

**Before the Ombudsman
Karnataka Electricity Regulatory Commission
Bangalore**

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-57/09/8094
Dated 20.04.2010**

M/s.Kudremukh Iron Ore Company Limited,
II Block, Koramangala,
BANGALORE-560034
(Represented by its Legal Counsel,
Smt.Subha Ananthi)

.. **Complainant**

Vs

1.Superintending Engineer(Ele)(C&RP),
Mangalore Electricity Supply Company (MESCOM)
Paradigm Plaza IV Floor,
A.B.Shetty Circle,
MANGALORE-
(Represented by its Legal Counsel,
Sri S.Sriranga)

2. Consumer Grievance Redressal Forum (CGRF)
MESCOM, Paradigm Plaza,
A.B.Shetty Circle,
MANGALORE

.. **Respondents**

I. This is a representation filed by the above named Complainant under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 not satisfied with the Order dated 09.12.2009 passed by the 2ND Respondent in file No. ^a 11A. < . , 1P1A/UÁ1P1A.P1E.1. ^a 11/14/09-10.

II. The brief facts of the case are as follows:

1. The Complainant is having two HT installations, RR No.KHTP-1 at Kudremukh site and RR No.HT 45 at Mangalore site. In order to woo the HT consumers to avail more power from the grid, the KPTCL and subsequently the ESCOMs introduced the special incentive scheme (SIS for short) approved by the KERC. KIOCL was availing this benefit for Kudremukh Unit RR No.KHTP-1 right from the inception of the scheme but discontinued pursuant to the directions issued by the Hon'ble Supreme Court for closure of mining operations w.e.f. 1.1.2006.
2. The MESCOM, as per provisions in the tariff order and directions from KERC, extended the benefit of SIS to the eligible consumers.
3. The Complainant applied to the 1st Respondent vide letters dated 11.4.2008 and 15.4.2008 for allotment of additional unit under the SIS for Mangalore plant RR No.HT 45. In response to the said letter, 1st Respondent vide its letter dated 15.5.2008 was pleased to allot additional units under the SIS effective from 1st May 2005
4. Subsequently, it was noticed by the Complainant that they were entitled to avail the benefit from October 2005 and requested to consider the same by addressing a letter dated 7.1.2009 to the 1st Respondent.
5. The 1st Respondent rejected the request of the Complainant vide its letter/order dated 16.2.2009 for allotment of additional units from October 2005, by interpreting the clause (20.10)(i) of the Tariff Order that the benefit of the scheme could be availed only upon request.
6. The Complainant made several correspondence with the 1st Respondent vide letters dated 21.2.2009 and 30.4.2009 requesting for allotment of additional units from October 2005.

Later, by a letter dated 21.5.2009, a request was made to extend the benefit of the SIS from July 2005 itself instead of October 2005 as wheeling

and banking agreement was short closed in June 2005. But the Complainant's grievance was not settled.

7. The Complainant was constrained to file a petition before KERC, Bangalore, under case No. OP 21/2009. KERC directed the Complainant to approach the 2nd Respondent.

8. The Complainant filed a complaint No.MESCOM/14/09-10 before the Second Respondent praying to direct the First Respondent to extend the benefit with effect from July 2005 and extend the benefit of RS.2,36,54,550/- with interest at 12% or alternatively direct the same to be adjusted in the monthly bills of the Complainant to the extent of principal and interest.

9. The Second Respondent after recording the statement of the Complainant as well as the First Respondent has passed an order dated 9.12.2009 rejecting the prayer of the Complainant.

10. Aggrieved by the orders of the Second Respondent, the Complainant has preferred this appeal petition before this Authority on the following grounds:

III. GROUNDS

1. The Second Respondent has failed to notice that the SIS automatically applies from December 2003 onwards.

2. The Second Respondent has failed to notice that under Clause 20.10(i) of the KERC order claiming the additional units **retrospectively is not barred and there is no time limit prescribed for claiming the benefit.**

3. The benefit of the scheme shall be extended to all the eligible HT 2(a) consumers **upon their request** without having any corresponding date of application.

