

# BEFORE THE ELETRICITY OMBUDSMAN

No. 16 C – 1, Miller Tank Bed Area, Vasanthanagar, (Behind Jain Hospital)  
Bangalore-560052.

**Present: B.N.Krishnaiah**

**Electricity Ombudsman**

**Case No.OMB/B/G-138/2012**

**Dated :16-05-2018**

M/s. Orient Bell Limited,  
Chokahalli Village,  
Hoskote Taluk  
Bangalore Rural District-5622114  
**(Represented by M.G. Prabhakar)**

... Appellant

V/S

The Assistant Executive Engineer EI)  
O & M Sub Division,BESCOM,  
Hoskote  
(Bangalore Rural District)

... Respondent

**(R-1 Represented by Sri H.V.Devaraj, Advocate)**

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- I. This appeal is taken up as per the directions of Hon'ble High Court of Karnataka vide their Order dated: 13-11-2017 in Writ Petition No.47096/2013(GM-KEB).

The Respondent ie., AEE, O & M Sub Division, BESCO, Hoskote Bangalore Rural District, had preferred an appeal before the Hon'ble High Court of Karnataka against the order No OMB/B/G/138/2012/156 dated: 05-02-2013 of the Electricity Ombudsman, KERC.

The Hon'ble High Court of Karnataka in their order dated: 13<sup>th</sup> November 2017 have remanded the said case to the Electricity Ombudsman with a direction to decide the matter afresh within a period of six months from the date of issue of order, and directed the parties to appear before the Ombudsman at the first instance on 15-12-2017. Accordingly, one of the parties - M/s. Orient Bell Limited appeared on 13-12-2017.

Notices were issued to both the parties for appearance before this Authority. The case was taken up for hearing on 5-01-2018, and further on different dates. On behalf of the Appellant the Authorised Representative Sri M.G., Prabhakar appeared and put forth his argument. On behalf of the Respondents, Sri H.V Devaraju, Advocate, filed the Vakalath and submitted his arguments.

II. The Hon'ble High Court in the said order at paras 6,7,8,9,10 and 11 have observed and ordered as follows:

**“para 6 –Having heard the learned counsels for the parties, this Court is satisfied that the authorities below have not computed and given the relevant facts and figures for computing the alleged refund due to the respondent – consumer. Prima facie the**

concessional rate was applicable as per the provisions of the Scheme only on the excess consumption of the consumer through BESCO Grid, over and above the Base Units fixed on the basis of average consumption of the preceding year and the scheme permitted additional contract demand to be increased to the extent of 20% vide Clause -6 of the scheme quoted above.

Para 7 – Whether the petitioner has been allowed the concessional rate only on such excess consumption or not and whether the scheme envisages any such refund of the excess amount paid, if any, by the consumer or not, with reference to contract demand, is not explained in the impugned orders at all.

Para 8 – The Ombudsman appears to have gone simply on the basis of a memo filed by the learned counsel appearing for the BESCO before High Court in a Writ Petition filed by the Consumer. Paragraph 15 of the impugned order in this regard is also quoted below for ready reference:

“15. In order to answer the above questions, we will have to refer to the memo filed by BESCO before the Hon’ble High Court and also the order passed by the High Court on this memo. The relevant portion of the order extracted reads as follows “N.K. Gupta, learned counsel appearing for the second respondent has filed a memo stating that the second respondent in its official memorandum dated: 19-11-2010 has extended the HT incentive scheme to the petitioner for the period from June, 2009 to November, 2009 and to

**refund the excess amounts for the said period through adjustments in future energy bills of the petitioner”**

**16. “In the light of the memo filed by the learned Council or the second respondent, the petitions do not survive or consideration and they are accordingly disposed of as having become in fructuous.”**

**Paras – 9 The refund of any alleged excess amount paid by the consumer cannot be straight away directed on the basis of any memo filed by the learned counsel for the BESCO unless the relevant facts and figures are discussed by the fact finding authorities in their orders and then assigning proper reasons for arriving at the relevant conclusions.Nothing of this sort appears to have been done by them.**

**Para -10. Therefore, the matter deserves to be remanded back to the Electricity Ombudsman for reconsideration of the entire matter and deciding the appeal de nova after providing reasonable opportunity to both the sides and taking on record the relevant facts and evidence with regard to the facts of the consumer’s case for the period in question.**

**Para –11. The Writ Petition is accordingly allowed by setting-aside the impugned order – Annexure “F” dated 05-02-2013. The matter is restored back to the Electricity Ombudsman to decide the matter again afresh, within a period of six months from now, Parties may appear before the Electricity Ombudsman, at the first instance, on 15-12-2017.”**

**III.** The representative for the Appellant at the time of hearing has reiterated the submissions made earlier before this Authority vide representation dated 13-08-2012. He has requested to consider the same submissions now also as his reply and pass orders. In the said representation, he has prayed and placed the following for consideration.

