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APPEAL PETITION NO. P/407/2013.

(Present: V.V. Sathyarajan)

Appellant : M/s.Zahi Rubbers India Ltd.
V/452, Nochima,
NAD.P.O,
Aluva-683 563.

Respondent : The Deputy Chief Engineer,
Transmission Circle,
KSEBoard Ltd, Kalamassery,
Ernakulam (Dt).

ORDER.

Introduction:

Appellant M/s. Zahi Rubbers India Ltd filed this appeal on 19.08.2013 against the order dated 20.07.2013 of CGRF, Central Region, Ernakulam in compliant No.164/12-13. The appeal has been numbered as P-407/2013.

Prayers.

1. To direct the respondent to forthwith refund the amount of Rs 71,0000/- and the sum of Rs 10000/- to the appellant together with interest at the bank rate till the date of payment.

2. To quash the illegal demand made on the appellant for the sum of Rs.1,93,48,875/- towards alleged minimum charges

3. To pass such other appropriate orders or directions that this Authority may deem fit and proper to grant on the facts and the circumstances of the case and in the interests of justice.

4. To grant the costs of the proceedings to the appellant.

Notice issued to both parties. Hearing of the petition was held on 19.05.2014 and 30.05.2014. The appellant's side was represented by Adv: Sizad Rehman and Respondent's side by Adv: T.R.Rajan and Sri.P. Silvester Peter, Executive Engineer, Transmission Circle, Kalamassery and they have argued the case on the lines stated below.

Facts of the Case.

The appellant is a Company manufacturing "pre-curved tread rubber" for the tyre manufacturing industry. In order to meet the power requirements of the new factory, the appellant had applied for power allocation to the tune of 3500 KVA under EHT tariff. The appellant had also constructed a 110 KV Sub Station for this purpose after meeting its entire cost. In addition to the above, the appellant had to construct a Tap line to the above Sub Station for which he had remitted Rs.9,50,000/- , on work deposit basis. The appellant has also remitted Rs.7,10,000/- as 10% of the security deposit. As the tyre industry faced huge recession and there was no adequate demand for the products, the Appellant take a decision not to go ahead with the new factory and intimated the respondent that the service is no longer required and hence submitted a proposal to take over the 110 KV Sub Station on payment of fair compensation. But no decision was taken by the respondent on the above proposal, even though there had been some preliminary studies in this regard. As the proposal was not materialised, appellant requested to refund the security deposit.

It is alleged that, instead of refunding the security deposit, the respondent had made an unsustainable demand on the appellant for Rs.1,93,48,875/- towards the Un Connected Minimum Charges. Aggrieved against this, the appellant approached CGRF Central Region. CGRF had issued order No CGRF-CR/Comp.164/12-13/dated 20.07.2013 partly allowing the claim of the appellant. Still Aggrieved, the appellant filed this petition before this Authority.

Argument of the Appellant.

The appellant stated that in order to meet the power requirement of his new factory, he required 3500 KVA power and constructed 110 KV Sub Station for this purpose at his cost. The appellant has paid an amount, of Rs.9,50,000/- to meet the cost of Tower for the construction of Tap line as per the direction of respondent.

During November 2007, appellant had paid a sum of Rs.7,10,000/- towards 10% of Security Deposit for availing of the service connection. A further amount of Rs.10,000/- was paid by the appellant as per the direction of respondent towards the "power allocation charges ". Appellant contended that there is no provision in the Electricity Act, 2003 to demand or levy any amount as power allocation charges.

The appellant had thereafter decided not to avail of power connection for its new factory due to recession in the industry and the fact was informed to the respondent. The respondent had not taken any action to refund the security deposit remitted by the appellant; though there is specific provision for such refund in the Supply Code 2005. Instead, the respondent had issued demand for Rs.1,93,48,875/- towards the UCM charges.

The contention of the appellant is that the respondent is liable to refund the amount of Rs.7,10,000/- and the sum of Rs.10,000/- remitted by him with interest and he is not liable to pay any amount as UCM charges. Appellant argued that the refusal of refund is against the Terms and Conditions fixed by the Regulatory Commission. The grievances of the appellant fall within the definition of "complaint "contained in the KSERC Regulations, 2005 and hence bound to interfere in the matter and to pass orders directing to refund the amount remitted by the appellant along with applicable interest. Appellant also requested to quash the illegal demand of Rs.1, 93,48,875/- made by the respondent.