4. The Second Respondent has failed to notice that for claiming the benefit under the SIS the minimum base consumption of power per month should be 430250 units at Clause 20.10(iii). The Complainant's monthly power consumption from July 2005 onwards exceeded the minimum base consumption as prescribed by the tariff order, thus the Complainant is entitled to avail the benefit of SIS from July 2005 onwards.

5. There is no application of mind and the order passed is bad in law.

Wherefore, the Complainant is forced to file this appeal complaint with the following prayer.

IV. PRAYER

- 1) Call for the records from the Second Respondent and quash the Order dated 9.12.2009 and consequently quash the order of the First Respondent dated 16.02.2009.
- 2) Direct the First Respondent to extend the benefit with effect from July 2005 and extend the benefit of RS.2,36,54,550/- with interest of 12% to the Complainant or alternatively direct the same to be adjusted in the monthly bills of the Complainant to the extent of principal and interest.
- 3) For such other orders as this Hon'ble Authority may be pleased to grant in the circumstance of the case.

V. Settlement by Agreement

Both the parties were informed to explore the possibilities of settlement by conciliation and mediation by this office letter No.OMB/M/G-71/09/7831 dated 18.02.2010. Smt.Subha Ananthi, Advocate, appeared on behalf of the Complainant and Sri S.Sriranga, Advocate, appeared on behalf of the 1st Respondent. They were heard on 30.03.2010. Before the statements were recorded, both the parties were reminded to follow the procedure of reconciliation as per law. It was learnt that

conciliation proceedings were conducted and the request of the Complainant was not accepted vide NO.SEE/(C&RP)/EE(HVCM)/AO(comm1)/39952-59 Hence, it was decided to pass an award. The statements were recorded. Later, the Complainant's Advocate filed the reply arguments to the statement of the Advocate for the 1st Respondent.

VI. Discussion and Analysis

It is worthwhile to analyse the arguments advanced by both the Counsels.

A. The important points brought out by the learned Counsel for the Respondent are as follows:

1. In the present case, it is an admitted fact that an application has been made seeking benefit of the scheme on 11.4.2008. In fact, the consumer has been given the benefit of scheme from 1.5.2008. The exercise of determining the base units as stipulated in para 20.10(iii) has been done fixing base units as 4,30,250. The consumer has availed this benefit.

2. It is important to note that even in the year 2008, when the request was made to provide benefit of the scheme, the consumer has rightly asked for prospective application of the scheme.

3. It is clear from the same that the present request which is the genesis for the dispute made on 7.1.2009 is an afterthought and the consumer has now sought benefit of scheme from the year July 2005.

It is submitted that in the facts of the present case, it is not possible nor is it permissible to provide the benefit of scheme retrospectively for various reasons.

4. It is to be noted that the Licensee places before the Commission details of power utilization as well as revenues earned by the Licensee by sale of power. It also projects expected revenue from charges which are considered by the Commission from time to time while fixing tariff.

5. After the Tariff Order Amendment in 2003, the Commission has passed successive Tariff Orders upto December 2009. The revenues of the Licensees have been factored in the tariff exercise.

6. The Licensee has also finalized its Balance Sheet etc. and placed the same before various authorities.

7. Though the option was available, by making a request, the consumer has for reasons best known to itself failed to avail the same earlier to April 2008.

8. It is also admitted that consumer has paid regularly for the energy consumed and the same has been factored in the revenues of the Licensee till April 2008.

9. The consumer has now come up with a huge claim to apply the scheme retrospectively according to the consumer itself would have a revenue burden of Rs.2,36,54,550/-.

10. Any order which allows such retrospective application of the scheme would cause huge revenue burden on the Licensee and the same is to be avoided as it would not be in public interest.

