# STATE ELECTRICITY OMBUDSMAN

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## REPRESENTATION No: P 81-82/09

Appellant: M/s Binani Zinc Ltd
Binani Puram 683502
Ernakulam Dt

Respondent: Kerala State Electricity Board
*Represented by*
The Special Officer (Revenue)
VaidyuthiBhavanam
PATTOM Thiruvananthapuram

## ORDER

M/s Binani Zinc Ltd Binani Puram Ernakulam Dt submitted two representations on 18.6.2009 seeking the following relief:

1. *Set aside the order dated 16.5.2009 of CGRF Ernakulam*
2. *Allow reduction in the Billing Demand for the months of July and October 2008 in accordance with and applying the formula enunciated in the order dated 1.1.1985 of KSEB.*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 18.08.2009 and again on 24.11.2009 after obtaining certain clarifications from the Respondent.

M/s Binani Zinc Ltd is an EHT consumer with Contract demand 18000KVA at 110KV. KSEB introduced restrictions in power consumption with effect from 25th July 2008 after obtaining approval from KSERC vide order dated 24.7.2008.All EHT and HT consumers were directed to 'restrict their energy consumption to 75% of the base average consumption'. If the consumption exceeds the quota allotted the excess consumption were to be charged at the marginal cost of power purchased additionally to meet the excess consumption.

Thus while energy consumption was sought to be restricted to 75% the KSEB order was silent on the consequential reduction in the maximum demand. The Appellant had

reduced the energy consumption to around 75% w.e.f 25.7.2008 and consequentially MD should also have come down from 25.7.2008.But the Respondent had taken the actual Maximum value recorded during the month as applicable to the whole month for billing purposes. The Appellant claims that the MD recoded after 25.7.20085 was actually lesser due to the restrictions imposed and hence they are eligible for reduction in Billing demand.

Similarly in October 2008 when the restrictions were partially relaxed power restriction was 25% from 1.10.2008 to 14.10.2008 and 20% from 15.10.2008 to 31.10.2008. Consequentially the Appellant claims that the actual MD would be different for the two periods. But the Respondent had taken the actual Maximum value recorded during the month as applicable to the whole month for billing purposes. The Appellant claims that the MD recoded before 15.10.2008 was actually lesser due to the restrictions imposed and hence they are eligible for reduction in Billing demand.
The Appellant had agitated the issue before the Respondent as well as CGRF but could not get relief.
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 and during the hearing are summarized below:
KSEB had denied the relief claiming that in 2008 they had implemented power restriction only, not power cut. In fact there is hardly any difference between the two when the Licensee is not able to supply normal quantity of power by fixing a quota of units for a month or part of the month for the power at normal rate. KSEB had sought permission from KSERC to implement power cut in July 2008 but the KSERC had termed the same as power restriction. The distinction between power cut and power restrictions is not relevant for any practical purposes.
When there is change in power availability in the midst of a month the actual MD during the two periods of the month would be different. It would be unfair to charge the highest MD for the whole month. In such cases the Billing Demand has to be calculated as per the formula prescribed in the Board Order no: Plg.Com./PC/802/84/Billing/dated 1.1.1985.
KSEB had issued the above order precisely to deal with situations like this. The order had been made applicable during power cut periods in Eighties and Nineties. Since the order has not been withdrawn or amended this order should be applied now also in order to determine the appropriate demand charges.
The Appellant was effectively prevented from drawing power in excess of quota during the periods of power restrictions due to the exorbitant rates of the additional power. The Appellant opted to consume only the allotted quota.
When a consumer is absolutely or relatively or for economic reasons deprived of access to normal power up to the permissible maximum demand the Board Order dated 1.1.1985 shall be applicable. This is also contemplated in paragraph 17 of the EHT agreement dated 22.11.1993 between the Appellant and KSEB.

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

No power cut was introduced in July 2008, only power restriction was implemented. The only restriction imposed was that the consumers may restrict consumption within the quota allotted by the Board and in case the consumption exceeds the quota, the excess consumption will be charged at marginal cost of power purchased by the Board to bridge the demand and supply.
The Board Order dated 1.1.1985 cited by the Appellant relates to the period of power cuts only. In 2008 there was no power cut, only power restriction. There is no restriction in maximum demand. The claim of the Appellant to compute demand charges as per formula in the BO dated 1.1.85 is not relevant as the concept of power cut and restriction is distinct entities.
The demand charges are collected to meet the capital outlay .The KSEB had to keep its installations ready on tap to supply at desired levels of electricity to all EHT/HT consumers even during the period of power restrictions in question.
There is no provision in the rules to reset the MD meter while imposing power restriction, nor had KSERC directed to reset the meters prior to introduction of power restriction.

