

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P 59/09

Appellant : Sri Douglas Antony
Mount Carmel Estate , Kailas Nada,
Chandanappara, Mavady, NEDUMKANDAM

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Sub Division KATTAPPANA Idukki Dt

ORDER

Sri Douglas Antony, Mount Carmel Estate , Kailas Nada, Chandanappara, Mavady, Nedumkandam submitted a representation on 3.3.2009 seeking the following relief :

Set aside the Notice dated 26.7.2007 of KSEB directing to remit Rs 8,76,832/- and the Notice dated 7.2.2009 demanding a payment of Rs 4,46,267/-

Counter statement of the Respondent was obtained and hearing of both the parties conducted on 10.9.2009 .

Administrative Sanction for an estimate amounting to Rs 1,40,000/- was issued by the Executive Engineer Kulamavu on 6.12.1985 for supply of power to 40 HP Agricultural pump of the Appellant involving extension of 1500M 11KV line, installation of one 63KVA transformer and extension of 1000M LT 3 Ph line. The Appellant executed a Minimum Guarantee agreement on 24th April 1986 guaranteeing a minimum revenue return of Rs 6435/- per annum for 10 years. The guaranteed amount was computed taking 15% of the estimated capitalized cost of LT portion of the work (Rs 39000/- plus 10% establishment charges). There was a provision in the schedule of the agreement that 'the amount guaranteed in column 5 is liable to variation if the actual cost of work exceed the estimated cost'. The work was completed and energized during August 1994 and connection effected on 26.8.1994 . A provisional invoice card was issued to the Appellant demanding payment of Rs 600/- pm where in the current charges was shown as Rs 537/- covering the MG amount of Rs 536/25 pm which was derived from the amount of

Rs 6435/- shown in the schedule to the MG Agreement. The Appellant paid the amount for 3 months. The connection was reported to be disconnected due to non payment of current charges in April 1995. The lines are reported to be damaged sometimes in 1995 due to natural calamity. The lines and materials were dismantled in September 2004 after the MG period.

Mean while KSEB revised the cost estimate of the work and revised the MG amount as Rs 2545/- per month. The outstanding MG amount due from the consumer was fixed as Rs 3,03,745/- for the period from 9/1994 to 8/2004 by the Respondent and Revenue Recovery action initiated for this amount along with 'Surcharge of Rs 4,34,364/- up to July 2005'.

Mean while the Appellant had approached the Consumer Disputes Redressal Forum with complaints on low voltage, poor service etc. Both CDRF and the State Forum dismissed the petitions of the Appellant in 2003-2004 period.

The Respondent had issued demand notices on 4.7.2003, 8.7.2003 and 5.9.2005 for payment of the dues. The Respondent issued a demand notice on 26.7.2007 again showing therein the details of the dues also as per the details given below:

Outstanding CC	: Rs 3,02,745.00
Surcharge	: Rs 5,74,087.00
Total	: Rs 8,76,832.00

The Appellant approached the CGRF Ernakulam. The CGRF allowed partial relief by way of reducing the interest rate to 6% instead of 24%. Respondent issued a revised demand notice for Rs 4,46,267/- on 7.2.2009 (Principal Rs 3,02,745/- plus interest Rs 1,43,522/-)

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

The contentions/arguments/points raised by the Appellant in the representation, argument note and during the hearing are summarized below:

The Appellant had executed the agreement agreeing to remit Rs 6435/- per annum for 10 years. He had paid current charges as per the Invoice card issued to him for 3 months at this agreed rate. Mean while the line was broken due to natural calamities. The Respondent did not care to re-erect the line in spite of repeated pleas from the Appellant. The position continued till 2004. The total energy consumed by the Appellant was only 634 units during the 10 year period.

The law does not permit extraction of undue benefits from any body. The Respondent has raised a demand of Rs 3,02,745/- towards MG against an agreed amount of Rs 64350/- The surcharge is claimed over and above this amount.

Time is a factor in any agreement even if not specified. The MG agreement was accepted in 1986. The work was done only in 1994. The Respondent did not verify whether the Appellant actually wanted the power and line after a period of 10 years.

The materials used for the work were taken back by the KSEB and they have not incurred any loss on the matter. Hence it is not fair to ask the Appellant to remit the cost of the work now.

The limitations provided in Section 18(8) of Supply Code are applicable to this demand.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

If the Appellant had remitted the current charges regularly the power supply would have been restored in time. The Appellant has no right to complain about fault on lines without remitting current charges and becoming himself eligible for reconnection.

The schedule of the MG agreement empowers the KSEB to revise the MG amount if the actual cost of the work exceeds the estimated cost.

