

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/080/2018
(Present: A.S. Dasappan)
Dated: 6th December 2018

Appellant : Sri. Jaimon James
Vallithottathil House,
Koodalloor,
Kottayam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Pala,
Kottayam

ORDER

Background of the Case

The appellant was a LT consumer who was running a metal crusher industry named Vallithottathil Industries, with consumer number 7820 under Electrical Section, Kidangoor. The electric connection was taken by installing a transformer of capacity 160 kVA under Minimum Guarantee basis valid for 7 years i.e. for the period from 19-11-2009 to 18-11-2016. As per the MG agreement executed by the appellant, he is liable to pay Rs.96032/- (Rupees Ninety six thousand and thirty two only) per annum up to 18-11-2016. Thereafter a new HT connection with transformer of 250 kVA capacity by replacing the 160 kVA was installed at the expenses of the appellant. The appellant had submitted a request on 01-12-2017 for refund of amount after depreciation of 160 kVA transformer which was removed by the Board. The request was rejected by the Deputy Chief Engineer, Pala. This LT connection was dismantled on 09-03-2018 on request from the appellant. Being not satisfied with the decision of the Deputy Chief Engineer, the appellant approached the CGRF, Kottarakkara, with Petition No. OP 80/2018 and the Forum dismissed the petition, vide order dated 14th August 2018. Still not satisfied by the decision of the CGRF, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

As per the Minimum Guarantee (MG) agreement executed between the appellant and the respondent (Executive Engineer, Electrical Division, Pala) an electric connection was provided from Kidangoor Electrical Section Office to the appellant's metal crusher unit "Vallithottathil Industries" with Consumer No. 7820 after installing a 160 kVA transformer.

As per the first Clause of the MG agreement, the expenditure for erecting 160 kVA transformer is calculated as Rs. 3,84,127/- including 10% establishment cost. But the appellant remitted Rs. 6,72,224/- @ Rs. 96,032/- per year for seven years. The above transformer was replaced with another transformer having capacity of 250 kVA in December 2017 at the cost of the appellant. The appellant submitted an application to the respondents on 01-12-2017 requesting to refund cost of the 160 kVA transformer after depreciation whenever KSEB take away the transformer. The respondents did not initiate any action on the above application and hence submitted an appeal to the Deputy Chief Engineer, Electrical Circle, Pala on 12-03-2018. The Deputy Chief Engineer rejected the appeal on 10/04/2018 stating that the Guarantor is not eligible for relaxation or rebate in the amount remitted by the appellant under Minimum Guarantee and KSEB have every right to use the transformer at anywhere under Section (5) of the Minimum Guarantee agreement.

Afterwards the appellant filed petition before CGRF, Kottarakkara and the Forum disallowed and dismissed the petition in OP No. 80/2018 on 14-08-2018. The order of CGRF is wrong, against law and against natural justice. The CGRF had to observe that the appellant is eligible to get the depreciated cost of the transformer and to allow the petition.

In the Minimum Guarantee agreement executed between the appellant and the respondent on 19-11-2009, there was no Clause allowing KSEB to lift the transformer by them. The disallowing of the request of the appellant by CGRF as per Supply Code 2014 is not proper as the agreement was neither renewed nor added any new clauses. Though the installation charge was Rs. 3,84,127/- including the administrative cost @ Rs. 10% of the estimate, KSEB realised Rs. 6,72,224/- which is double of the installation cost. As such, legally the ownership of 160 kVA transformer is with the appellant. The respondents who took away the transformer, either sell it or to use to provide other connection after realizing charges. This creates loss to the appellant and at the same time the respondent makes profit, which cannot be permitted.

The Regulation 24(1), 24(2) and 32 in the Kerala Electricity Supply Code, 2014 are not relevant in this case. The transformer was not included in the above regulations or in the Section (5) of the Minimum Guarantee agreement executed between the appellant and the Executive Engineer. There is no provision to take away the transformer in the above regulations or in the Minimum Guarantee agreement.