Appellant argued that he is entitled to withdraw his application for power as per Regulation 9 of the Supply Code 2005 which provides for "Withdrawal of Application". The Regulation provides that ''If any person after applying for supply of electricity with the Licensee withdraws his application or refuses to take supply ,the amount of security paid by him under Clause 14

shall be refunded to him. Amount remitted for providing electric line or electric plant shall not be refunded if the Licensee has commenced the work.'' There is also an identical provision contained in the Clause 6 of the KSEBoard Terms and Conditions of Supply, 2005. But CGRF did not considered the above facts.

An amount of Rs.7, 10,000/-paid by the appellant is a portion of the security as stipulated under Regulation 14 of the Supply Code, and Clause 13 of the KSEBoard's Terms &Conditions. As such the same has to be refunded to the appellant as no electricity has been supplied to the appellant. So also is the amount of Rs.10,000/- levied by the respondent without any enabling statutory provision.

The respondent also cannot claim any amount on the ground that Power Allocation has been made to the appellant. There is no process of power allocation under the provisions of the Electricity Act, 2003, or any of the Regulations/Rules issued under it. CGRF failed to note that this fact as it is admitted by the KSEBoard itself in its Board Order No.(FB) (Genl) No.510/2010(DPC II/AE/T&C of Supply 02/2009) dated 24.02.2010. The above Board Order categorically states that the " formality of power allocation is not envisaged in Kerala State Electricity Supply Code, 2005 or KSEBoard Terms and Conditions of Supply 2005 approved by KSERC".

The respondent cannot demand any further amount from the appellant towards cost of work done. TheAppellant has paid the entire amount of Rs.9,50,000/- for the work to be done for giving the proposed connection to the appellant. The appellant is not seeking the refund of the above sum of Rs.9,50,000/- as provided for under regulation 9 of the Code and Clause 6 of the Conditions. No work was done by the respondent at their cost, and as such no amount is due to the respondent under that head also.

The provisions of Regulation 10 of the Code are not relevant in the instant case. The said provision is applicable only in a case where after a completed application has been made and the Agreement for Supply has been entered into, and if there is delay on the part of the applicant to take supply after the Distribution Licensee has completed all its work, at its cost.

In this case, the Appellant has not made an application as provided under the conditions, has not entered into any agreement with the respondent

and has not taken connection. The entire work was also undertaken at the appellant's cost.

Even in a case where a formal application is made and all other formalities are completed, and if the application is withdrawn before connection is given or where the applicant refuses to avail of the connection, the applicant is entitled to get the Security Deposit refunded. Therefore, there is no reason why the Appellant should not be paid the said amounts by the respondent.

A reading of the provision of Regulation 10, 8(2) and 8 (9) of the Supply Code, together with the corresponding provisions of the KSEB Terms and Conditions of Supply, 2005 would clearly show that the liability to pay minimum charges is attracted only in case where the work in connection is undertaken at the cost of the Board, after the agreement has been executed and there is delay in taking connection. Where no connection is availed of or where the application is withdrawn, there is no provision for demanding any amount from the prospective consumer.

The provision of Regulation 10 of the Supply Code are not attracted in this case where the entire money has been spent by the appellant, the appellant had not preferred any application as contemplated under the Act, Regulations and the Terms and Conditions, the appellant had not entered in to any Agreement for Supply and the appellant has not taken connection from the Respondent.

The Conditions which govern the relationship between the appellant and the respondent, does not contain a clause relating to the demand for unconnected minimum charges analogous to regulation.

Minimum Charges are payable only in situations as provided for under the KSEB Terms and Conditions and the respondent can demand minimum charges only in situations as provided for under the Supply Code. The Board cannot unilaterally fix conditions contrary to the provisions of the Electricity Act 2003, the Supply Code and the Terms and Conditions. Any such decision is arbitrary, illegal and not enforceable on the appellant.

There is no procedure for giving power allocation under the Electricity Act 2003, the Supply Code or KSEB Terms and Conditions. There is thus no question of either extension or cancellation of the power allocation, or claiming any amount on the ground that power allocation has been issued. There is no statutory provision permitting the demand for unconnected minimum charges.

Argument of the Respondent.