1. To set aside the order of the 4<sup>th</sup> respondent in case No. CGRF/100/2011/1175-80 dated: 12-7-12.
2. To direct the first respondent company BESCO to extend the benefit in accordance with the provisions of tariff orders 2005 and 2009 and credit the account of the complainant along with 2% for the periods in excess of 60 days from the date on which the defect was pointed out by the consumer in accordance with Cl.29.8 of the conditions of supply.
3. To grant such other reliefs as may be deemed fit under the circumstances.
4. To grant cost of Rs.50,000/-

**IV.** Further, in addition to the said representation dated: 13-08-2012, the Appellant in the memo dated: 14-03-2018 filed before this Authority on 28-03-2018 further has stated as follows:

- 1) **“As per the directions of this Authority during the hearing held on 06-03-2018, the Appellant herewith produces the statement of claims of installation bearing RR No. HKHT – 161(Annexure 1). In this regard it is submitted that the basis for computing the claim is the provision under Sub-section-6 of Section 62 of the ‘The Electricity Act -2003’ (The Act for short) read with Cl.29.08 (a) of Conditions of Supply of Electricity of Distribution Licences in the State of Karnataka (COS for short), which reads as under:**

**Section – 62(6) of the Electricity Act 2003**

if any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licences ( Emphasis and under line supplied).

**Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in The State of Karnataka.**

(a)At any time during verification of the Consumer's account, if any short claims caused by erroneous billing are noticed, the consumer is liable to pay the difference. The licensee shall follow the procedure laid down under Clause 29.03 in such cases for preferring the supplemental claims.

However, the licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied.

In case the verification of the consumer's account shows excess claims made in the past, the excess amount shall be credited to the consumer's account along with the interest of Bank Rate from the date of payment up to the date of credit. This shall be done within one month from the date of pointing out the excess claims. If for any reason there is delay in crediting the amount to the consumer's account, interest of 2% per month shall be paid to the consumer for the period beyond two months.(Emphasis and under line supplied).

2. Further, it is submitted that the Hon'ble High Court has held that the prima facie the concessional rate was applicable as per the provision of the scheme only on excess consumption of the

consumer through the BESCO Grid over and above the base units fixed on the basis of average consumption of the preceding year and the scheme permitted additional Contract Demand to the extent of 20% vide Clause-6 of the scheme; at Para -6 of the order in WP No.47096/2013. (Emphasis supplied). It is now requested of this Authority to consider the facts and figures provided by us in arriving at the refund due to us.

3. Further, in respect of applicability of the S-62(6) and Cl.29.08, it is submitted that emphasis was laid upon the order of Hon'ble Karnataka Electricity Commission in the complaint M/s Karanja industries, Bidar and Asst.Executive Engineer, Humnabad, GESCOM (Complaint No.7/2013). A copy of the said order is produced and marked as Annexure-2).

