

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/005/2019
(Present: A.S. Dasappan)
Dated: 25th March 2019

Appellant : Sri.Vipin Thankappan
Maiampillil House,
Thalayolaparambu P.O.,
Kottayam

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

ORDER

Background of the Case:

The appellant, Sri Vipin Thankappan was an Industrial consumer under Electrical Section, Thalayolaparambu, Kottayam bearing Consumer No.23485. This connection had been effected on 17-03-2007 for commencing an industrial unit at Mannar under Minimum Guarantee scheme with a connected load of 33305 watts under LT-IV industrial tariff. The MG period for which the consumer is bound to pay the minimum amount as per the Agreement was for seven years from 03/2007. The appellant had remitted current charges up to 09/2007 only and due to non-payment of electricity bills, the electric service connection was dismantled on 31-05-2008 and Revenue Recovery Notice for Rs. 1385281/- was issued to him towards the arrears of bills and the MG charges to be paid plus interest, for the realization of the amount. The appellant has requested to exempt from the action of revenue recovery ordered against him considering his present financial difficulties. The petition submitted before the CGRF was disposed of vide order OP No. 119/2018 dated 24-12-2018. Still not satisfied with the order, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant availed a service connection with consumer No 23485 under LT IV tariff as per Minimum Guarantee Agreement No- EST3/ 06-07/

dated 15-06-2006. As per the terms and conditions of the agreement, the appellant had to pay an amount of Rs 1,80,000/- per annum for a period of 7 years, or Rs 15000/-per month for a period of 7 years. Even though the service connection was effected on 17-03-2007, the appellant couldn't run the industry further for the reasons beyond his control and the unit was closed. Subsequently, the service connection was dismantled on 31-05-2008. But, the respondent initiated revenue recovery proceedings for an amount of Rs 13,85,281/- even after a lapse of more than 5 years. Though the appellant made several requests to review the M.G. liabilities since the transformer became self remunerative, the respondent had not taken any steps till date.

Due to severe voltage problems, the respondent transferred many service connections from the nearby transformer and also effected several new service connections from the transformer installed under M.G. Scheme during 2007-2008 itself. Further, several connections including industrial connections were effected from this transformer and these facts were admitted by the respondent. But the respondent argued that the transferred service connections were already effected from the nearby transformer and hence cannot be considered for self remunerative. In order to overcome the voltage problem the licensee is bound to install a new transformer under voltage improvement scheme. But in this case the respondent simply transferred the connections from the existing overloaded transformer to the transformer installed under M G Agreement. Hence the contention of the respondent cannot be justified.

Though the requests made by the appellant were not considered by the respondent, the appellant approached the Honourable Minister for Electricity with a petition to withdraw the revenue recovery proceedings as the transformer installed under M.G. Scheme had already been self remunerative and to exonerate him from further proceedings. As per the directions of the Honourable Minister for Electricity, the Deputy Chief Engineer, Electrical Circle, Kottayam has reported that the transformer was self remunerative only with effect from 01-2014.

The appellant strongly believe that the transformer was self remunerative much before 2014. But it is admitted that the respondent has no details of revenue realized during the period from 2007 to 2014. This fact was admitted by the respondent in their No BB/ DCB/ Details/ 23485/ 2017-18 dated 15-12-2017. It is evident that the respondent failed to consider the actual date on which the transformer became self remunerative and not taken timely actions to intimate the appellant regarding the liabilities which resulted accumulation of huge arrear to the tune of Rs 4194572.00. Hence, the appellant is liable for making payment of such a huge arrear.

In view of the above facts, it is requested that this Authority may kindly direct the respondent to verify the actual revenue realized from the transformer

during the period from 2007 to 2014 and to revise the M.G. liabilities. It is also requested that the exorbitant surcharge amounting to Rs 16,38,165.00 may be withdrawn, since the unit of the appellant was already closed.

Arguments of the respondent:

1. The details arrived at from available records regarding the service connection bearing consumer No.23485 (formerly 26485 and later changed to 23485 on renumbering) to Sri. Vipin Thankappan, Maimpallil House, Thalayolaparambu

2. Sri. Vipin Thankappan, applied for power allocation equivalent to 100 kVA for commencing an industrial unit at Mannar under Minimum Guarantee (MG) scheme. For giving this service connection, 1150m 11 kV OH line had to be constructed, installing one no. 100 kVA transformer. Total MG amount required was Rs. 13,86,000/- (@ Rs. 16,500 per month for 7 years).

