

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO.P/072/2014

(Present: Sri. V.V. Sathyarajan)

Dated: 12th May 2015

Appellant : Sri K.V. Francis,
Managing Partner,
M/s Aiswarya Agro Mills,
Mattoor, Kalady P.O,
Ernakulam – 683 574

Respondent: The Assistant Executive Engineer
Electrical Sub Division
KSE Board Ltd.,
Kalady,
Ernakulam District

ORDER**Background of the case**

The appellant is the Managing Partner of M/s Aiswarya Agro Mills bearing consumer No. 11309 (registered in the name of Sri. T.A. Varghese) under Electrical Section, Kalady. He applied for additional load and conversion of LT existing connection to HT connection on 13-06-2011. According to the appellant, he submitted the agreement on 28-10-2013. But the agreement was executed only on 11-02-2014 and the HT connection was effected on 12-02-2014. Meanwhile a total amount of Rs. 4,95,000/- was collected from the appellant towards the Unconnected Minimum Charges. The appellant approached the CGRF on 15-05-2014 seeking compensation for alleged delay on the part of the respondents and refund of UCM charges. The Forum, in its order, directed the respondents to revise the UCM charges by limiting the period of assessment for 9 months and to adjust the excess amount paid in future bills. Aggrieved against the said order, this appeal petition was filed.

Appellant's arguments

The consumer No. 11309 was registered in favour of the appellant under LT industrial tariff. Monthly bills issued by the KSEB were promptly remitted by the appellant, without any failure. While matters stood thus, the appellant applied for change of connected load by way of LT to HT conversion and submitted an application on 13-06-2011 for allocation of

power. Contract demand was made for 220 kVA. Pursuant to the application dated: 13-06-2011, administrative sanction for the work was accorded on 28-12-2011. On 11-01-2012 he was directed to remit an amount of Rs. 92,535/- towards the cost of work from Distribution side. The appellant remitted the said amount on 13-02-2012. On 20-10-2012 the appellant was informed that the line extension work was completed and he was directed to avail additional load within three months, failing which appellant is liable to pay minimum charges as per Regulation 10 of Kerala Electricity Supply Code, 2005.

In order to demand Unconnected Minimum Charges, the licensee has to complete the work required for providing electricity to the applicant and has to issue a notice to the applicant as contemplated under Regulation 10 (1) of the Supply Code, 2005 asking him to take supply within 90 days. The Unconnected Minimum Charges can be collected only after expiry of three months from the date of issue of notice. As on the date of the alleged notice i.e. 20-10-2012, the respondent had not completed the work on their part to provide electricity. Moreover, the alleged notice dated: 20-10-2012 cannot be considered as a notice which has been issued under Regulation 10 (1). In the present case, the appellant applied only for the change of connected load in the existing service connection, not for fresh connection. The respondent cannot demand unconnected minimum as the appellant's establishment was already connected with the power supply provided by the respondent under LT tariff for the disputed period.

The agreement for the supply of HT energy along with necessary documents was submitted on 28-10-2013. The appellant remitted security deposit and application fee of Rs. 1,000/-. But the agreement was executed only on 11-02-2014. Meanwhile an amount of Rs. 2,92,820/- was illegally demanded from the appellant towards UCM charges commencing from 20-01-2013. Under threat of disconnection, appellant was compelled to remit the said amount. Thereafter, on 06-01-2014 the appellant was directed to remit a further amount of Rs. 2,02,180/- towards UCM. The appellant remitted the said amount also under protest. A total amount of Rs. 4,95,000/- was collected from the appellant towards UCM. No calculation statement has been furnished so far.

No notice contemplated under Regulation 10 was issued by the respondents. The respondents never intimated the completion of work on their part. The agreement for HT service connection was executed only on 11-02-2014. As per Regulation 19 of the Terms & Conditions of Supply, 2005, the premises shall not be connected unless and until the agreement is executed. Therefore the demand and collection of UCM prior to 11-02-2014 is illegal. Only on 11-02-2014 the KSEB completed their work and on that reason the appellant is not legally bound to remit UCM for the period from 01/2013 to 11-02-2014. Though the appellant submitted agreement as early as on 30-10-2013, the same was executed only on 11-02-2014. The KSEB is duty bound to effect supply to the applicant within the time frame as stipulated in Regulation 8 of the Supply Code, 2005. The additional power applied by the appellant was only for 88 kVA. The demand for UCM for the

existing connected load of 132 kVA is unsustainable, as the appellant already availed connection for the existing connected load of 132 kVA and paid fixed charge as well as the electricity charges for the existing connected of 132 kVA for the period from 01/2013 to 10/2013. The appellant only requested to change the connected load which cannot be treated as a new connection. The Board cannot demand UCM as the appellant had existing supply of electricity.

