials taken pains to read the Para 14(a) of their agreement at least once, such confusion and use of irrelevant terms could have been avoided.

The Appellant has stated that their representative had met the concerned officials of KSEB and explained the situation. The Respondent was also apprised of the situation arising out of cancellation of contract by Air-India. This had not been denied by the Respondent. Still the Respondent continues to argue that they were not aware of the intentions of the Consumer and cite the confusing terms the Appellant had used in the communications. But I feel that an organization like KSE Board should not take refuge behind such technicalities and jargons to deny the eligible relief to its consumers.

In this context it should also be observed that the actual demand recorded in the premises of the consumer after 01.05.2005 is 52 KV A, 55 KV A and 61 KV A for 6/05,7/05 and 8/05 respectively. It is less than 25 KV A more most of the remaining months. This is in contrast to 130 – 140 KV A range of values before 01.05.2005.

Under the above circumstances and in the interest of justice I conclude that the Letter dated 29.04.2005 shall be taken as the Notice under Para 14(a) of the agreement for reduction of Contract Demand to the minimum value of 50KV A .

Another point to be looked into is contention of the Respondent on the request from the Manager of the company for the reduction of contract demand .The Respondent argues that the Manager was not the appropriate person to make the request and it was not acceptable. The respondents argue that the Company had not authorized the Manager to represent the company prior to 24.9.2007. The General Manager had signed the agreement. But it can be seen the General Manager had signed the agreement 'for Saj Flight Services (P) Ltd'. Also from the copy of invoices issued one can see that the HT connection is in the name of M/s Saj Flight Services (P)Ltd , not the General Manager. Hence it is not proper to insist that all correspondence with KSEB should be done by the General Manager himself.

The respondents argument that 'any change or modification on the terms of the agreement can only be made by the parties of the agreement' is correct. They can insist that the Company should produce appropriate records of authorization if a new person is signing a revised agreement.

But *a notice* under Para 14(a) of the agreement can not be conceived as a change in the terms and conditions of the agreement. The Respondents contention that the Notice under Para 14(a) of the agreement has to be made by the agreement authority is totally illogical. A company being a juristic person would be represented by a person competent to represent it. It is enough that the person competent to represent a company presents the Notice on behalf of the company. KSEB ought to have taken into record a letter signed by the representative of the Company on the matter as a notice from the Company .

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 order of the CGRF Kottarakkara dated 11.07.2008 is set aside.*
2. *The Appellant shall be eligible for reduction of Contract Demand to 50KVA with effect from 01.11.2005*
3. *The excess MD Charges collected from the Appellant shall be refunded/adjusted in 12 (Twelve) monthly installments without interest.*
4. *No order on costs.*

Dated January 20, 2009 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 30/08 / 139 / dated 21.01.2009

- Forwarded to:
1. M/s Saj Flight Services(P) Ltd ,
Airport, Thiruvananthapuram
 - 2 The Deputy Chief Engineer
Electrical Circle(Urban)
Power House Building
Thiruvananthapuram 36

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
Consumer Grievance Redressal Forum
KSE Board, Power House buildings
Power House Road ERNAKULAM 682018

4. The Chairman
Consumer Grievance Redressal Forum
KSE Board, Vaidyuthi Bhavanam
Gandhi Road Kozhikode 673032

5. The Chairman
Consumer Grievance Redressal Forum
KSE Board, Vaidyuthi Bhavanam
KOTTARAKKARA