3. The service connection was effected on 17.3.2007. Registered connected load was 33305 watts.

4. Due to default in payment of regular current charge the service connection was dismantled on 31.5.2008.

5. Remittances of current charge made by the consumer are as follows

Date	Amount (Rs.)
04-07-07	15,292.00
15-10-07	2,486.00
03-11-07	15,000.00
12-11-07	3,910.00
12-12-07	3,910.00
14-01-08	3,910.00
06-02-10	60,148.00
Total	104,656.00

6. Total amount due from the consumer as per MG Agreement MG amount @ Rs. 16,500 p.m.

for 7 years Rs.13,86,000.00

Current charge over and above MG amount in 2/2008 Rs. 12,575.00

Total Rs.13,98,575.00

7. Total amount adjusted against the amount due was,

Amount remitted Rs. 1,04,656.00

Security Deposit adjusted	Rs. 30,000.00
Total	<u>Rs. 1,34,656.00</u>
8. Balance amount due as per the MG Agreement	
Total amount due	Rs. 13,98,575.00
Less: Adjusted	Rs. 1,34,656.00
Balance	<u>Rs. 12,63,919.00</u>

9. Interest due on the balance amount based on the prevailing interest rate (@24% p.a. up to 10/2008 and @18% p.a. from 11/2008) is Rs. 18,45,925.00.

10. The consumer had filed a complaint before Hon'ble Minister for Electricity demanding waiver of the balance amount of MG amount stating that the transformer had already become self remunerative.

11. A transformer installed for effecting power connection under MG Agreement can be considered to self remunerative if the total revenue earned each month from the power supplied through the transformer during the MG period is not less than the Minimum Guarantee amount per month. For this purpose revenue earned from all the consumers to whom power is supplied from this transformer can be taken into account.

12. Though the power allocation demanded by the consumer was about 100 kVA, he had connected 33305 watts only leaving almost half of the capacity of the transformer idle.

13. Total of 118 consumers are being supplied power at present from this transformer. Out of this, 86 Nos. are those consumers to whom service connection had been effected earlier to 17.3.2007 and later transferred to this transformer in order to utilize the idle capacity. Revenue earned from these consumers cannot be taken into account for the determining self remunerative as they could have been fed power from the distribution system existed there before 17.3.2007.

14. Out of the balance 32 consumers, 10 consumers are given service connections after 17.3.2014, after the expiry of MG Agreement.

15. Therefore revenue earned from the 22 consumers to whom service connection had been effected between 17.3.2007 and 17.3.2014.

16. Average revenue earned during each year from 1/2009 to 3/2014 from each of the above 22 consumers have been calculated and found that the transformer became self remunerative only in 2014.

17. Total amount revenue from the above 22 consumers that can be adjusted against the MG amount is found as Rs. 3,06,012.00.

The appellant is not a consumer of KSEB Limited at present and a revenue recovery action is pending before the Hon'ble District Collector Kottayam.

Analysis and Findings: -

The Hearing of the case was conducted on 05-03-2019, in the Office of the State Electricity Ombudsman, Edappally, Kochi 24, and Sri. Vipin Thankappan, represented the appellant's side and Sri. N.V. Joshy, Assistant Executive Engineer, Electrical Sub Division, Kuravilangad, represented the Respondent's side. A site inspection was conducted on 07-03-2019. Another hearing was also conducted on 22-03-2019 in the Office of the State Electricity Ombudsman, Edappally, Kochi 24 and the appellant and the Assistant Executive Engineer were present. 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 MG agreement was executed on 15-06-2006 between the Assistant Executive Engineer, Electrical Sub Division, Kuravilangad and the appellant Sri. Vipin Thankappan. Power allocation was for 70 HP (52.5kW) and the actual connected load at the time of giving connection on 17-03-2007 was 33.30kW. The work includes 1150 metre 11kV single circuit line and one number 100KVA transformer. The estimate cost was Rs. 6,54,550/-. The minimum guarantee amount originally fixed was Rs 15,000/- per month and the annual MG amount was Rs. 1,80,001/-. Even though MG amount was revised from Rs.15000/- per month to Rs. 16,500/-, there is no revised MG agreement executed, the copy which was not produced by the respondent. Also the appellant is unaware of such an agreement. In this case the appellant's version is that around 132 connections were provided from the transformer till date and 118 connections were provided during the period up to 17-03-2014. The service was dismantled on 31-05-2008 following arrears of electricity.

As per the MG agreement executed between KSEB and the consumer, the appellant has agreed to pay 25% of the actual amount incurred by the KSEB (including 10% establishment cost) to erect the transformer and to construct the electric line for effecting the industrial electric connection to appellant's premises, per annum for next 7 years. The intention of minimum guarantee is to ensure that the required minimum 'revenue return' for the expenses incurred by KSEB in constructing the line and transformer. This MG liability will be in force, for the next 7 years after availing supply or until the 'Line' becomes self remunerative as per the norms fixed by the Board, whichever is earlier. Once the line has become self-remunerative, the minimum guaranteed

amount can be waived, for the remaining period of the agreement. In all other cases, if a MG service connection has to be dismantled before the expiry of seven years period, he is bound to pay the guaranteed minimum amount, for the rest of the period. That is, this MG payment has to be continued, whether the said Line is dismantled or not, till the consumer completes payment for the guaranteed 7 years. As per condition 4 of the agreement, the respondent shall consider whether the line and transformer became self remunerative within the guarantee period and if so such benefit shall be given to the appellant from the month on which it became self remunerative.