**Sd/-Jagadish Pal**  
**Factory Manager/Plant Head**

**Statement of claims**

**-For Orient Bell Limited.** Orient Bell Limited, Hosakote. 5/31/11  
06/01/11

2/28/18

Sl. No.	Month	Units	Base	Allowable Units	Cheque date	Assumed date of payment	No of days for 9.1% Interest	TOD Amount	Interest 9.1% @	No days of 2% Interest	2% Interest	Total Interest
1	Sep-08	489840	437474	52366	10/18/2008	10/20/2008	953	26183	6,221	2464	42,421	48,642
2	Oct-08	447720	437474	10246	11/20/2008	11/20/2008	922	5123	1,178	2464	8,300	9,478
3	Nov-08	439500	437474	2026	12/20/08	12/20/08	892	1013	225	2464	1,641	1,867
4	Dec-08	544920	437474	107446	1/20/09	1/20/09	861	53723	11,532	2464	87,040	98,572
5	Jan-09	540710	437474	103236	02-11-09	02/20/09	830	51618	10,681	2464	83,630	94,311
6	Feb-09	425610	437474	11864	03-12-09	03/20/09	802	5932	1,186	2464	9,611	10,797
7	Mar-09	570660	437474	133186	04/20/09	04/20/09	771	66593	12,801	2464	107,892	120,692
8	Apr-09	783090	585474	197619	05/19/09	05/20/09	741	98808	18,254	2464	160,085	178,339
9	May-09	825720	585474	240246	06/19/09	06/20/09	710	120123	21,263	2464	194,619	215,882
10	Jun-09	1126230	585474	540756	07/18/09	07/20/09	680	270378	45,838	2464	438,057	483,895
11	Jul-09	816270	585474	230796	08/19/09	08/20/09	649	115398	18,672	2464	186,164	205,636
12	Aug-09	387030	585474		09/18/09	09/20/09	618	0	-2464	2464		
13	Sep-09	963480	585474	378006	10/13/09	10/20/09	588	189003	27,707	2464	306,216	333,923
14	Oct-09	767760	585474	182286	11/19/09	11/20/09	557	91143	20,657	2464	147,667	160,324
15	Nov-09	1103760	585474	518286	12/17/09	12/20/09	527	259143	34,049	2464	419,854	453,903
	<b>Total</b>	<b>10232300</b>		<b>2708362</b>				<b>1354181</b>	<b>222,265</b>		<b>2,193,996</b>	<b>2,416,261</b>

For Orient Bell Limited  
Sd/-  
Jagdish Pal  
Factory Manager / Plant Head



### Statement of claims

Orient Bell Limited, Hosakote. Date:2/28/18

	Month	Contract Demand	75%	Recorded Demand	Billed Demand	Excess	Rate	Total Excess Billed	No of days	Interest @ 9.1%
1	Sep-08	1000	750	959	959	0	170	0	0	
2	Oct-08	1000	750	957	957	0	170	0	0	
3	Nov-08	1000	750	988	988	0	170	0	0	
4	Dec-08	1000	750	980	980	0	170	0	0	
5	Jan-09	1000	750	979	979	0	170	0	0	
6	Feb-09	1000	750	973	973	0	170	0	0	
7	Mar-09	2500	1875	1726	1875	149	170	25330	3286	20752
8	Apr-09	2500	1875	1964	2025	61	170	10370	3255	8415
9	May-09	2500	1875	1514	2025	511	170	86870	3225	69847
10	Jun-09	2500	1875	1961	1961	0	170	0	0	
11	Jul-09	2500	1875	1987	1987	0	170	0	0	
12	Aug-09	2500	1875	1932	1932	0	170	0	0	
13	Sep-09	2500	1875	1932	1932	0	170	0	0	
14	Oct-09	2500	1875	1470	1875	405	170	68850	3072	52732
15	Nov-09	2500	1875	1995	1995	0	170	0	0	
<b>Total</b>							<b>191420</b>			<b>151746</b>

For Orient Bell Limited

Sd/-  
Jagdish Pal  
Factory Manager / Plant Head

- V. Further, the Appellant in support of his claim has quoted the Orders passed by the Karnataka Electricity Regulatory Commission in complaint No.7/2013 dated: 18<sup>th</sup> May 2014 between M/s. Karanja Industries Pvt Ltd., and the AEE, O & M Division, GESCOM, Humnabad, Bidar District. The Orders of KERC reads as follows:

**ORDER**

**“We hereby direct the Respondent to comply with the Order, Dated 26-9-2012 of the learned Electricity Ombudsman, keeping in view the above findings and conclusions relating to the interpretation of Regulation 29.08(a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, 2006, and to make payment of interest after adjusting the amounts, if any, already paid to the Complainant, within 60(sixty)days from the date of receipt of this Order. The Respondent shall report the compliance of this Order to the Commission after making such payment. Office is directed to send a copy of this Order to the learned Electricity Ombudsman”.**