The respondent stated that the appellant had submitted application for power allocation to the extent of 3500 KVA at 110 KV and remitted Rs.5000/- on 15.06.2006 towards application fee and Rs.10,000/- on 09.06.2007 as processing fee. Also as per the direction of Chief Engineer Transmission South the appellant remitted Rs.7, 10,000/- on 21.11.2007, towards 10% of the cash portion of the security deposit. For effecting supply at EHT level, a D 30+4.5m 110 KV Tension tower had to be erected in the place of existing D3+3m suspension tower at location 15 and 50 m 110 KV SC tap line had to be constructed. An estimate for the above work was sanctioned at the office of the Deputy Chief Engineer, Transmission Circle, Kalamassery on 10.01.2008 and intimated the appellant on the same day itself. The appellant remitted the work deposit amount of Rs.9,50,000/- on 28.01.2008. Power allocation was given by the Chief Engineer (Transmission South) on 14.01.2008 and also requested the appellant vide letter dated 14.01.2008 to execute agreement along with remittance of balance security deposit amount of Rs.63,51,670/- as DD in favour of Special Officer Revenue, KSEBoard and furnishing Bank Guarantee for Rs.70,61,670/- within 6 months .

As per the request of the appellant, period of power allocation was extended by the Chief Engineer (Transmission South) for two months (up to 14.09.2008) vide letter dated 06.09.2008. The Executive Engineer, Transmission Division, Kalamassery had intimated the appellant vide letter dated 01.09.2008, that the construction of 110 KV tap line to provide 110 KV service connection to the appellant's premises has been completed and also requested them to produce the documents such as energization approval of their EHT installation from Electrical Inspectorate along with approved

schematic diagram, Test & Completion Report of the installation, list of equipments with connected load details, ownership certificate issued by local body, test report of TOD meter issued from TMR Division, to proceed with the energization of their installation as per Clause 5 of Supply Code 2005.

It is also intimated vide letter dated 01.09.2008 that the EHT equipments in their installation have to be tested by Board's PET & Relay Team to carry our commissioning tests and to ensure relay co-ordination before energisation. But the appellant failed to respond for a period of one year. Later, vide letter dated 08.09.2009 the appellant requested for extension of period of the Power Allocation after the expiry of the same and also sought for permission to remit balance portion of the security deposit. The Chief Engineer (Transmission South) vide letter dated 19.03.2010 had informed the appellant that their request for waiver of minimum charges has been denied by the Board and they have to remit an amount of Rs.74,41,875/- towards minimum charges as on 01.03.2010.

The appellant failed to remit the required amounts and not executed agreement and hence failed to comply the Clause 5 of Supply Code 2005. As per the request of the appellant, Board had accorded sanction to remit the amount towards minimum charges in instalments and the Chief Engineer (Transmission South) had intimated the matter to the appellant vide letter dated 16.09.2010. The appellant failed to remit the instalments even.

The statement of the appellant that, they had not formally applied for power connection and they had not been given power connection with in the meaning of the Electricity Act 2003 or the applicable rules or Regulations, are absolutely false, because all the above events were taken place due to the incapability of the appellant to equip himself for availing of power. As per clause 10 of Kerala Electricity Supply Code 2005, the petitioner had to remit minimum demand charges @ 2700×0.75×245 from 01.12.2008 for every month till they avail of supply. As per Condition no. 6 of proceedings of Chief Engineer [TS] dtd 14-01-2008, if the power supply is not availed of within 6 months from the date of this order, M/s Zahi Rubbers India Ltd will have to pay the minimum charges.Even though necessary directions and intimations were given by the Respondent, the appellant did not remitted necessary fees for availing of supply. Hence the lapse was from the part of the appellant itself.

The intimation of the appellant that they do not require EHT connection any more as they decided to wind up their Company and the request to cancel the EHT application was given to the respondent only on 27.03.2012. The appellant failed to intimate their decision in time.

The appellant vide letter dated 24.01.2011 intimated the Member (T &GO)that, as an alternate proposal they are ready to surrender their newly constructed 110 KV substation at Nochima to KSEBoard on fair compensation value, as their future total contract demand requirements is 2200 KVA which can be availed of from 11KV system. In the above letter, they requested to either permit them to remit security deposit excluding penal charge or to take over the substation constructed by them on fair value compensation basis.