According to the respondent, as per the revised calculation statement, an amount of Rs. 134656/- collected from the appellant. The total amount as per MG for 7 years is 12,60,008/- and the balance amount as per statement is Rs. 11,25,352/-. The appellant has contended that the minimum guarantee ended in 07/2014 and during this period the licensee provided supply to many consumers from this transformer. The appellant is willing to remit the balance amount after deducting the energy charges of 108 consumers. The appellant's main contention is that due to severe voltage problems, the respondent transferred many service connections from the nearby transformer and also effected several new service connections from the transformer installed under M.G. Scheme during 2007-2008 itself. In order to overcome the voltage problem the licensee is bound to install a new transformer under voltage improvement scheme. But in this case the respondent simply transferred the connections from the existing overloaded transformer to the transformer installed under M G Agreement.

The Assistant Executive Engineer has been directed to report on some points like the details of the second MG agreement, details of connections provided with connected load of consumers, date of effect and amount collected during the MG period, the reason for transferring the old connections to the MG transformer, the amount for which the RR Action was taken, the amount collected so far and whether the line has become self remunerative considering 118 consumers, if so from which date etc. The respondent has furnished the details in his letter dated 19-03-2019, but not provided complete details called for.

The estimate cost of the installation of 1150 metre 11 kV line and one number transformer is Rs. 6,54,550/- plus 10% establishment cost. The Minimum Guarantee Agreement was executed on 15-06-2006 and service connection effected on 17-03-2007. The service connection was dismantled on 31-05-2008. The agreement period of Minimum Guarantee is for 7 years from 17-03-2007. The total Minimum Guarantee amount fixed is Rs. 12,60,007/-. The total amount remitted by the appellant is Rs. 1,04,656/- for the period from 04-07-2007 to 06-02-2010 and adjusted in the security deposit for Rs. 30,000/- (Total Rs. 1,34,656/-).

At present 118 consumers of different category of tariff are being fed from the transformer, of which 86 numbers are the connection transferred from other transformers, 22 numbers newly connected within the Minimum Guarantee period and 10 numbers connected after the Minimum Guarantee period. That is a total of 108 numbers connected to the transformer within the Minimum Guarantee period. The transformer erected under Minimum Guarantee basis was utilized by the respondent to make the electrical network stable, healthy, flexible etc. If 86 connections were not transferred to the transformer, they had to erect another transformer under normal development to achieve the stability of the network in that area. Another fact noticed in the reply by the respondent to the information sought by the appellant that the transformer make is 1956. This transformer was installed in the appellant's premises in 2007 and now still exists in the appellant's premises.

Another transformer with capacity of 100 kVA was installed in the same 11 kV line at a distance of 700 metres away from the transformer during 2012-13. The exact date of energisation of the transformer is not furnished by the respondent. A portion of the 11 kV line was utilized by the respondent for installing other transformer within the Minimum Guarantee period.

However, it is a fact that the electric Line and the transformer, which were installed under MG agreement for the specific use of the consumer and the service connection dismantled and taken back by the respondent. Hence it is natural that the cost of the taken back 'usable materials', at the depreciated value as per rules, have to be assessed and has to be set against the balance MG amount pending against the consumer. The CGRF has held the view that the revenue from those old consumers cannot be taken into account for determining self remunerative. Actually 86 numbers old consumers who got connection before 17-03-2007 i.e., before the installation of the MG transformer and Line, were given connection from the MG transformer in 2008 itself. It is a fact that all these taken back materials have turned out to be part of the electrical system and the respondent has used it completely for transferring the existing connections and also giving new connections. The rules says that the Assistant Executive Engineer shall review whether the line has become self remunerative, if the minimum guarantor give an application for termination of minimum guarantee agreement furnishing the consumer number and other details of total consumers connected from the line. Hence in the rules, there is no specification of new connections to calculate the self remuneration. I am of the view that the said decision of the CGRF is not correct.

The interest of the security deposit shall be calculated before settling the claim. The respondent shall examine this whether any interest on security deposit is due to the appellant and ensure the benefit of interest, if any, on Security Deposit at the date of adjusting the SD in the balance MG amount.

From the analysis done and the findings and conclusions arrived at, which are detailed above, I take the following decisions.

Decision: -

In view of the above facts, it is decided to quash the arrear bill for Rs.13,85,281/- as revenue recovery issued to the appellant.

The Respondent shall take action to declare the Line and Transformer as Self remunerative considering the income of 108 consumers connected to the transformer and the cost of 700 metres line required for installation of another 100kVA transformer in the same 11 KV line. The appellant is required to pay further, a balance amount if any in such a situation. Once the appellant remits the balance amount, if any, he shall be relieved from the MG liabilities and the Revenue Recovery proceedings. Having concluded and decided as above, it is ordered accordingly and the Appeal Petition filed by the appellant, stands disposed of to the extent ordered. No order on costs.

ELECTRICITY OMBUDSMAN

P/005/2019/_____ / _____

Delivered to:

1. Sri.Vipin Thankappan, Maiampillil House, Thalayolaparambu P.O., Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kuravilangadu, 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.