

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/176/2015
(Present: V.V. Sathyarajan)
Dated: 26th February 2016

Appellant : Sri P.J. John
M/S Matha Residency, Ponekkara,
Near Amritha hospital,
Edappally, Kochi-24.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Palarivattom,
Ernakulam.

ORDER

Background of the case:

The appellant in this petition had applied for power allocation of 109.5 kW and the respondent directed to remit an amount of Rs. 10,000.00 as cash deposit for issuing power allocation. The appellant had remitted Rs.10,000.00 on 26-10-2007. Further, the respondent prepared an estimate amounting to Rs. 1,67,447.00 for carrying out the work required for giving supply to the appellant. The appellant remitted the estimated amount of Rs. 1,67,447.00 on 14-12-2007. It is alleged that as the appellant failed to avail the supply after a lapse of 90 days from the date of receipt of notice issued by the respondent, demand for an amount of Rs. 11,97,700.00 was issued to the appellant towards the Unconnected Minimum Charges.

Being aggrieved by the above demand, the appellant approached the CGRF, Ernakulam by filing petition on 02-07-2015 with a request to waive the Unconnected Minimum Charges. The CGRF disposed the petition vide Order No. CGRF-CR/Comp/42/2015-16/400 dated 29-10-2015 directing the respondent to revise the demand notice for a period 10-04-2013 to 31-03-2014. The supply shall be effected within 15 days from the date of remittance of the Unconnected Minimum Charges by the appellant. Still not satisfied with the decision, the appellant has submitted this appeal petition with a plea to set aside the decision of the CGRF to collect Unconnected Minimum Charges from the appellant for a period 10-04-2013 to 31-03-2014.

Arguments of the appellant:

According to the appellant, the CGRF has not considered the following points raised by the appellant in the complaint.

1. The appellant had remitted an amount of Rs. 10,000.00 towards initial deposit for issuing power allocation to the extent of 77 kVA on 26-10-2007.
2. The appellant had paid the estimated amount Rs. 1,67,447.00 vide D.D. and the respondent acknowledged the amount on 14-12-2007.
3. Any notice as contemplated under Regulation 10(1) of Supply Code was issued by the respondent to the appellant. Though a letter dated 02-05-2009 was issued by the respondent, it contained only a request to submit the HT agreement without mentioning the consequences as contemplated under Regulation 10 (1). A proper notice was not issued.
4. The respondent had taken 16 months to complete the works after collecting the estimated amount. Nothing positively heard from the respondent so despite persistent enquiries made by the appellant during the said period. A demand notice for UCM charges was issued on 09-01-2013 for the period from 03-8-2009 to 02-02-2013. The respondent had not issued any notice to the appellant during this period.
5. Neither the Electricity Act 2003 nor the Kerala Electricity Supply Code 2014 provide for collection of UCM charges. Section 46 of Electricity Act 2003 authorise 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 appellant has paid the expenditure incurred by the Board for providing the supply on 14-12-2007 itself.
6. The appellant have executed the HT service connection agreement in 02/2015 only.
7. The respondent has not complied with the timeline prescribed for releasing new electric connection from the date of receipt of completed application and all payments to as per the demand note.
8. The appellant had not signed an agreement with the licensee under the Minimum Guarantee Scheme.
9. The respondent being a statutory authority is prohibited from making illegal gain from indulging in unfair trade practices.
10. The revised demand notice was not issued as ordered by the CGRF. The respondent wilfully disobeyed the orders and practicing delaying tactics by referring the matter to legal cell of KSEB.
11. The delay to give supply causes much hardships and financial loss to the appellant.
12. The matter in this regard is pending since 2007 i.e. for 8 years due to the unlawful and lethargical actions of the respondent.

The appellant has further adduced the following arguments in the argument notes submitted by him.

1. A notice under Section 10 (1) of the Supply Code 2005 was not issued to the appellant by the respondent. The CGRF held that though a letter was issued, it cannot be considered as a proper Notice under Section 10 (1), since it has not contained the relevant details with consequences as specified in Section 10 (1) and 10 (2) of the Code. Hence it cannot be admitted as notice under Section 10 (1) of Supply Code 2005.
2. The respondent himself admitted the fact that after receiving the estimated amount on 04-12-2007 they have completed the work on 02-5-2009 only i.e. after a period of 16 months. This is clear violation of the provision under the standard of performance prescribed by licensee. It may be noted that a demand notice was issued on 09-01-2013 i.e. after 32 months of the said completion of the work by the licensee. Why the licensee failed to take any action during these long period.
3. The appellant had not signed any agreement with the licensee under minimum guarantee scheme. In the absence of such an agreement the appellant is not liable to pay the UCM Charges. The appellant has not used energy during these periods for which the respondent is claiming energy charges. This is quite unfair and harassment of the appellant.
4. It may please be noted that section 46 of the Electricity Act, 2003 authorizes the licensee to realize reasonable expenditure incurred by it in providing any electric line or electrical plant for the purpose of giving supply to a consumer. Therefore there is no legal sanctity in the collection of UCM charges which was introduced prior to the enactment of Electricity Act 2003 and for the collection of Unconnected Minimum Charges in the absence of an agreement.
5. The respondent has not answered satisfactorily to the issues raised by the appellant in his appeal petition. Since the respondent is trying to make illegal gain from indulging unfair trade practices, your good self may grant the reliefs requested for in the appellant's petition. The respondent had not effected the connection till date by saying lame excuses. Hence it may please be ordered to effect the connection immediately and also allow interest for the amounts deposited by the appellant in 2007 at the applicable rate.