Sd/- (M.R.SREENIVASA MURTHY) CHAIRMAN	Sd/- (H.D. ARUN KUMAR) MEMBER	Sd/- (D.B. MANIVAL RAJU) MEMBER”
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**VI.** The Respondents in addition to reply dt.28-03-2018, in their submissions made before this Authority have submitted as follows:

- 1. M/s. Bell Ceramics availed Special Incentive Scheme from September 2008. The Contract Demand of the latter was enhanced from 1000 KVA on 23-03-2009 as per the PC. test report and therefore the contrary averments made that during 18-12-2008 as stated by the complainant are all false.**
  
- 2. The Respondent submits that, the RR No. HKHT -161, M/s. Bell Ceramics; the Appellant was serviced on 02-06-2006 with a sanctioned load of 1000KVA. Though the Appellant was eligible for the Special Incentive Scheme after completion of 12 calendar months, he opted for the Scheme from Sept'08. The objective narrated in the Tariff Amendment Order 2003, is that the ESCOMs may not gain from the Scheme but it will help in increasing the metered sales which in turn will reduce the Average Cost of Supply and increase Average Realisation Rate. The prime reason for continuation of the Scheme in Tariff Order 2005 was that the Scheme would increase the metered sales of the ESCOMs and encourage the industries to draw more energy from the grid at a rate less than the normal tariff. This will also give an opportunity to the industries to seek other less costing resources such as captive generation/wheeling. It was to be a win – win situation for both the licensee and the consumer. It is submitted that, the scenario of 2007-08 was different, the total allotment of units under the Scheme for Financial year 2008 was 5490.67 lakh units where as industries have utilized only 3967.99 lakhs. The objective of the Scheme was to improve its metered sales. However, the facts prove otherwise. The average power purchase cost for the Financial Year 2007 and Financial Year 2008 increased from Rs.2.33/unit to Rs.2.46/unit respectively and Rs.2.98/unit for the Financial Year 2009.**

3. It is submitted that the BESCO has incurred power purchase cost of Rs.6082.93 crores as against approved figure of Rs.5764.18 crores inclusive of transmission charges for a quantum of 20435.92 MU of power purchase for Financial Year 2009. Such being the case, the Appellant in its letter dated 5<sup>th</sup> Sep 2008 requested additional 8 lakh units under the Scheme as against the average consumption of 4,30,115 units. BESCO allotted 45,000 units under the Scheme over and above the base units of 4, 37,474 units for the 1<sup>st</sup> four months ie., from Sept-08 to Dec.08 which was also accepted and utilised without any protest by the Appellant. The appellant has not utilised; the allotted units as seen from the calculation. The average consumption of the consumer for the period from Sep'08 to Nov'08 was 4,58,974 units. The average consumption prior to participation in the Scheme was 4, 81,890 units (April '08 to June '08). It is seen from the above that the metered consumption decreased after participation in the Scheme.
4. It is submitted that, the complainant in his letter dated:2<sup>nd</sup> Dec 2008, requested to extend the additional units till Sept-2009. Since the complainant has not utilised the allotted units, the allotment for the further period reduced to 21,500 units which is more or less equal to difference between the average consumption of prior and after participation in the Scheme ( 4,81,890 and 4,58,974) and the allotment made was also accepted and utilised without any protest by the Appellant. The Appellant had increased its Contract Demand (CD) from 1000KVA to 2500Kva from 23-03-2009 on permanent basis and therefore the base consumption was revised to 587474 units (437474 previous base +  $1500 \times 100 = 150000$ ), the additional units over and above the base consumption continued at 21,500 units.

5. It is submitted that, the Scheme was discontinued vide Tariff Order 2009 from Dec'09. Further, the Commission in its Tariff Order 2009 issued directions to extend the Scheme for the period from Jun'09 to Nov'09. BESCO had discontinued the Scheme for the above
6. said period, which was challenged by the Appellant & other consumers by filing Writ Petitions before the Hon'ble High Court. Since the Commission extended the Scheme for the period from Jun'09 to Nov'09, BESCO filed a memo in the WP filed by the appellant and others and informed the Hon'ble High Court that it had extended the scheme period from Jun'09 to Nov'09 and it would refund the excess amount collected for the said period by way of adjustment in future bills. On the basis of this memo, the writ petition filed by the Appellant in WP 31181-82/2009 was disposed off.
7. It is submitted that, in view of the order passed in the above WP, the Appellant submitted a letter requesting for refund of a sum of Rs. 8,767/-Accordingly, the Scheme was reviewed and an amount of Rs. 56,231/- was computed and refunded that was actually outstanding to Appellant by considering the additional allotment of 21,500 units per month which was a larger amount than claimed by the Appellant. The Appellant thereafter proceeded to make a claim for refunding a sum of Rs.12,69,670/- by its letter dated: 31/03/2011 and 16/06/2011. BESCO considered the demand and proceeded to reject this claim for refund by its letter dated:15/07/2011. The Appellant challenged the rejection of its claim for refund, by filing a complaint before the CGRF, which was however rejected. The Appellant preferred an appeal to the Electricity Ombudsman as provided under the Regulations. The Ombudsman after hearing has proceeded to allow the appeal.