The respondent had conducted feasibility study for the proposal of taking over of substation and the same was under the consideration of KSEBoard. The substation constructed by the appellant was not as per Board's requirements and the same has to be modified to suit to Board's standards. The minimum cost required for the modification works to be carried out to take over the substation of M/s Zahi Rubbers is Rs.312 Lakhs and cost required for the modifications including one additional transformer (for flexibility and reliability as per Board's standards) is Rs.550 lakhs.

Later the appellant informed on 27.03.2012 that they have decided to wind up their Company and to convert the same to Ware House and requested to cancel their application for EHT connection. During that time, the proposal of taking over of substation was under the consideration of KSEBoard. In the meantime, the appellant had filed a writ petition before the Hon'ble High Court of Kerala on 27.10.2012 vide WP (c) No.25247 of 2012.

In the judgement dated 29.11.2012 of the Hon'ble High Court of Kerala on the above writ petition, the Chief Engineer (Transmission South) was directed to take a final decision regarding dismantling of the tap line, within a period of three weeks from the date of receipt of a copy of the judgement and if the Authority fails in taking any decision within the stipulated time, the petitioner will be free to dismantle the substation by dismantling the tap line connected to the substation.

While the appellant approached various Forums for obtaining approval for dismantling the line, the appellant had clear cut plans to dismantle the substation and putting the land for alternate purposes. Even before getting the High Court Judgement, they had awarded the work of dismantling the substation and never waited for the decision of KSEBoard. It may be noted that the proposal for handing over the substation was in lieu of the amount to be remitted to the Board as Minimum Charges and the amount due is Rs.1,93,48,875/- .

The Chief Engineer (Transmission South) has requested the appellant to remit an amount of Rs.1,93,48,875/- towards minimum charges for the period from 01.12.2008 (90 days from the date of notice) to 27.03.2012 at Transmission Circle, Kalamassery and also intimated that the 110 KV tap line from KLCH-I feeder to provide 110 KV service connection shall be dismantled on work deposit basis on remittance of the full amount mentioned above . As per the instruction of the Chief Engineer (Transmission South), an estimate amounting to Rs.15,300/- has been prepared for the deposit work of "Dismantling the 110 KV SC tap line constructed from Kalamassery-Chalakkudy #1 feeder to provide service connection to M/s.Zahi Rubbers ". But the estimate can be sanctioned and demand can be raised only after remitting the minimum charges by the appellant. The demand raised by the Chief Engineer after obtaining the judgment is genuine by all means because the appellant is liable to pay the said charges as per Clause 10 of Kerala Electricity Supply Code 2005. The appellant had purposefully hidden this fact while approaching the High Court as well as the CGRF. The dismantling of the line and remittance of the charges are interrelated, which is contrary to the contention of the appellant.

As per Board Order, B.O.No.2413/2001 (TC 1/PA/51/2001 dated 07.12.2001 and B.O. (FM) No.1273/2007 (Plg.Com.4601/05/07-08 dated, 04.06.2007 TVM, a Processing fee amounting to Rs.10,000/- had to be collected from the Applicant seeking Power Allocation for 1001 KVA to 6000 KVA. As the Power Allocation requirement of the appellant was 3500 KVA, the firm was requested to remit Rs.10,000/- towards processing fee Vide letter dated 01.09.2007 and the amount was remitted by the Appellant on 06.09.2007.

The Chief Engineer demanded a sum of Rs.1,93,48,875/- as minimum charge since the respondent has completed the work and intimated the same to the appellant on 01.09.2008. Hence, as per clause 10 of KSEBoard Supply Code 2005, the appellant had to remit minimum demand charge at the rate 2700×0.75×245 from 01.12.2008 (90 days from the days of first notice) for every month till they avail supply. Rs.10,000/- was collected as processing fee as per B.O.(FM) No.1273/2007 (Pig.Com4601/05/07-08) dated 04.06.2007 Thiruvananthapuram, which is non refundable. The Terms and Conditions of supply Code allow the licensee to collect sufficient application fee/processing fee and security deposit. Appellant's demand for refund of security deposit can be considered only after the payment of the UCM charges.

The respondent stated that the demands raised by them were strictly in accordance with clause 10 of Supply Code 2005 and there is no wilful refusal of refund of security deposit. The Regulation 9(2) of Supply Code states that "if an applicant refuses to avail supply, the amount deposited by him for providing electric line or electric plant shall not be refunded if the licensee has commenced the work". As per this Regulation it is clear that Licensee's system cannot be modified free of cost. The respondent prays that the Appeal Petition may be dismissed directing the appellant to remit the amount demanded by the respondent.

