

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/133/2015

(Present: V.V. Sathyarajan)

Dated: 29th October 2015

- Appellant : M/s Aaron International
Plot No. 10, Industrial Development Plot,
Parakulam, Anakkara P.O.
Palakkad
- Respondent : 1. The Deputy Chief Engineer,
Electrical Circle, KSEB Limited,
Shornur.
2. The Asst. Executive Engineer,
Electrical Sub Division,
Kerala State Electricity Board Ltd,
Thrithala, Palakkad.

ORDER

Background of the case:

The appellant in this petition had applied for power allocation of 270 kVA to start a new industry in Industrial Development Area at Parakkulam, Palakkad for manufacturing Copper Cathode and Zinc Sulphate and the same was sanctioned by the Deputy Chief Engineer, Electrical Circle, Shornur on 05-11-2007. The appellant remitted Rs. 60,000.00 as security deposit on 04-11-2007, for getting the power allocation. As per the request of appellant the power allocation was extended for six months from 05-05-2008. On 5th of August 2008, the appellant remitted an amount of Rs. 87,079.00 towards the OYEC charges. It is alleged that the works on the part of the respondent were said to be completed on 18-12-2008 itself. But the appellant submitted a letter to the respondent informing the completion of the work and requested to provide power supply only on 04-06-2014. Hence the respondent demanded unconnected minimum charges (UCM) amounting to Rs. 2,73,735.00 for the period from 4/2009 to 10/2009.

When the appellant was ready with their installations to avail power, the respondent intimated that their industry is a power intensive unit and hence power supply could be given through a dedicated feeder as per the new Supply Code. Being aggrieved by the demand, the appellant approached the CGRF, Kozhikode by filing petition on 09-12-2014 with request to reclassify their unit as non power intensive. The CGRF had taken the following decision on this. "The respondents are directed to collect UCM charges from 4/2009 to 6/2014 without surcharge, according to the tariff prevailed during the day and thereafter effect service connection to the petitioner." Aggrieved against the decision, the appellant has submitted this appeal petition with a plea to set aside the direction to the respondent to collect unconnected minimum charges from the appellant. In the meanwhile the appellant had approached the Hon'ble High Court of Kerala by filing WP(C) No. 2933/2015 seeking a prayer for expeditious disposal of petition already filed before this Authority. The Hon'ble Court disposed the above OP with a direction to dispose the petition within a period of one month from the date of receipt of copy of judgment after hearing the petitioner.

Arguments of the appellant

1. This appeal has been filed by the appellant challenging the order dated 19-05-2015 in O.P. No: 87/2014-15 of the Consumer Grievance Redressal Forum, KSEB, Northern Region, Kozhikode.
2. The case of the appellant before the Forum in brief was as follows: The appellant, a partnership firm was proposed to establish an industrial unit in Industrial Development Area at Parakkulam, Palakkad for manufacturing Copper Cathode and Zinc Sulphate in the initial stage. The appellant had applied for power allocation through the Single Window Clearance Board. After processing of the application the respondent had issued a letter dated 02-11-2007 requiring the appellant to deposit an amount of Rs. 60,000.00 (Sixty Thousand Rupees) as advance security deposit. On 04-11-2014 the appellant had remitted the required amount by way of demand draft. On 05-11-2007 the appellant received power allocation with a validity period of 6 months which was subsequently extended. On 05-08-2008 the appellant had remitted Rs. 87,079.00 (Eighty Seven Thousand Seventy Nine Rupees) as OYEC deposit.

On 17-02-2009 the respondent requested the appellant to submit an approved schematic diagram. On 09-06-2009 the appellant submitted the Approved Schematic Diagram. Thereafter no communication was obtained from the respondents to the appellant. On 04-06-2014 the appellant submitted to the respondents a letter informing the completion of the industrial unit and explained the delay caused in completion and requested to provide power supply. On 05-06-2014 as required by the respondent the appellant had submitted a fresh application along with a

request for power feasibility report. On 10-11-2014 the appellant received a letter from the respondent informing that the appellants industrial unit is a power intensive unit as per the provisions of the supply code and sanction from the Board is required for allocating power.

On 04-12-2014 the 2nd respondent issued a letter to the Executive Engineer asking to inform the appellant that as the unit of the appellant propose to carry out electrochemical process, and which is classified as a power intensive activity under Clause 12 of the Supply Code-2014, the appellant is required to resubmit the proposal with estimate for a dedicated feeder. On 09-12-2014 the appellant had submitted a request before the 4th respondent to reclassify the unit as non-power intensive unit. As the grievance was not redressed, the appellant approached the Forum on various grounds inter alia that the unit require only 20 Amp power and for the said purpose installing a dedicated feeder of 220 Amp power is not viable for both the Board (KSEB) and the appellant.