- 8. It is submitted that, the consumption recorded under the scheme for the Financial Year 2008 and Financial Year 2009 are 396.79Mus and 406.67 MUs respectively. Under the Special Incentive Scheme, the entire consumption of 396.79Mus and 406.67 Mus were billed at Rs.3.80 instead of normal tariff of Rs.4.30. For Financial Year 2008 and Financial Year 2009, if the whole units were consumed under normal tariff, the Company would have gained Rs.19.84 crores and 20.33 crores respectively. During the Financial Year 2009, BESCO faced a unique situation, never experienced in the past, of coping up with the increase in dead from the consumer to be met with depleted sources of energy. Failure of monsoon, reduced allocation from central generating units, non- availability of cheaper power etc., contributed to the grim power scenario. The Company ended up with buying power through bidding process at higher rates to meet the increase in demand from all categories.**
  
- 9. It is submitted that, the annual accounts for Financial Year 2009 indicate a financial loss of about Rs.588.24 crs, which is totally a first time situation for the Company since its inception. The power purchase cost for FY09 leap fogged to Rs.6087 Crs from 4939 Crs, a whopping increase of 23% over financial year 2008. The source wise details of high cost energy purchased during Financial Year 2009 are as follows:**

	Energy in Mus	Cost per Unit	Amount in crores
GMR	449.58	6.81	306.15
JSW	132.48	7.23	95.73
PTCIL	106.83	7.93	84.72
GUVNL	7.61	6.55	4.99
IEX	21.79	7.41	16.14
NTPC			
VVNL	0.97	7.43	0.72
TATA	1.49	7.81	1.16
CO GEN	123.59	6.5	80.33
BIO MASS	20.22	5	10.11
UI Charges	695.24	6.99	486.2
<b>TOTAL</b>	<b>1559.80</b>	<b>6.96</b>	<b>1086.25</b>

It is evident from the above that the Company is paying about Rs.7 Per unit towards high cost energy.

10. It is submitted that, while the allocation during Financial Year 2008 and Financial Year 2009 were 5490.67 lakh units and 4223.75 lakh units respectively under the Scheme, industries have utilised only 3967.99 lakh units for Financial Year 08 and 4066.72 lakh units for Financial Year 2009.

11. It is submitted that, the objective of the scheme was to motivate HT industries not to move out of the grid and thereby BESCO would improve its metered sales. However, the facts prove otherwise. The BESCO stands at a disadvantageous position, since, sales under the scheme are at concessional tariff of Rs.3.80 per unit instead of normal tariff of Rs.4.30 per unit. The purpose of the scheme was to discourage captive

generation. Experience has shown that the utility has not been able to gain substantially by introduction of the scheme as compared to 1999 when the scheme was launched, the situation has substantially changed. Due to escalation in the price of the petroleum products, captive generation has become expensive and as such the chances of HT installations resorting to captive generation is remote. Even under Open Access, these installations may not be able to procure power at the rate at which BESCO supplies energy. It is submitted that the scheme is not entitled for refund of the any amount.

Therefore the above circumstances, the HT consumer M/s Bell Ceramics/Oriental Bell Ceramics is not entitled to refund in the interest of justice.

Sd/- Respondent.”

VII. As ordered by the Hon'ble High Court of Karnataka cited above both oral and written submissions made by the Appellants and Respondents, are considered. Consequently the following issues emerge for consideration.