Discussions and Decisions.

1. **Whether or not the appellant was a consumer as defined in the Electricity Act 2003 or in the Supply Code 2005?**

As per Supply Code 2005 Regulation 2(m), and Section 2 clause 15 of Electricity Act 2003," **Consumer**" means any person who is supplied with electricity for his own use by a Licensee or the Government or by other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee, the Government or such other person, as the case may be.

Here the appellant has only applied for power allocation to the tune of 3500 KVA. But he has not availed of the supply and the appellant's premise has not been connected with the distribution system of the Licensee. Hence appellant is not a consumer as defined in the supply code or in the Act 2003.

2. **Whether or not there is any provision in the Electricity Act 2003 or in any rules or regulations made there under, enabling the Licensee (Respondent) to realise un connected minimum charges from the appellant or making the appellant liable to pay the un connected minimum charges to the Licensee?**

The respondent has not produced any documents or pointed out any legal provision which enables the respondent to realise un connected minimum charges or making the appellant liable to pay the un connected minimum charges to the respondent.

3. **Whether or not there are any contractual obligations on the part of appellant to pay UCM charges to respondent or there is any contractual right to the respondent to realise the UCM charges from appellant?**

The respondent has not produced any document to establish that there was a contract between respondent and appellant relating to the supply of electricity.

4. **Whether or not there is any order of KSERC enabling the licensee to realise UCM charges from the appellant or making the appellant liable to pay the UCM charges to the Licensee?**

As per the provisions of Electricity Act 2003, and the Regulations made there under the Licensee can realise only the following charges.

Section 45 of Electricity Act 2003, deals with power to recover charges by the distribution licensee for supply electricity

(a). Fixed charges in addition to the charge for actual electricity supply.

(b).a rent or other charges in respect of any electric meter or electrical plant provided by the distribution Licensee.

As per Section 46 of Electricity Act, any expenses reasonably incurred in providing any electric line or electrical plant used for giving the supply.

Section 47 of Electricity Act, stipulates the power to require security. According to this section distribution licensee is empowered to recover security deposit as determined by Regulations.

There is no provision in any of the Regulations or in any order issued by KSERC enabling respondent to collect UCM charges. Further the respondent has not submitted any orders of KSERC to substantiate their claim.

5. **Whether or not there is any provision for allocation of power?**

As per BO (FB)(Genl) No.510/2010 (DPCII/AE/T&C of Supply 02/2009) dated Tvm 24.02.2010, formalities of power allocation were dispensed with. On receipt of application from prospective consumers having power requirement above 10 KVA has to remit advance amount (prescribed for LT, HT/EHT consumers respectively) to ensure the genuiness of the request. The amount shall be adjusted without interest in the estimated amount to be paid by the applicant. This advance amount shall not be refunded in case applicant withdraws the application. Hence, there is no provision for allocation of power envisaged in the supply code 2005 or KSEBoard Terms and Conditions of Supply 2005 approved by KSERC.

6. **Whether or not respondent had reserved any capacity or installed any electrical plant exclusively for appellant consequent to his application for power allocation. ?**

It is evident form the communication dated 15.01.2010 issued by the Deputy Chief Engineer, Transmission Circle, Kalamassery which is marked as Exhibit No.7 produced along with the reply statement furnished by the appellant before CGRF, that no capacity idling has occurred to the respondent on account of appellant's power allocation. The respondent had not pointed out any instance where a prospective consumer's request is denied

because of the Power Allocation sanctioned to the appellant. In this case, it is admitted that the appellant met all the expenses for the construction of the 110 KV substation and Tap Line for availing of EHT supply. It is also pertinent to note that the appellant remitted 10% of the Security Deposit as directed by the respondent. Hence, there is no capacity idling or installed any electrical plant exclusively for appellant consequent to his application for power allocation.

7. **Whether or not the respondent has sustained any financial loss due to idling of such capacity or electrical plant due to any other reasons caused by the appellant?**

The appellant had remitted Rs.7,10,000/- as 10 percent of cash portion security deposit for power allocation sanction and Rs.9,50,000/-for the construction of 110 KV tap line from 110 KV Kalamassery-Chalakkudy line on work deposit basis. It is admitted that the appellant met all the expenses for construction of 110 KV sub station and tap line for availing EHT supply and respondent has not spent any amount on this account. Hence, no financial loss/capacity idling has occurred consequent to the appellant's application for power allocation.