Respondent's arguments

The service connection with consumer number 11309 under Electrical Section is registered in the name of Sri T.A. Varghese. Its connected load was 119 kW under LT category and the service connection has now been converted to HT category under 190.757 kW connected load. The consumer applied for conversion of LT connection to HT category, with contract demand of 220 kVA on 13-06-2011 before the Assistant Engineer, Electrical Section, Kalady and the same was forwarded to Deputy Chief Engineer, Electrical Circle, Perumbavoor on 22-06-2011. The same was sanctioned by the Deputy Chief Engineer and the applicant was directed to remit the amount on 11-01-2012. Accordingly an amount of Rs, 92,535/- was remitted towards the cost of work to be carried out by KSEB, on 13-01-2012. The line work was completed by the KSEB and intimation was issued to the consumer for availing power supply within three months on 20-12-2012. After receiving the notice, the appellant did not submit the completion report and HT agreement till 31-10-2013. The HT agreement was submitted only on 31-10-2013 after a long period of one year. The HT agreement was submitted on 11-02-2014. Meanwhile a total amount of Rs. 4,95,000/- was collected from the appellant towards the UCM as per Clause 10 of Kerala Electricity Supply Code, 2005.

Analysis and findings

Hearing of the case was conducted on 27-03-2015 in my chamber at Edappally, Kochi. Advocate Santhosh G. Prabhu represented the appellant. Sri M.Y. George, Assistant Executive Engineer, Electrical Sub Division, Kalady appeared for the respondent. Hearing the arguments of the parties, perusing the documents produced by the parties and considering all the facts and circumstances of the case, this Authority comes to the following conclusions.

The dispute in this case arose when an amount of Rs. 2,92,820/- was demanded from the appellant towards UCM charges. According to the appellant, under threat of disconnection, he was forced to remit the said amount. Again he was directed to pay further amount of Rs. 2,02,180/- towards UCM. He remitted the said amount also. Altogether a sum of Rs. 4,95,000/- was collected from the appellant towards UCM charges. It is true that the UCM charges can be demanded from a consumer for not availing power supply that he sought for, even after completing the work on the part of KSEB for effecting power supply. Now the question to be looked into is as to whether the respondent has performed his part earnestly. Only

if the respondent completes the work on their part, they can issue first a notice to the consumer directing to take supply within 90 days of the service of notice in the case of HT/EHT consumers. Whether such a notice was issued in this case is a disputed fact. The correctness of the said claim of issuing notice has direct impact on the question of liability of paying the UCM charges. In this connection Clause 10 of Supply Code, 2005 reads thus:-

10. (1) Where the Licensee has completed the work required for providing supply of electricity to an applicant but the installation of the applicant is not ready to receive supply, the Licensee shall serve a notice on the applicant to take supply within sixty days of service of the notice in the case of LT consumers and 90 days in the case of HT & EHT consumers.

The above clause shows that the Licensee shall serve a notice clearly indicating a period of 90 days for completing the work on the consumer's side. Appellant's contention is that no such notice has been given in the present case and that the Licensee can give a proper notice only after completing the work on their part. It is to be noted that the agreement for HT connection was executed only on 11-02-2014. As per Regulation 19 of the Terms & Conditions of Supply Code, 2005 the premises shall not be connected unless and until the agreement is executed. Hence the date of execution of the agreement i.e. 11-02-2014 in the present case is the crucial date on which the respondent was in a position to give HT connection. It seems that the respondent completed his portion of work only on 11-02-2014. The appellant already completed his portion of work well before 11-02-2014. It is also seen that HT connection was effected on the next day i.e. 12-02-2014. In the circumstances the question of issuing notice as contemplated under the Regulation does not arise.

The appellant is an existing LT consumer who requested for converting into HT on 13-06-2011. It took 7 months for the licensee to complete the process and directed the appellant to remit the cost of work on 11-01-2012. It can be seen from the records that the appellant remitted the amount without any delay i.e. on 17-01-2012. But the notice alleged to have been sent under Regulation 10 (1) of Supply Code, 2005 is on 20-10-2012. So there is a considerable delay on the part of respondent in processing an application for conversion from an existing consumer. It can be seen that the appellant produced the agreement on 28-10-2013 which is seen executed on 11-02-2014. So it is very difficult to arrive at a logical conclusion that the respondent completed the work required for providing supply of electricity to the appellant.

Decision

In view of the above discussion I hold that the respondents are not eligible to demand and collect UCM charges of Rs. 4,95,000/- (Rs. 2,92,820/- and Rs. 2,02,180/-) from the appellant. The respondents are directed to adjust the total amount of Rs. 4,95,000/- remitted by the

appellant in future bills. The order of the CGRF is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

No.P/072/2014/ _____ /Dated: _____

Forwarded to:

1. Sri K.V. Francis, Managing Partner, M/s Kalpana Agro Mills, Mattoor, Kalady P.O, Ernakulam – 683 574.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Kalady, Ernakulam District.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018