- A. To have a look at the Agenda of the **Special Incentive Scheme (SIS)**:
- B. Whether the Appellant has participated in the Special Incentive Scheme (SIS) as per the provisions of the Tariff Orders of KERC?
- C. Whether the Appellant is eligible for the benefits under the scheme?
- D. Whether the Special Incentive Scheme (SIS) as per the provisions of the Tariff Orders of KERC had any **“CAP”** on the *entitlement* /



consumption by the Appellant over and above the base units at a concessional Tariff of Rs 3.80 per kWh ?

- E. Whether any binding on the Appellant to use /consume excess energy after opting for the scheme?.
- F. Whether the entitlement / allotment of energy (units) over and above the base consumption fixed by the respondent is as per the provisions of Tariff order or not? And whether the Respondent is empowered for fixing energy under the scheme ?

**VII. Look at the Agenda of the Special Incentive Scheme (SIS) since its inception:**

- The Special Incentive Scheme for H.T. Industrial consumers was introduced by erstwhile KEB, since January 1999, through which the industrial consumers were, supplied power at a rate of Rs 3.25 per unit for the quantum of energy utilised above the base consumption during the month. The scheme was meant to woo back the industrial consumers to the grid, who were resorting to captive generation.
- The Commission, vide Tariff Order dated 08.05.2002, discontinued the scheme, since, no proposal was put forth by KPTCL in its tariff filing for the year 2002. Because of the delay on the part of the Licensees in implementing the Tariff Order 2002, the Commission, further clarified by its Order dated 04.06.2002 that, the scheme would continue till the Tariff Order 2002 is implemented by the Licensees. There was unbundling of KPTCL and all the ESCOMs, which started functioning with effect from 01.06.2002, discontinued the scheme
- The Commission, vide Tariff Order 2005 dated: 27.09.2005, approved the continuation of the special incentive scheme with the same

terms and conditions as approved in the Tariff Amendment Order 2003 read with the Commission's Order dated 27.07.2004 at the same tariff rate of Rs. 3.80 per unit, until further orders

- The Commission, in its Tariff Order 2006, dtd: 16.10.2006 decided to extend the Special Incentive scheme at Rs.3.80 per unit applicable to BMAZ area and Rs.3.65 per unit applicable to areas other than Bangalore Metropolitan area, with the same terms and conditions as specified in the earlier Tariff Order, until further orders.
- The Commission in its Multi Year Tariff Order for FY-08, FY-09, & FY- 10, dated- 11.01.2008, decided to further extend the Special Incentive Scheme with the same terms and conditions as specified in the earlier Tariff Order.
- The Commission in its Tariff order for FY-10 for BESCO dated 25-11-2009, further continued the special incentive scheme (SIS) in spite of request to discontinue the scheme by ESCOMs in their Tariff filings.
- The scheme was made applicable to all HT 2(a) industrial consumers in the State upon their request at the rate of 3.80 Per kWh excluding Tax for the consumption above the derived base consumption
- **For new consumers**, the scheme was made available upon their completion of 12 calendar months. The base period and base consumption was calculated accordingly.
- In order to avail the special scheme, 20% increase in contract demand shall be allowed to the availing consumers during the currency of the scheme without any special request from the consumers. Penalty for exceeding maximum demand for the

consumers availing the scheme, thus, would be 20% of the sanctioned contract demand. The minimum billing demand shall also be enhanced accordingly.

- In respect of the eligible consumers who increase their contract demand on a permanent basis during the currency of the scheme, the existing base consumption shall be increased at a rate of **100 kWh per KVA** per month from the month in which additional contract demand has come into effect.
- No additional security deposit shall be levied for the units consumed under the scheme”

**B.** Whether the Appellant has participated in the Special Incentive Scheme (SIS) as per the provisions of the Tariff Orders of KERC ?.

***It is evident from the records and the submission made, that the Appellant has undoubtedly participated in the Special Incentive Scheme from the memo filed by the Respondent M/s BESCO before the Hon'ble High Court and also order passed by the Hon High Court on this memo.***

The relevant portion of the order read as follows.