3. The respondents filed a reply as follows: the appellant was a prospective High Tension applicant. The appellant had submitted an application for power requirement to the extent of 270 kVA. On verification it was understood that the manufacturing process involves electrolysis, which was an electrochemical process. As per the Regulation 2(66) Clause III of Kerala Electricity Supply Code, 2014 the industry comes under the category of power intensive unit. As per Regulation 12 of the Supply Code, 2014 service connection to a power intensive unit should be granted only through a dedicated feeder. In so far as the claim of the appellants that they received power allocation in the year 2007, the respondents submitted that the power allocation to the extent of 270 kVA had been issued to the appellant vide letter dated 05-11-2007 and Advance Security Deposit and OYEC amount has been remitted by the appellant. The appellant was informed that if they fail to avail 270 kVA within the prescribed period, they will be liable to pay minimum demand charge till they avail supply. With regard to the prayer of the appellant that the unit should be reclassified as non-power intensive, it was submitted that it was unjustifiable as per the prevailing rules and regulations.
4. Considering the facts and circumstances the Consumer Grievance Redressal Forum, KSEB found that the appellant can be considered as a consumer from 2007 as the power allocation was already made and the appellant had remitted the Advance Security deposit in 2007 itself but it was further found that as the appellant failed to avail the supply, the appellant is liable to pay the Unconnected Minimum (UCM) charges for the period in which supply was unavailed. The Forum also found that as the case was originated while Supply Code, 2005 was in force it has to be dealt by the provisions contained in 2005 Code. The respondents are directed to collect UCM charges from 4/2009 till 6/2014 without

surcharge, according to the tariff prevailed during the day and thereafter effect service connection to the appellant.

The appellant is aggrieved by the order of the Forum to the extent of finding that the appellant is liable to pay Unconnected Minimum (UCM) charges for the period in which supply was unavailed. The finding of the Forum that the appellant is liable to pay unconnected minimum charge for the period they have not availed the supply, after becoming a consumer in 2007, is unjustifiable and arbitrary. The Forum failed to find that the appellant being remitted the Advance Security Deposit and OYEC charges should not have imposed with a liability for non usage of the power allotted to them. The usage of the power without setting up the proposed industrial unit for which power was required is impossibility and the Forum ought not to have found the appellant is liable to pay Unconnected Minimum Charge for the impossibility of usage of power. Charging a consumer who had complied with the entire statutory requirement for power allocation and statutory remittance for such power allocation, solely on the ground that the consumer had not availed the supply for reasons not attributed by such consumer is unreasonable. The imposition of Unconnected Minimum Charge on the appellant is illegal in so far as such imposition is not as provided under the Kerala Electricity Supply Code 2005 or any other governing Act, Rules or Regulations. The Unconnected Minimum Charge imposed on the appellant is exorbitant and such imposition is without considering the facts and circumstances of the case.

Reliefs sought for:

1. To modify the order dated 19-05-2015 in O.P. No: 87/2014-15 of the Consumer Grievance Redressal Forum, KSEB, Northern Region, Kozhikode and thereby set aside the finding that appellant is liable to pay Unconnected Minimum Charge and delete the direction to the respondents to collect Unconnected Minimum Charge from the appellant.
2. To grant such other order that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

Arguments of the respondents

All the arguments and allegations stated by the appellant are objected by these respondents, except those which are specifically admitted hereunder. The instant petition is not maintainable either under law or on facts. The appellant has approached this Authority with far fetched and fallacious averments merely on an experimental basis as there is no real cause of action as alleged by the appellant.

Matters connected with electricity in the land are governed by the Electricity Act, 2003 and the Rules and Regulations made thereon. State Electricity Regulatory Commission constituted under Section 82 of the Act,

2003 mandated under Section 50 framed Kerala Electricity Supply Code, 2005. Regulation 10 of the above supply code is extracted hereunder.

"10. Delay on the part of the applicant to take supply:-

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 with sixty days of service of the notice in the case of LT consumers and 90 days in the case of HT & EHT consumers.

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 expiry of notice till the applicant avail supply"

The applicant M/s. Aaron international applied for electricity for an industry producing copper cathode. The load required by the applicant was 270 kVA. Supply of power to this load requires 11 kV line. The appellant was sanctioned the power requested. He remitted the required charges for getting electric supply. The Kerala State Electricity Board Limited had completed all its works required for providing 11 kV supply to the appellant on 18-12-2008 and the fact of the completion was informed to the appellant vide letter dated 23-12-2008 of the Assistant Executive Engineer. In the above notice it was informed that if the appellant fails to avail the electric supply he will liable to remit the minimum charges prescribed by law.

