

STATE ELECTRICITY OMBUDSMAN

THAANATH BUILDING CLUB JUNCTION POOKKATTUPADI ROAD EDAPPALLY TOLL

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REPRESENTATION No: P 36/09

Appellant : M/s Perumpalam North Coir Vyavasaya Coop Society Ltd
Perumpalam CHERTHALA
Alappuzha District

Respondent: Kerala State Electricity Board

Represented by

The Assistant Executive Engineer
Electrical Sub Division POOCHAKKAL
Alappuzha District

ORDER

M/s Perumpalam North Coir Vyavasaya Coop Society Ltd submitted a representation on 23.12.2008 seeking the following relief :

- i. Declare that the order dt 22/11/2008 in complaint No 42/2008 on the files of the Consumer Grievance Redressal Forum, Central Region Ernakulam is arbitrary and illegal.
- ii. Call for the records leading to the order dated 22/11/2008 in complaint No 42/2008 on the files of the Consumer Grievance Redressal Forum, Central Region, Ernakulam and quash the same.
- iii. Declare that the petitioner herein is not liable to pay the amount demanded by the respondents in the Forum in the light of Board Order dated 01/03/2006 and of the fact that the line has become self Remunerative.
- iv. Direct the respondents to furnish the details of the consumer numbers with date who has acquired a Connection subsequent to the date of acquiring connection by the petitioner from the minimum Guarantee line drawn for the complainant.
- v. To set aside the order BB/arrears/08-09 dated 24/06/2008 of the Assistant Engineer, Electrical Section, Arookutty.

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 26.2.2009 .The Appellant and the Respondent did not submit argument notes.

The Appellant is a Coir Workers Co Op Society registered under the Co Op Department of the Kerala Government. They have a 3 phase connection with Connected Load 18.65 KW and Consumer Number 1705 .They had obtained the connection after executing a Minimum Guarantee Agreement with KSEB for construction of 11 KV lines and installing Transformer. The amount guaranteed was Rs 9859/- per month for 7 years from May 1999.

The Society defaulted payment of monthly MG amount from October 2004 onwards. They paid Rs 20000/- as per direction of the Hon : High Court in 4/05 to get reconnection.

Mean while the KSEB issued an order on 01.03.2006 according sanction to exempt 114 specified Coir Societies *from remitting M G Arrears* as a special case. The Appellant was included in the list.

The Society was not paying MG amounts from 10/2004 onwards. Hence the arrears upto 3/06 were written off by the Respondent and the total amount payable as on 20.8.2008 was recalculated by the Respondent taking the actual electricity charges from 1/05 to 2/06 with interest , MG Amount payable for 3/06,4/06 and 5/06,and the monthly actual electricity charges bills from 6/06 onwards. The total amount payable on 8/08 was Rs 1,30,920/-

The service was disconnected on 2.9.2008 .They paid another amount of Rs 40000/- in 9/2008 again as per direction of Hon: High Court for getting reconnection and to petition before CGRF Ernakulam. The CGRF upheld the arrear calculations of the Respondent. The Respondent issued a demand notice with due date as 27.12.2008 for an amount of Rs 1,05,217/- which include old arrears as well as monthly current charges from 9/08 onwards.

The outstanding dues from the Appellant as per the calculation of the Respondent consist of the following:

Actual Electricity charges from 1/05 to 2/06 (MG Waived) :	Rs 29109.00
MG amount 3/06 to 5/06 (9859*3)	Rs 29577.00
Regular current charges 6/06 to 3/08 (with interest)	Rs 73233.00
Monthly Bills from 4/08 to 12/08	Rs 33298.00
Total	Rs 165217.00
Deduct Amount paid as per Court Orders	Rs 60000.00
<i>BALANCE PAYABLE (as on 12/08)</i>	<i>Rs 105217.00</i>

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

I. The contentions/arguments/points raised by the Appellant in the representation and during the hearing are summarized below:

The complainant had been remitting the minimum guarantee agreement without fail. About 50 electricity connections were given from the line and thus the line became self remunerative. The Complainant was not liable to pay the minimum guarantee agreement by virtue of the circular dated 22-03-1990. The complainant had already paid about 80% of the minimum guarantee amount and by virtue of the circular a huge amount is liable to refunded to the complainant.

The Board had issued a notice dated 18-01-2008 directing to pay an amount of 2,98,099/- towards arrears of charges. In response to the same, the society had replied that an Amount of RS.7 lakhs has already been paid and an additional amount of RS.20,000/- was paid as per the interim order of the Hon : High Court.

When the complainant had objected to the calculation in the notice dated 18/01/2008, by the above communication they have reduced the amount as Rs 1,23,199/-.

It submitted that the amount paid towards minimum guarantee agreement by the Complainant after the line become self remunerative has not been taken into account by the Board while issuing the communication. The power Supply to the establishment of the complaint was disconnected by the Board on 02/09/2008 and the workers had to stop the work and they are rendered jobless thereafter. The action of the Board in disconnecting the power supply without adjusting the amount already paid and without granting time sought for in the communication is absolutely arbitrary and illegal.