***“N.K. Gupta, the learned counsel appearing for the second respondent has filed a memo stating that the second respondent in its official memorandum dated 19-11-2010 has extended the HT incentive scheme to the petitioner for the period from June, 2009 to November, 2009, and to refund the excess amounts for the said period through adjustments in future energy bills of the petitioner”***

**C.** Whether the Appellant is eligible for the benefits under the scheme?.

As per the provisions of the KERC Tariff order the scheme is applicable to all HT 2(a) consumers in the State”, the Appellant being a HT-2(a) industrial consumer is eligible for the benefits under the scheme, which is also evident from the written submissions filed by the Respondent

**D.** Whether the Special Incentive Scheme (SIS) as per the provisions of the Tariff Orders of KERC had any **“CAP”** on the *entitlement /* consumption by the Appellant over and above the base units at a concessional Tariff of Rs 3.80 per kWh?

As per the terms and conditions of the **Special Incentive Scheme** The scheme is applicable to all HT 2(a) consumers in the State upon their request at the rate of 3.80 Per kWh excluding Tax for the consumption above the derived base consumption. The consumption over and above the base consumption fixed for a month is eligible for Special Incentive Scheme (SIS) tariff. The base period is defined as the past 12 months' consumption as proposed by KPTCL/ESCOMs. The base consumption had to be determined with reference to the consumption from **01.12.2002 to 30.11.2003** irrespective of the date of request by the consumer. The base consumption shall be the average of monthly billed energy supplied by ESCOMs during the base period. The Energy consumed under the special scheme if any, during the base period shall not be accounted for arriving at base consumption. **For new consumers**, the scheme was made available upon their completion of 12 calendar months. The base period and base consumption was calculated accordingly.

In respect of the eligible consumers who increase their contract demand on a permanent basis during the currency of the scheme, the existing base consumption had to be increased at a rate of **100 kWh/KVA** per month from the month in which additional contract demand has come into effect. The base monthly consumption of the Appellant has been fixed by the Respondent at 4,34,474 kWh from September, 2008 to March, 2009 and 5,85,474 from April, 2009 onwards, consequent to sanctioning additional Contract Demand of 1500 KVA (Increase from 1000 KVA to 25000 KVA) as per the submissions made by the Appellant and the Respondent. Referring to the Respondent BESCO's submission in its Tariff proposal for FY-09 while proposing for scrapping the Special Incentive Scheme, themselves have stated that **“there is no “CAP” on the additional units sought by the applicant and to be sanctioned under** “which has been mentioned in chapter-7 at page No-192 of the KERC Tariff order - FY-09.

***“There is no provision for putting a CAP on the consumption of the consumers above the base consumption to be eligible at incentive rate, as per the Special Incentive Scheme in the KERC Tariff Orders”.***

**E.** Whether the entitlement / allotment of energy (units) over and above the base consumption fixed by the respondent is as per the provisions of Tariff order or not? And whether the Respondent is empowered for fixing energy under the scheme?

The Respondents in their written submissions stated that BESCO allotted **45,000 kWh per month for four months from September -2008 to December -2008 and reduced the allotment to 21500 kWh per month for further period,** to the

Appellant under the SIS at concessional Tariff. Thus the Appellant has to pay only for such allotted consumption at concessional rate of Rs 3.80 per kWh and any consumption beyond the allotted units have been billed under normal Tariff. The reasons quoted by the Respondent for such fixation, in his submission are (i) BESCO incurred Rs 6082.93 Cores for the Power purchase including Transmission charges during FY-09 against KERC approved figure of Rs 5764.18 Cores. It further submitted that the allotted units have been further reduced to 21500 units per month for further period beyond December, 2008 since the Appellant has not even utilised the allotted units of 45000 units per month under the scheme between **September -2008 to December -2008** and Appellant has accepted the same without any protest.

- IX.** \* Further, it is seen that the Respondent BESCO has arbitrarily terminated the **Special Incentive Scheme** without the permission / consent/orders by the KERC which has been restored for the period from June, 2009 to November, 2009 as per the directives issued by the KERC. This clearly indicates that the Respondent BESCO acted arbitrarily to tamper with the provisions of the Tariff Orders, by putting a cap on the consumption under SIS over and above the base consumption fixed by the Respondents themselves Any changes or withdrawal of the scheme needs approval of KERC

\* The **arbitrary** action of the Respondent M/s BESCO in allotting the monthly energy to the consumers for entitlement

under **Special Incentive Scheme** without any such provisions in the Tariff orders of KERC **is found to be beyond its powers/orbit and not correct/ legally not tenable.**