The appellant was again intimated vide letter dated 05-08-2009 to avail electric supply. A demand for Rs. 2,13,735.00 was also demanded from the appellant towards monthly minimum charges during 04/2009 to 10/2009. The appellant neither availed electric supply nor remitted the minimum demand notice issued under Regulation 10 (2) of the Kerala State Supply Code, 2005.

This being the factor, the appellant submitted a new application on 10-06-2014, for supply of electricity to the extent of 270 kVA for an industrial unit producing Copper Cathode and Zinc Sulphate. The Kerala Electricity Supply Code, 2005 has been replaced with Kerala Electricity Supply Code, 2014. New Supply Code introduced certain formalities for providing electric supply to power intensive industries.

According to the above Regulation, the appellant was intimated vide letter No DB 60/Ptla D/SOP/I4-15 dated 08-12-2014 of the Executive Engineer, Electrical Division, Pattambi regarding new requirements. The application forwarded by the Executive Engineer, Electrical Division, Pattambi to the Deputy Chief Engineer, Electrical Circle, Shornur was therefore returned

for re-submission incorporating the scheme of construction of a dedicated feeder exclusively for the appellant.

The appellant instead of complying with the statutory requirements, approached the Hon'ble Consumer Grievance Redressal Forum (Kozhikode) with prayer to re-categorize the appellant's industry as 'non-power intensive'. The Hon'ble Consumer Grievance Redressal Forum, disposed of the Complaint No OP 87/2014-15 filed by the appellant vide its order dated 19-05-2015 finding that the appellant can be considered as a consumer way back from 2007. Being an applicant for power, he failed to avail power even after receiving notice under Regulation 10 (2) of Supply Code, 2005 and hence liable to pay minimum charges for the unavailed period.

Empowered under Section 50 of the Electricity Act, 2003, the Kerala State Electricity Regulatory Commission framed Kerala Electricity Supply Code, 2014. At Regulation 2 (66) it defined power 'intensive units'. A licensee cannot act in violation of the Supply Code in force. The new application of the appellant cannot be considered in violation of the provisions of the Supply Code, 2014. The request of the appellant to re-categorize it into 'non-power intensive' is not within the jurisdiction of the respondents.

The earlier application was submitted by the appellant when the Kerala Electricity Supply Code, 2005 was in force. The procedure formalities taken by the applicant and the respondents in relation to the earlier application were performed as per the provisions of the Supply Code, 2005. The applicant failed to avail supply even after receipt of notice under Section 10 (2) of the above Regulation. The appellant has no case, either in the complaint before the Hon'ble Consumer Grievance Redressal Forum or the appeal that no notice has been issued by the respondents prescribed under Regulation 10 (2) of Supply Code, 2005. The appellant is liable and bound to pay the minimum demand charges up to 31-03-2014, the date on which the Supply Code, 2005 was in force.

The minimum demand charges are a liability created by the appellant under Regulation 10 (2) of the earlier Regulation. The new Regulation came into effect from 01-04-2014 which classifies the appellants unit as power-intensive, which requires dedicated feeder for giving supply. The appellant is liable for the minimum demand for not availing supply till 31.3.2014 and require to bear the cost of dedicated feeder availing supply till 31.03.2014 for getting electric connection.

Hence it is respectfully submitted that the appellant is not entitled for any relief as sought for in the petition and prayed before this Authority to declare that the action of the respondents are well within the purview of the prevailing rules and regulations and is in order and prayed to dismiss the petition with cost.

Analysis and findings

A hearing of the Case was conducted in my chamber at Edappally, Ernakulam on 13-10-2015. The Counsel for the appellant, Sri K.R. Avinash, and Sri. V.A. Azad were present for the appellant's side and Smt. Asha Sugathan, Advocate, Sri. C. Pradeep Executive Engineer, Electrical Division, Pattambi and Sri. K.K. Unnikrishnan, Nodal Officer (Litigation) represented the respondent's side. Both sides have presented their arguments on the lines as stated above.

This Authority has deeply gone through the evidence and other materials available on records and a written submission by the appellant. The issue that arises for consideration is as to whether the appellant is liable for remitting the unconnected minimum charges for the delay in availing the power to the extent of 270 kVA.

According to the appellant he had remitted the amount demanded by the respondent and submitted approved schematic diagram. Thereafter no communication was received from the respondent. Hence his contention is that a consumer who had complied with the entire statutory requirements for power allocation and statutory remittance for such power allocation, solely on the ground that consumer had not availed the supply for the reasons not attributed by such consumer are unreasonable.

On the other hand the respondent argued that the appellant failed to avail the supply even after receipt of notice under Regulation 10(2) of Supply Code, 2005. Hence the appellant is liable and bound to pay the unconnected minimum charges up to 31-03-2014, the date on which the Supply Code, 2005 was in force. Regulation 10 of Supply Code, 2005 deals with the delay on the part of applicant to take supply.