Nature of reliefs sought for from Ombudsman.

1. To declare that appellant is not liable to pay any amount towards UCM for availing HT connections to the premises of the appellant and to set aside the demand of UCM made by the respondents.
2. To set aside the order dated 29-10-2015 issued by the CGRF and to declare that appellant is not liable to pay any amount towards Unconnected Minimum Charges.

3. To give necessary orders to the respondent to effect the HT connection to the premises of the appellant forthwith.
4. To allow interest for the amounts deposited by appellant in 2007 at the applicable rate.
5. To award a compensation for the delay occurred on the part of respondent which caused financial loss and mental agony to the appellant.

Arguments of the respondent:

The respondent argued that the appeal is not maintainable either in law or on facts. On the other hand, it is filed by ulterior motives in order to harass the respondent.

1. The Hon'ble Forum ordered to revise the UCM demand for a period of 1 year and also directed to effect the supply within 15 days from the date of remittance of revised UCM demand. The notice issued by the respondent is not considered by the Hon'ble Forum as Section 10(1) notice of the Supply Code, 2005.
2. The Appellant had submitted an application before the Assistant Engineer, Electrical Section, Edappally for power allocation to the extent of 109.5 kW. On receipt of the same, the Deputy Chief Engineer, Electrical Circle, Ernakulam informed the appellant to remit an amount of Rs. 10,000.00 (Rupees Ten Thousand only) towards initial cash deposit for issuing power allocation. The same has been remitted by the appellant as well. The Appellant was also required to furnish an undertaking to the effect that he will bear the expenses to provide the RMU and laying and maintenance of UG cable.
3. Based on the above, the Executive Engineer, Electrical Division, Ernakulam prepared a detailed estimate amounting to Rs. 1,67,447.00 (Rupees One Lakh sixty seven thousand four hundred and forty seven only) and the same has been got sanctioned. Administrative sanction was obtained vide AS No. 98/2007-08/23-112007. The estimate consists of three parts namely:
 - Construction of 2 Nos. of double pole structure
 - Laying of 220 Mts. 3 x 300 mm² XLPE cable and
 - Erection of 160 KVA indoor transformer

The appellant submitted their willingness for laying UG cable at their own cost. It is true that the appellant remitted the estimated amount on 04-12-2007 by way of DD.

4. It is submitted that PTCC approval was necessary for the above work and the same was sought from the Assistant General Manager (CP) office of the PGM Telecom, Kochi-16. Sanction for the above work was obtained from the authority concerned on 28-09-2008 vide letter No. ENG-

796/2008-09/4. The work was completed on 02-05-2009 and sanction for energisation was sought from the AGM (CP), office of the Principal General Manager, BSNL, Ernakulam vide Letter No. DB/2008-09/ Matha Residency/PTCC/20.03.2009. Based on the above, energisation sanction has been received from the AGM (CP), office of the Principle General Manager, BSNL, Ernakulam vide letter No. 118/5/796/2008-2009/6 dated 18-04-2009.

5. The Assistant Engineer informed the appellant on 02-05-2009 that the work as per AS No. 98/200/2008/ dated 23-11-2007 has been completed in all respect and informed for providing power allocation to M/s Matha Residency and the appellant was requested to take necessary arrangements for availing the power. In reply to this, the appellant preferred a letter dated 27-05-2009 to the Assistant Executive Engineer requesting that six months time is necessary for purchasing the transformer and other equipments.

It is clearly stated in this letter that the appellant has received respondent's letter as well. Neither the appellant completed their work in the prescribed time limit nor they availed the power supply after a lapse of 90 days from the date of receipt of respondent's letter, the Assistant Engineer on 09-01-2013 issued a demand towards UCM to the tune of Rs. 8,49,700.00 (Rupees Eight lakhs forty nine thousand seven hundred only) for the period from 03-08-2009 to 02-01-2013 vide letter No' DB1/SC/EDPLY/201213/104/09-01-2013. A detailed calculation was also enclosed along with the demand. The same was received and acknowledged on behalf of the appellant.