The line extension work for the Appellant was sanctioned based on the assumption that the REC funding will be available for the work. Hence the Appellant was advised to execute MG agreement for the LT portion of the work. But on verification after executing the work it was seen that REC funding could not be availed for the work. Hence the cost estimate of the work was revised vide AS No: 95/99-00/ dated 31.3.2000 and the MG amount was revised as Rs 2545/- per month. Copy of the revised sanction order was not seen available on records.

The Appellant was served with arrear details as early as on July 2003 but did not make payments. Notice was also given in July 2007 before initiating RR action.

Discussion and Findings:

The Appellant had guaranteed to pay Rs 6435/- per annum for 10 years by the MG agreement. The amount guaranteed was liable to variation if the actual cost of work exceed the estimated cost. Hence the Respondents are entitled to revise the guaranteed amount based upon the actual execution cost in August 1994.

Now a review of the methodology adopted by the Respondent to assess the guaranteed amount become relevant. From the copy of the Administrative Sanction it can be seen that the cost of LT lines shall be Rs 39,000/- It is also seen that the clause (1) of the MG agreement shows the estimated cost of the work including 10% establishment charges shall be Rs 42,000/-. Hence it is clear that the Respondents themselves had limited the MG liability of the Appellant specifically to the LT portion of the work. The guarantor has no contractual obligation to pay MG charges towards any other portion of the work. As such the action of the Respondent in demanding the MG amounts towards the HT and Transformer portion of the work is clearly illegal.

During the hearing the Appellant made it clear that he had not been given any communication on revising the MG agreement or revising the methodology of calculating the MG amount. He reported that he was unaware of the calculations by which the monthly MG amount was revised from Rs 536/- to Rs 2545/-. The Respondent could not produce copies of any communications sent from KSEB to the Appellant nor was she aware of any intimations given to the Consumer on the matter. The Respondent could only state that as per the entries in the register the estimate had been revised vide AS No: 95/99-00/ dated 31.3.2000 and the MG amount revised as Rs 2545/- per month.

Whether the KSEB had obtained REC funding for the work or not, is not a look out of the guarantor. He had not been bound by any such conditionality while executing the agreement and executing the work. The unilateral and arbitrary way in which the Respondent had revised the amount guaranteed in the agreement is highly deplorable.

The argument of the Appellant that he was not consulted before doing the work after around 10 years of executing the MG agreement has been contradicted by himself. The Appellant had, during hearing, claimed that he had to spend money towards labour and conveyance charges for executing the work. Hence he can not complain that had he been intimated in time, he could have withdrawn from the MG liability.

The contention of the Appellant that the lines had been damaged, had become unserviceable and hence the MG Liability can not be applied shall not be accepted. The contention can not be accepted as an excuse for escaping from the liabilities arising out of the contract. If the Appellant had paid the monthly charges in time as per the Provisional Invoice Card and asked for the electricity service, the Respondent could not have kept the lines in unserviceable conditions for around 10 years.

The argument of the Appellant that the limitations imposed by the Supply Code 2005 is applicable for this Arrear demand is not correct since the arrears in question pertain to a period before the new statutes come into effect.

Hence having considered all the arguments submitted by both sides I conclude and decide that the Respondent can revise the MG amount only as per *the actual cost of LT portion of the work* executed in August 1994. The Appellant is bound to pay the amount for 10 years.

Hence the Respondent shall revise the schedule to the MG Agreement based upon the actual cost of LT portion of the work and forward a copy to the Appellant. The Respondent shall take action to recover the balance MG amount, if any, with interest calculated as per directives of CGRF and issue notice to the Appellant for payment allowing one month time to settle the payments. On default, the amount may be recovered by Revenue Recovery.

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 Notices of KSEB dated 26.7.2007 directing to remit Rs 8,76,832/- and the Notice dated 7.2.2009 demanding a payment of Rs 4,46,267/- are set aside.*
2. *The Appellant shall be liable to pay the Minimum Guarantee amount towards the LT portion of the Line Extention work for 10 years along with interest.*
3. *No order on costs.*

Dated this the 15th day of September 2009,

P.PARAMESWARAN
Electricity Ombudsman

No P 59 /09/ 352 / dated 17.09.2009

- Forwarded to:
1. Sri Douglas Antony
Mount Carmel Estate , Kailas Nada,
Chandanappara, Mavady, NEDUMKANDAM
 2. The Assistant Executive Engineer
Electrical Sub Division KATTAPPANA Idukki Dt

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 , CGRF,KSE Board ,
VaidyuthiBhavanam , PowerHouse , Ernakulam 682018