As per Regulation 10 Supply Code 2005 (1).where the licensee has completed the work required for providing supply of electricity to an applicant but, the installation of the applicant is not ready to receive supply, the licensee shall serve a notice on the applicant to take supply within 60 days of service of the notice in the case of LT consumers and 90 days in the case of HT and EHT consumers.

(2). If after service of notice the applicant fails to take supply electricity, the licensee may charge fixed/minimum charges as per the tariff in force for completed months after expiry of notice till the applicant avail of supply.

Here the appellant spent huge amount for the construction of 110 KV sub station and the construction of tap line etc and the respondent has not done any work at their expense for providing supply and the respondent had never challenged these facts. Hence, the appellant's argument that no financial loss has occurred to the respondent is admitted.

As per Regulation 9 (1) of Supply Code reads thus “If any person after applying for supply of Electricity with the Licensee withdraws his application or refuses to take supply the amount of security paid under clause 14 shall be refunded to him. Amount paid for providing electric line or electric plant shall not be refunded if the Licensee has commenced the work”.

2. If a person fails to pay the sum required for extension of supply lines or other works within the time allowed by the Licensee, the licensee may treat his application as withdrawn after giving him 30 days notice. Here the appellant has not availed of the supply and the licensee has not provided supply, appellant is eligible for getting the refund of security deposit.

Decision.

Unconnected Minimum charges originally introduced for consumers those who were executed Minimum Guarantee Agreement as per KSEBoard Conditions of Supply of Electrical Energy 1990. The intention of Minimum Guarantee is to ensure that the required minimum revenue return is forthcoming and will be charged only until the line extension becomes self remunerative as per norms fixed by the licensee (Board) from time to time. In the case of MG consumers, all the works are carried out by Board and the consumer has to furnish only Minimum Guarantee Agreement. After completing all the works required for the consumer and the consumers who are not ready with their installation to avail of supply will have to pay the UCM charges. At present there is no Minimum Guarantee agreement and the applicants requiring supply have to remit the required fees, charges and security and satisfying the conditions stipulated in the approved Terms and Conditions of Supply of the Licensee. In the present case, all the works were carried out by the appellant at his cost and the licensee has not spent any amount. Hence, there is no rational in charging UCM and is not supported by any Law or Regulations or orders issued by KSERC or by Terms and Conditions of any agreement. In the above circumstances it is found that there is no ground for charging an amount of

Rs.1,93,48,875/-towards un connected minimum charge from the appellant. Hence the demand notice for Rs.1,93,48,875/- issued by the respondent is quashed. Appellant is eligible for refund of Rs.7,10,000/-towards the security deposit already remitted by him.

As per Terms and Conditions of Supply, 2005 the Licensee is eligible for collecting Application Fee/Processing Fee, which is non refundable. The amount remitted by the appellant towards the application fee Rs.5,000/- and processing fee Rs.10,000/- are in order.

The Order issued by CGRF, Central Region, Ernakulam, in compliant No.164/12-13 dated 19.08.2013 is set aside. Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant stands disposed of with above directions. No order on costs. Dated 11.09.2014.

ELECTRICITY OMBUDSMAN.

No.P/407/2013/ Dated.

Forwarded to: (1).M/s.Zahi Rubbers India Ltd, V/452, Nochima,
NAD P.O, Aluva-683 563.
(2).The Deputy Chief Engineer,
Transmission Circle,
KSEBoard Ltd, Kalamassery,
Ernakulam (Dt).

Copy to: (1). The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, C V Raman Pillai Road, Vellayambalam, Thiruvananthapuram-10.
(2). The Secretary, KSEBoard Ltd, Vydyuthibhavanam, Pattom, Thiruvananthapuram-4
(3). The Chairperson.
Consumer Grievance Redressal Forum ,
Power House, Power House Road, Cemetry Mukku,Ernakulam-18

The Appellant had requested for a power requirement of 3500 KVA on 15.06.2006 and formal Power allocation sanctioned by the Chief Engineer (Transmission) on 14.01.2008 after collecting Rs.7,10,000/- (10% of cash portion of Security Deposit). While issuing power allocation, the Appellant was directed to execute an Agreement along with remittance of balance amount of Security Deposit of Rs.63,51,670/- as Demand Draft in favour of Special Officer (Revenue) and furnishing Bank Guarantee for Rs.70,61,670/- within6 months. But the Appellant had not remitted the balance amount of Security Deposit of Rs.63,51,670/- and not furnished Bank Guarantee for Rs.70,61,670/-. Further he has not executed the EHT Agreement till date.