**The following table testifies and makes clear the said facts**

<b>Statement of Month wise Units consumed &amp; Excess units for which SIS is not considered</b>							
Sl No	Month/ Year	Units Consumed	Base units	Units to be billed under SIS	Units Billed under SIS	Excess units for which SIS not applied in the billing	
1	*Sept-08	489840	437474	52366	45000	7366	
2	*Oct-08	447720	437474	10246	45000	0	
3	*Nov-08	439500	437474	2026	45000	0	
4	*Dec-08	544920	437474	107446	45000	62446	
5	*Jan-09	540710	437474	103236	45000	58236	
6	*Feb-09	425610	437474	-11864	45000		
7	*Mar-09	570660	437474	133186	45000	88186	
8	*April-09	783090	585474	197616	21500	176116	
9	*May-09	825720	585474	240246	21500	218746	
10	*Jun-09	1126230	585474	540756	21500	519256	
11	*Jul-09	816270	585474	230796	21500	209296	
12	*Aug-09	387030	585474	-198444	21500	0	
13	*Sep-09	963480	585474	378006	21500	356506	
14	*Oct-09	767760	585474	182286	21500	160786	
15	*Nov-09	1103760	585474	518286	21500	496786	
16	Total units for which the SIS not applied in Billing						2353726

**X. It is to be noted that the CGRF** while dismissing the petition of the Appellant mainly centered around the following reasons.

- a) The Appellant M/s Orient Bell Limited were silent and not challenged the action of BESCO regarding fixing of power entitlement over & above the base

units under the Special Incentive Scheme, at 45000 units per month and again reduced to 21500 units per month.

- b) The Appellant M/s Orient Bell Limited has approached Honourable High Court in writ petition No 31182/2009 only against the action of BESCO for discontinuation of the Special Incentive Scheme and not against the ceiling imposed on the eligible units under the scheme over & above the base consumption.
- c) The Appellant has never challenged the allotment of units and ceiling of monthly units over & above the base consumption previously and after a lapse of 3 years the Appellant is questioning the allotment of monthly units under the scheme and claiming the refund for excess billed amount.
- d) The BESCO was purchasing power at extra high cost and supplying at approved rate to the consumers under Special Incentive Scheme at lower cost.

**XI. The said views cannot be considered for the following reasons:**

- i. Not challenging the action of the respondent in allotting units by the Appellant cannot be treated as acceptance. It is not as per the provisions of Tariff order.
- ii. The CGRF has not taken into account and seen the arbitrary action taken by the Respondent BESCO, in fixing the monthly -



quota / entitlement under the Scheme to the Appellant without such provisions in the Tariff order of KERC.

- iii. It is not in the scope of CGRF's orbit to consider & examine, the financial implications of the Special Incentive Scheme, which will be considered by KERC while Tariff Fixation in the Tariff Orders.

### **ORDER**

**XII.** Hence, for the foregoing reasons, the appeal is allowed in terms of the following

a) BESCOM to refund the excess amount collected from the appellant for the period from September 2008 to November 2009 under Special Incentive Scheme.

b) The Appellant is at liberty to approach BESCOM regarding the payment of interest and BESCOM will examine such request and pass suitable orders in accordance with law within a period of 30 days from the date of this order

Sd/-

**B.N. Krishnaiah**  
Electricity ombudsman

To:

1. Sri M.G. Prabhakar, NO,79, 14<sup>th</sup> Cross, 2<sup>nd</sup> Phase, J.P.Nagar, Bangalore-560 078.
2. Sri. H.V. Devaraju, Advocate, No.24, A.S.V.N. Bhavan, K.G.Road, Bangalore-560 009.
3. The Chairperson, C.G.R.F., BESCO., Office of the Superintending Engineer(Ele)West Circle Office, site No.05, West of Chord Road, III Stage, Bhimajyothi HBCS Layout, next to Chord Hospital, Basaveswaranagar, Bangalore-560 079.
4. The Assistant Executive Engineer, ) O & M Sub Division, BESCO., Hoskote, Bangalore Rural District.
- 5.
6. The Managing Directors of all ESCOMS.

COPY TO: 1. PS to Hon'ble Chairman, KERC  
2. PS to Hon'ble Member (A), KERC  
3. PS to Hon'ble Member (M), KERC  
4. PS to Secretary, KERC.