On going through the records it can be seen that no such notice as specified in Regulation 10(1) of Supply Code, 2005 was issued by the respondent. As per the above provision, had a notice was issued after the date of completion of the work, the appellant would have the benefit of 90 days time and the respondent may charge fixed/minimum charges as per the tariff in force for completed months after expiry of notice till the appellant avail supply. But the respondent argued that a notice was served on the appellant and in the notice it was mentioned that if the appellant fails to avail the electric supply, he will be liable to remit the minimum charges prescribed by law, but failed to produce a copy of notice acknowledged by the appellant.

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

1. Fixed charges in addition to the charge for actual electricity supply.
2. A rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensees.

Section 45 of Electricity Act, 2003 deals with power to recover charges by the distribution licensee for supply of electricity. 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 the KSERC enabling the respondent to collect UCM charges. Further the respondent has not submitted any orders issued by KSERC in order to substantiate their claim.

In this case the appellant's prayer to CGRF was to re-categorise the appellant's industry as non power intensive. But, the Consumer Grievance Redressal Forum has directed the respondents to collect UCM charges from 4/2009 till 6/2014 without surcharge, according to the tariff prevailed during the day and thereafter effect service connection to the appellant. The appellant is aggrieved by the order of the Forum to the extent of finding that the appellant is liable to pay Unconnected Minimum (UCM) charges for the period in which supply was unavailed.

The respondent has also submitted that the spirit of a demand under Regulation 10 for the delay beyond the stipulated time mentioned therein is not for any work carried out therein by licensee, but for the quantum of power that is being reserved for the consumer for which the licensee is entitled to recover the due minimum/fixed charges. The appellant is bound to remit monthly demand charges corresponding to the actual maximum demand or 75% of the Contract Demand whichever is higher. Hence monthly demand charges corresponding to 75% of the Contract Demand is the minimum guaranteed revenue to KSE Board. Here, the respondent failed to furnish any capacity idling or any electrical plant erected exclusively for the use of appellant consequent to the additional power allocation. 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 genuineness 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 KSE Board Terms and Conditions of Supply, 2005 approved by KSERC. Therefore, the argument of the respondent

that the power reserved for the appellant for which the licensee has charged the minimum / fixed charges cannot be accepted.

The Kerala State Electricity Regulatory Commission, in its letter No. 151/Com.Ex/2015/KSERC/758 dated 09-06-2015, has issued some clarifications regarding the collection of Unconnected Minimum Charges (UCM) by KSEB Ltd. It reads “Neither the *Electricity Act, 2003* nor the *Kerala Supply Code, 2014* provide for MG scheme or for collection of UCM charges. Section 46 of the Act authorizes the licensee to realize reasonable expenditure incurred by it in providing any electric line or electric plant for the purpose of giving supply to a consumer. The Commission has approved the cost data for recovery of reasonable expenditure by the licensee. Therefore there is no legal sanctity to continue with the erstwhile MG scheme which was introduced prior to the enactment of *Electricity Act, 2003* and for the collection of UCM charges in the absence of an agreement to the contrary. When MG scheme was in vogue, UCM charges could be collected by the licensee only as per the terms of the MG agreement. If there is no such agreement, UCM charges cannot be collected, even when such scheme was in vogue”.

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”. Here in this case the respondent had completed all the works required for providing supply to the appellant on 18-12-2008 but the appellant has not availed supply till date. As the appellant failed to avail supply within the stipulated time limit, the amount remitted by the appellant shall not be refunded as per the Regulation 9 (1) mentioned above. Further, the argument of the respondent that the power reserved for the appellant for which the licensee has charged the minimum / fixed charges is without any valid grounds and hence cannot be accepted. In such a situation it is highly irregular to issue such a huge bill towards the unconnected minimum charges.

Decision

As the respondent failed to furnish any capacity idling or any electrical plant erected exclusively for the use of appellant consequent to the additional power allocation, there is no legal sanctity to demand UCM charges from the appellant. Hence it is decided to quash the demand for Rs. 2,73,735.00 issued to the appellant. However, the appellant is directed to approach the respondent with fresh application and the respondent shall take action on that as per the prevailing rules and regulations in force without any delay.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant is found having merits and is allowed to extent ordered and is disposed of accordingly. The related CGRF order in OP No. CGRF-CR/Comp. 87/2014-15 dated 19-05-2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

Forwarded to:

P/133/2015/_____ /Dated:_____

1. M/s Aaron International, Plot No. 10, Industrial Development Plot, Parakulam, Anakkara P.O., Palakkad
2. The Deputy Chief Engineer, Electrical Circle, KSEB Limited, Shornur.
3. The Asst. Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Limited, Thrithala, Palakkad.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSEBoard Ltd, Gandhi Road, Kozhikode