1. For effecting 110 KV supply to the appellant, construction of 110 KV Tap line from 110 KV Kalamassery- Chalakudy line was constructed by the Respondent (Transmission Circle) during 9/2008, on deposit work basis. It is a fact that the Respondent intimated the Appellant to produce relevant documents to proceed with the energisation of the proposed unit on 01.09.2008. But, the Appellant responded to the above communication only on 08.09.2009, after a period of one year. Reason stated by the Appellant for delay is that due to ongoing recession in the GlobalMarket, demand for the product had slow down and they were forced to slow down the expansion programme for few months. The Appellant also requested for time extension of Power Allocation and for the remittance of cash deposit and furnishing BG.
2. No further steps have been taken by the Appellant. However, the Respondent informed the Appellant on 19.03.2010 to remit an amount of Rs.74,41,875/- towards the minimum charges as on 01.03.2010, since Board has denied the request dated 10.10.2009of the Appellant for wavier of demand charges.

3. The Appellant requested Principal Secretary Industries and Commerce on 23.03.2010 to revoke the penalty imposed on them and to save their industry from a possible collapse.
4. Respondent Chief Engineer (Transmission) vide letter dated 16.09.2010, informed the Appellant to forward their willingness to remit the minimum charge amount in instalments. But, the Appellant did not replied for the above proposal.
5. The Appellant intimated the Respondent on 27.03.2012, that they do not require the EHT supply anymore and decided to wind up their company. Respondent argued that the Appellant failed to intimate their decision in time.
6. The Appellant vide letter dated 24.01.2011 intimated Board that they are ready to surrender their 110 KV Sub Station to Board on payment of fair compensation. Even though the Respondent had conducted a feasibility study they dropped since an amount of Rs.550 Lakhs is needed for modification as per Board's requirement.
7. In the meantime, the Appellant filed WP(c) No.25247 of2012 before Hon'ble High Court for taking a final decision regarding the dismantling of Tap line. The Appellant dismantled the Tap line as per the directions in the judgement in WP (c) 25247 of 2012.
8. The Respondent's argument is that the amount demanded by Chief Engineer (Transmission) for Rs.1,93,48,875/-towards the minimum charges for the period from 01.12.2008 to 27.03.2012 is correct and the Appellant is liable for payment as per clause 10 of Kerala Electricity Supply Code 2005.
9. The Appellant argued that he is not liable to pay any amount to the Respondent as demanded. On the contrary, he is eligible for refund of Rs.7,10,000/- and sum of Rs.10,000/- remitted by him with interest applicable.

   The points to be decided are

   1.Whether the Appellant is entitled to withdraw his application for power as per Regulation 9 of Supply Code?

   2.Whether the Respondent had suffered any financial loss due to capacity idling?

3.Whether the request of the Appellant has been denied by the Respondent for waiver of minimum charges?.

4. Whether the Respondent had issued notice contemplated under Regulation 10 to the Appellant?

In this case all works are carried out at the cost of Appellant. But he failed to avail supply. The Licensee, the Respondent has not spent any amount on this account. Hence, the amount of security paid by the Appellant has to be refunded in view of the fact that the Licensee, the Respondent has not energised the installations.

Appellant is an Industrialist who failed to start the industry proposed due to the recession in the Global Market. He was very enthusiastic entrepreneur and hence he spent a huge amount for getting the power to his proposed unit. There is no evidence produced to show that there is a wilful latch or deliberate intension to cheat the Respondent from the part of Appellant. This is evident from the communication dated 15.01.2010 issued by the Deputy Chief Engineer, Transmission Circle, Kalamassery which is marked as Exhibit No.7 produced along with the reply statement furnished by the Appellant before CGRF.

It can be seen from the facts of the case that the Appellant failed to run the industry which he proposed. All the equipments including the substation constructed at his costs were dismantled after getting orders from the Hon'ble High Court of Kerala. The Respondent had never challenged these facts. Hence the Appellants argument that no financial loss/Capacity idling has occurred to the Respondent on account of the failure to take the supply by the Appellant is admitted.