Discussion and Findings:

1. KSEB has claimed that the terms Power Cut and Power Restriction are 'distinct entities' what ever it means. They have not put up any evidence to establish it. They have not put up any Rules, Regulations or even Technical literature to support the claim. The representatives of the Respondent who had attended the hearing were not able to explain the *technical or administrative* differences in implementing the two concepts. As far as the experiences of electricity consumer is concerned there is little difference between power cut and power restrictions. Due to the above reasons the claim of the KSEB that Power Cut and Power Restriction are distinct concepts can not be accepted.
2. The contention of the KSEB that there was no restriction in MD during the period is technically wrong. The energy consumption being a function of the actual demand in KVA any restriction in energy consumption would entail reduction of KVA demand. When consumers, with fairly constant load factor, reduce energy consumption by 25%, their KVA demand for the period also would come down by around 25%.This is basic electrical engineering. How can an organization like KSEB claim that they had not restricted Demand when they restrict energy consumption by 25%?
3. The most important question to be decided is whether the Appellant deserves any relief on Demand charges consequent to the restrictions in the consumption of energy and if so how the relief is to be computed.
4. The Appellant claims that they are eligible for relief as per the Board Order dated 1.1.1985. The Respondent contends that the above Board Order is irrelevant at the present scenario. The above Order dated 1.1.1985 was issued regarding the months when the consumers were not able to utilize the full quantum of contracted power due to restrictions enforced in energy consumption during the year 1983. It would not be proper to apply the above order now. As pointed out by the Respondent the scenario

is very different now. The argument of the Appellant that the order will be applicable unless it is amended or withdrawn is not correct. The dictum applicable to statutory rules and regulations can not be applied to administrative orders. More over the agreement executed between the parties, later on 22nd November 1993, provides for reliefs under such situations very clearly. As such the Board Order dated 1.1.1985 is not relevant now.

5. The Clause 17 of the Agreement executed between the Appellant and KSEB in 1993 reads as follows:

   If at any time the consumer is prevented from receiving or using the electrical energy *to be supplied under this agreement* either in whole or in part owing to any strike , riots, insurrection, command of a civil or military authority, fire, explosives, act of God or any other cause reasonably beyond control or if the *Board is prevented from supply or unable to supply such electrical energy* owing to all or any of the causes mentioned above, then the minimum charge or the minimum guarantee payable by the consumer *for each month* in which the consumer or the Board is so prevented, shall be reduced for the time being, in proportion to the ability of the consumer to take or the Board to supply such power , *the ability being reckoned proportional to the energy consumed during the month in question in relation to the average consumption for six normal months immediately preceding the said period* . This will be without prejudice to the provisions contained in clause 16 above. Also the periods of non consumption of less than seven days, consecutive, will not be considered for operation of this clause.

6. In July 2008 due to causes 'beyond the control' the Board had been prevented from supplying the energy 'under this agreement' and enforced restrictions. The offer of energy above the quota fixed, at marginal or market prices can not be conceived as the energy being supplied under the agreement. The notice issued to the Appellant on 24.7.2008 by the Respondent directed the Appellant to 'limit the consumption with in the quota allotted' and informs that 'if the consumption exceeds the quota the excess energy consumed will be charged at marginal cost of power'. This situation attracts the above clause of the agreement.
7. The ability of the KSEB to supply energy can be reckoned as mentioned in the clause above. This will be a ratio between the actual energy consumed in the month in question in relation to the average for six normal months. The KVA MD charges for the month, computed from the actual Maximum Demand for the month, shall be modified by the above ratio. But the Consumer shall be liable to pay the minimum annual revenue guaranteed and specified in the schedule to the agreement as noted in clause 16 of the agreement.

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 Order No: CGRF-CR/Comp.91/08-09/852 dated 16.5.2009 and the Order No: CGRF-CR/Comp.94/08-09/853 dated 16.5.200 of CGRF Ernakulam are set aside.*
2. *The Respondent shall allow reduction in the Demand charges for the months of July and October 2008 in accordance with and applying the principles enunciated in the clause 17 of the Agreement dated 22nd November 1993 executed between the Appellant and KSEB.*
3. *The adjustment of the excess payments shall be completed within a period of Three months from the date of this order failing which the Respondent shall pay interest for the amounts as per Section 24(6) of the Supply Code from the date of this order.*
4. *No order on costs.*

Dated this the 8th day of December 2009,

P.PARAMESWARAN
Electricity Ombudsman

No P81-82 /09/ 429/ dated 8.12.2009

Forwarded to: 1. M/s Binani Zinc Ltd
Binani Puram 683502
Ernakulam Dt

2. The Special Officer (Revenue)
VaidyuthiBhavanam
PATTOM Thiruvananthapuram

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