The fact that 114 societies including the complainant were exempted from payment of minimum Guarantee amount is also undisputable. Hence the amount Rs.7 lakhs collected from the Complainant is highly excessive and a major portion of the amount is liable to be refunded to the Complainant . Such amount is liable to be adjusted towards the arrears now claimed as per the order, and the refusal to adjust the amount is thus absolutely arbitrary, illegal and liable to be interfered with by this Forum.

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

There are only 31 new service connections on the line .These 31 connections are not making up Rs 9859/- per month for making eligible for the line to be self remunerative. The request of the Society to waive the MG Amount prior to 10/2004 can not be accepted as the line has not become self remunerative in that period.

The claim of the Appellant that the line would become self remunerative before 10/2004 due to the new connections is not factual.

More over the MG arrears from 10/2004 to 3/2006 have been waived as a special case by KSEB as per the BO dated 01.03.2006.This is not because the line has become self remunerative. This waiver was on the unpaid arrears only. This is not applicable to the Amounts already paid towards the MG Amounts nor does it exempt the Appellant any further payment of MG Amount after 01.03.2006

The Respondent have all along taken a very lenient view on the questions of MG arrears, disconnection etc in view of the poor condition of the Coir Sector. The Society had benefited to the tune of Rs 1,24,000/- due to MG waiver as per the above BO.

The disconnection was done as a last resort after giving several notices to the consumer and Reconnection was effected immediately on payment of amounts specified by the Hon: High Court.

III. Discussion and Findings:

The issue to be decided in this case is whether the Society is bound to pay the MG Amounts as per the M.G. Agreement or whether they are eligible for waiver of all the MG liability as claimed by them due to the lines becoming self remunerative. The MG Agreement was a contract between the Appellant and the Respondent in which the Respondent invests certain amounts towards the works for the benefit of the Guarantor and the guarantor in turn agrees to pay the Respondent amounts specified in the Agreement to the KSE Board. If the revenue derived from other consumers connected up to the works become sufficient to offset the guaranteed amount the liability of the guarantor is waived and the works are considered to be self remunerative. Here the Society had guaranteed to pay Rs 9859/- per month up to 5/06. The works could have been self remunerative if the new consumers connected up before 10/2004 had been paying this amount, because the Society had asked for the waiver of MG Amount for this period. As per the respondent these consumers make up only an amount equal to Rs 1400/- per month. Under this situation the claim of the Appellant that they are eligible for waiver of MG liability prior to 10/2004 can not be approved.

The Appellant had already paid MG Amounts upto the month of 10/2004 by way of monthly current charges. The liability to pay MG amounts from 10/2004 to 2/2006 had been written off by the Respondent as per the BO (FB) No 686/2006(DPC1/C-GI/103/2005) dated 01.03.2006. The above Board Order had been issued '*in view of the acute financial crisis faced by these societies and the fact that these societies provide means of livelihood to hundreds of very poor families*'.

The MG Liability continues upto 5/06 as recorded by the Respondent. The above Board Order do not exempt 114 societies including the complainant from payment of minimum Guarantee amount. The order allows the writing off of MG Arrears only. That do not entitle the Appellant to claim for refund of the amounts already paid. Hence the contention that they are eligible for refund as per the order is not correct. The circular dated 22.3.1990 referred by the appellant is not at all relevant in this case.

During the hearing the Secretary of the Society informed that *the Society would face closure due to financial difficulties if the dues as demanded by the Respondent were to be remitted by them and a number of poor families would lose the meager lively hood provided by the Society*. But he also confirmed that they would strive to pay the charges towards *the actual current charges* if sufficient installments are allowed and interest liability is reduced.

Under the above circumstances and taking forward the spirit of the above Board Order dated 01.03.2006 the under signed hereby directs the Respondent to provide the following reliefs to the Appellant as a very special case:

1. *The Minimum guarantee liability of the Appellant for the 3 months of 3/06, 4/06 and 5/06 following the BO dated 01.03.2006 shall also be waived in pursuance of the spirit of the Order and directions from the Government.*
2. *Current charges for the actual electricity used by the Appellant only shall be collected from the Appellant from 10/2004 onwards.*
3. *Interest for all the dues from the Appellant shall be collected at 6% per annum, the rates applicable for the One-time-settlement schemes of the Board.*

4. *The arrears shall be collected in Twelve Equal Monthly installments.*

IV. 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 Representation and the reliefs sought in the same are devoid of any merits and hence dismissed.*
2. *The Appellant shall be allowed the reliefs noted in Section III above as a special case*
3. *No order on costs.*

Dated this the 12th day of March 2009,

P.PARAMESWARAN
Electricity Ombudsman

No P 36/09/ 189 / dated 16.03.2009

- Forwarded to: 1. M/s Perumpalam North Coir Vyavasaya Coop Society Ltd
Perumpalam CHERTHALA
Alappuzha District
2. The Assistant Executive Engineer
Electrical Sub Division POOCHAKKAL
Alappuzha District

Copy to :

The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram 695010

The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004

The Chairman
Consumer Grievance Redressal Forum,
KSEB,Power House , ERENAKULAM