On the above circumstances, it is requested

1. To direct the respondents to pay the depreciated cost of the 160 kVA transformer, which was lifted by the respondents.
2. Cost of agreement

Arguments of the respondent:

The appellant Sri Jaimon James, Vallithottathil was given an electric connection with Consumer No. 7820 under LT IV (industrial) tariff from Electrical Section, Kidangoor as per Minimum Guarantee agreement No. 2/10-11 dated 14-06-2010. The service connection was dismantled on 09-03-2018 as requested by the appellant. As per the Minimum Guarantee agreement the appellant is liable to confirm the guaranteed return by way of electric charge or guaranteed amount. The appellant purposefully hide the fact that electricity charge was also included in the amount remitted by him.

The service connection was dismantled on 09-03-2018 as requested by the appellant. As per the agreement, the period of Minimum Guarantee was from 14-06-2010 to 13-06-2017 and after there is no validity. As per Section 5(1) of the Minimum Guarantee agreement, the Board have right to use the installation to other purpose as such or with alterations and the Guarantor has no rebate or relaxation in the amount. Hence the order of the Deputy Chief Engineer, Electrical Circle, Pala is as per rules. The argument of the appellant that the transformer is not the part of the installation cannot be accepted.

Analysis and Findings: -

The Hearing of the case was conducted on 13-11-2018 and 21-11-2018 in the Office of the State Electricity Ombudsman, Edappally, Kochi 24. The appellant was absent on 13-11-2018 and requested another date for hearing. Mr. Jaimon James, represented the appellant's side and Mr. Shaji Mathew., Assistant Executive Engineer, Electrical Sub Division, Pala, represented the Respondent's side on 21-11-2018. On perusing the Petition, the counter of the Respondent and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The statement of facts of the Assistant Executive Engineer is based on an agreement executed on 14-06-2010 between one James Joseph and the Executive Engineer, Electrical Division, Pala. The MG agreement copy produced by the respondent along with the statement of facts is not related to the subject case. Hence the Assistant Executive Engineer has been directed to report on some points like the details of MG amount collected so far and the actual MG agreement executed between the respondent and the appellant. The respondent has furnished the details.

A 160 kVA transformer was installed for giving the connection to the appellant. On examining the agreement executed on 19-11-2009, it is seen that the estimate sanctioned for transformer installation under MG scheme was for an amount of Rs. 3,84,127/- i.e., the MG amount shall be the estimate cost plus its 10% as establishment cost. . As per the MG agreement executed by the appellant, the MG amount payable by the appellant per annum was Rs. 96,032/- (Rupees Ninety six thousand and thirty two only) up to 18-11-2016. The appellant has contended that the minimum guarantee ended on 19-11-2016 and the 160 kVA transformer was replaced with a 250 kVA transformer at the expenses of the appellant in 12/2017. The service connection was dismantled on 09-03-2018 as requested by the appellant.

On going through statement of recovery details submitted by the respondent, it is found that the monthly current charges exceeded MG installment amount except few months. Hence it is a fact that since the amount of monthly current charge exceeded the MG amount and remitted by the appellant, there is no question of payment of MG during the MG period. 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 Board from time to time. It is a fact that the electric line and the 160 kVA transformer which were installed under MG agreement for the specific use of the consumer were dismantled and taken back by the respondent. After the expiry of 7 years of the MG agreement a 250 kVA transformer installed at the expenses of the appellant and the service connection was dismantled on 09-03-2018 at the request of the appellant. In this case the expenditure for installation of 160 kVA transformer and 50 metre line were met by the respondent under MG agreement, but the appellant had not required to remit the minimum guaranteed MG amount since the monthly current charge exceeded the MG amount. Hence there is no question of refund of any amount to the appellant under MG agreement, on expiry of the agreement period.

Decision

Considering the above facts and legal provisions pertaining to the issue this Authority is of the considered view that the petition is not maintainable

before this Authority. So, the appeal petition stands dismissed as it is found having no merits.

The order of CGRF, Kottarakkara in No. 80/2018 dated 14-08-2018 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/080/2018

Delivered to:

1. Sri. Jaimon James, Vallithottathil House, Koodalloor, Vayala, Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Pala, Kottayam

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.