6. Due to the non remittance of the amount demanded 09-01-2013, the Assistant Engineer issued another demand for UCM amounting to Rs. 3,48,000/- (Rupees Three lakhs and forty eight thousand only) for the remaining period i.e. from 03-01-2013 to 31-03-2013 vide letter No. DB1/HTSC/Matha Residency/EDPLY/2014-15/120 dated 11-12-2014. The same was received and acknowledged on behalf of the appellant on 15-12-2014.
7. The Regulation 10 of the Kerala Electricity Supply Code, 2005 was complied as well as far as this matter is concerned. It is evident from that the Appellant was well informed regarding the completion of work with respect to the licensee is concerned. Therefore, the contention of the Appellant that Regulation 10 of the Kerala Electricity Supply Code, 2005 was not complied is against facts and hence not sustainable.
8. Regarding the Electricity Supply Code, 2014, it is submitted that it is crystal clear that the dispute was well before the existence of the Kerala Electricity Supply Code, 2014. All administrative orders ordinarily are to be considered prospective in nature. When a policy decision is required to be given a retrospective operation it must be stated expressly or by necessary implicate (2008 (2) KHC 792). The Kerala Electricity Supply Code, 2014 has not applicable in this case.

9. It is pertinent to note that the appellant conceded the fact that sanction for energisation obtained from the office of the Deputy Chief Electrical Inspector was during Dec. 2014. It is the duty of the appellant to obtain sanction for energisation from the authority concerned, if the applicant fails to avail the power within a time limit of 90 days even after the completion of work of the Board, the applicant had to pay the guaranteed amount. The case at hand, the appellant was duly informed by the office of the respondent that the completion of work in all respect. It was an admitted fact that the appellant was in a worst financial condition and not in a position to carry out his work. Therefore, it is a bounden duty of the appellant to remit the UCM charges as demanded by the respondents.
10. It is clear from the above stated facts that the respondents are duty bound and acted in accordance with the statutory provisions as contemplated in the Electricity Act 2003 and the Kerala Electricity Supply Code, 2005. The appellant is not eligible for any of the reliefs sought for and the complaint may be dismissed.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 11-02-2016. The appellant, Sri P.J John was present for the appellant's side and Sri. V.P. Mohammed Sherif, Assistant Executive Engineer, Electrical Sub Division, Palarivattom 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 109.5 kW.

According to the Appellant, he had complied with all statutory requirements and remitted estimated amount towards the cost for construction of the line. Hence imposing UCM charges as penalty, solely on the ground that the appellant had not availed the supply for reasons not attributed by the appellant is unreasonable and 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. Section 46 of the Electricity Act, 2003 authorizes the licensee only to realize reasonable expenditure incurred by it in providing any electric line or electrical plant for the purpose of giving supply to a consumer.

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. Another argument adduced by the appellant is that he had not signed any agreement with the licensee under minimum guarantee scheme. In the absence of such an agreement the appellant is not liable to pay the UCM Charges. The

appellant has not used energy during these periods for which the respondent is claiming energy charges.

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 for the delay in availing the connection. Regulation 10 of Supply Code, 2005 deals with the delay on the part of applicant to take supply. But appellant has refuted this contention by stating that a proper notice as contemplated in the Regulation was not issued to him. Though the appellant had sent a letter for extension of time, no reply received from the respondent.

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 dealt 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.

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. 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 2005 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 02-05-2009 but the appellant had submitted application for availing supply in 2/2015. 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.

It is pertinent to note that the respondent had completed the work on 02-05-2009, they had issued a demand notice for UCM charges only on 09-01-2013. The respondent had failed to take proper action to complete the work after obtaining sanction from Telecom Authorities and also to issue timely notices to the appellant. 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. The argument of the respondent that they have reserved the power for the appellant from 5/2009 to till date cannot be sustainable and therefore not admitted. In such a situation it is highly irregular to issue such a huge bill towards the unconnected minimum charges.

Decision:

In view of the above discussions and findings it is concluded that the respondent failed to prove that any capacity idling or any electrical plant erected exclusively for the use of appellant consequent to the issue of power allocation. In this background there is no justification for issuing UCM charges for an amount to Rs. 11,97,000.00, hence quashed. The respondent is also directed to provide HT connection to the appellant within a period of 30 days and also allow the interest admissible for the amount of Rs. 1,67,447.00 with effect from January 2015 i.e. the period after energisation sanction obtained

from Deputy Chief Electrical Inspector, for the delay caused to effect supply to the consumer.

Having concluded and decided as above it is ordered accordingly. Appeal petition filed by the appellant is found having some merits and is admitted. The order of CGRF in OP No. 42/2015-16 dated 29-10-2015 is set aside. No order as costs.

ELECTRICITY OMBUDSMAN

P/176/2015/_____ /Dated:_____

Delivered to:

1. Sri P.J. John, M/S Matha Residency, Ponekkara, Near Amritha hospital, Edappally, Kochi-24.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Palarivattom, Ernakulam.

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, KSE Board Ltd, Kottarakkara - 691 506.