1. Whether the request of Appellant for wavier of UCM has been denied by the Respondent?

On examining the documents produced by the Respondent (Exhbt R15) along with the additional statements, reveals that notice was served on the appellant directing to avail power. This cannot be acted upon, since that representation is filed before the Principal Secretary,

Industries & Commerce. No number or date of such notice is stated in the representation. The party supposed to produce the notice sent under Regulation 10 is the Respondent i.e. Board. The Respondent failed to produce such a notice sent to the Appellant which is mandatory as per Regulation 10 of the Supply Code. Even if the Respondent failed to produce the 'Notice' the circumstances and the relevant documents produced by the Appellant reveals that the Appellant is aware of the situation that the Respondent has done their part of the work completely for providing supply to the Appellant. In the present case, the delay happened because of the default on the part of Appellant and the fact was admitted by the Appellant in their representations to Chairman KSEBoard, Minister Electricity and Chief Minister etc.

The Exhbt. 12 representations submitted by the Appellant to Chairman, KSEBoard, a copy of which is seen marked to Member (Transmission) & Member (Finance) which is produced by the Respondent along with additional statements proves that the Appellant requested before the Respondent to waive of UCM. As this document was produced by the Respondent, it is presumed that the Respondent is in receipt of this letter. So in view of this, if the Respondent was prompt enough to take a decision on the request of the Appellant, the issue could have been settled then and there. So there is lethargy on the side of Respondent in taking timely decision. Hence, there is no justification for demanding UCM of Rs 1,93,48,875/- for the whole period. There is no justification in demanding UCM after the date of 10.10.2009 the date of which the Appellant requested for wavier of penalty through representation as Exhibit 12.In the above circumstances. Iam of the view that the demand of UCM after 10.10.2009 i.e. date of representation by the Appellant to the Chairman, KSEBoard, is unsustainable.

4. Whether the Respondent issued notice contemplated under Regulation 10 of supply code?

On examining the documents produced by the Respondent, it can be seen that Executive Engineer, Transmission, Kalamassery had intimated the Appellant on 01.09.2008 to produce necessary

documents to proceed with the energisation of the installation. This communication cannot be treated as a notice under Regulation 10 of Kerala Electricity Supply Code 2005. The Respondent is relying on the representations submitted by the Appellant to the Chairman, KSEBoard, Thiruvananthapuram, Hon'ble Minister (Electricity) Thiruvananthapuram & Principal Secretary Industries & Commerce, Tvm which can not admitted. The Regulation 10 of the Supply Code states that if after service of notice the applicant fails to take supply of electricity, the Licensee may charge fixed/minimum charges as per the tariff in force for completed months after the expiry of the notice till the applicant avail supply. In this case the Appellant has not availed the supply and dropped his project. Going by the various documents produced by the Respondent, notice containing a direction to the Appellant to takes supply with in 90 days as per Regulation 10 (1) cannot be seen and in none of the communications/notice it is stated to avail supply within the statutory period. Therefore it is evident that no statutory notice as contemplated under Section 10 (1) has been served up on the Appellant and hence, no cause of action for demanding unconnected minimum charges had arisen at any point of time.

Even though a specific communication is not seen produced as notice to avail supply, the pleadings of the Appellant and documents produced will show that the Appellant is aware and full knowledge that the Respondent had completed their part of the work and energisation of the line is delayed because of the lethargy shown by the Appellant. It is clear from the facts and evidence produced that the Appellant dropped his proposed industry due to the impact of global recession and hence he did not want to energise the line.

Decision:

In view of the above discussions and findings I hold that the Appeal is allowed to the extend that Unconnected Minimum Charges cannot be collected from the Appellant beyond then 10.10.2009 the date on which the Appellant requested for waiver of penalty. The Appellant is also eligible for refund of security deposit remitted by

him. The security deposit amount with its interest shall be adjusted against the minimum charge liability. Any amount paid excess by the Appellant may be refunded to him. Also amount if any payable by the Appellant, the Respondent may collect the same. As per Terms and Conditions of Supply Code, Licensee is eligible for collecting Application fee/processing fee, which is non refundable.

Having concluded and decided as above, it is ordered accordingly.

The Appeal Petition filed by the Appellant stands disposed of with the said direction. No order on costs. Dated 29.08.2014.

ELECTRICITY OMBUDSMAN.