11. It is settled law that all schemes or orders issued are always to be construed as prospective unless they are specifically made retrospective. In the case on hand, a reading of the Amended Tariff Order makes it clear that the scheme is prospective and to be availed upon the request of the consumer. The Commission has issued directions with regard to fixing of base units. Only with regard to fixing of base units, irrespective of date of application, Licensee is directed to calculate base units

consumed in a particular period. **No part of the Tariff Order regarding incentive provides for retrospective operation of the scheme as contended by the consumer.**

12. It is an admitted fact that there was no request to implement the scheme before 11.4.2008. The facts narrated by the consumer make it clear that the consumer was very much aware of existence of the scheme as it had availed the scheme in respect of another installation belonging to the same consumer bearing RR No.KHTP-1.

13. Therefore, it has to be construed that the consumer took a conscious and informed decision not to avail the benefit of scheme and has now sought to avail the same retrospectively as a clear afterthought.

14. It is also important to note that the benefit can only be prospective as the Licensee is required to plan regarding the supply of electricity taking various factors into consideration. One such factor is the cost of procurement of energy and the resultant revenue that will be generated by sale of power being procured by the Licensee. For this exercise, the Licensee is required to know the number of consumers who have availed benefit of concession scheme which would, in turn, have an effect on the revenue being generated by sale of electricity.

15. Retrospective operation, as sought by the consumer, would act harshly on the Licensee and would result in revenue loss which is impermissible.

16. From the foregoing, it is clear that the benefit of scheme can only be after a request to the said effect is made by the consumer and it can never be retrospective. Therefore, the present complaint deserves rejection.

B. Per contra, the Advocate for the Complainant counter argues as follows:

1. The Tariff Amendment Order only states that the benefit of the scheme shall be extended to all the eligible HT-2(a) consumers **upon their request**. Though initially the request was made vide letters dated 11.4.2008 at page No.29 to allocate 19MU, 20 MU and 20 MU for the months of April 2008, May 2008 and June 2008, subsequently on 15.4.2008 at page No.37 request was made to read the same as 1.9 MU, 2.0 MU and 2.0 MU for the months of April 2008, May 2008 and June 2008 respectively. Similarly, by letter dated 21.5.2009 at Page No.43 request was made to extend the benefit as per Clause 20.10(i) of the Tariff Order 2003 from July 2005 onwards.
2. As per Clause 20.10(i) no cut-off date/limitation is given for making the request and, therefore, the Complainant's request ought to have been considered by MESCOM Limited favourably in accordance with the Tariff Amendment Order, 2003.
3. The Respondents while stating that benefit cannot be claimed retrospectively did not support the same by any clause in the Tariff Amendment Order and it is pertinent to note that the benefit claimed is during the subsistence of the SIS and not for any period earlier to the scheme. In any event, the request made by the Complainant on 21.5.2009 is also during the subsistence of the SIS.
4. The argument of the Respondents that revenues have already accrued to the licensee and if the benefit is given, huge financial burden will be cast on them is not a valid ground for denying the benefit/relief to the Complainant.
5. The further argument of the Respondents that it is not in the public interest to grant relief cannot be accepted as the Complainant is also a Public Sector Undertaking.
6. The further argument of the Respondents that all orders have to be construed as prospective unless made retrospective is not warranted as the Tariff Amendment Order vide Clause 21 clearly states that the special incentive scheme to HT consumers shall take effect after due publication by the licensees as required under Section 27(9) of the KER Act, 1999. It can be seen from the order dated 27.7.2004 at Page 28 of the Appeal that the Order came into effect from 1.4.2004.

7. The difficulties of the MESCOM to make required planning in regard to power adjustment also does not hold water as the complainant has sought that the benefit liable to be granted from July 2005 can be set off against future dues payable by the Complainant Company which makes it easy to make necessary adjustments.

8. In that view of the matter, the request made by the complainant is required to be considered and the benefit should be granted as claimed from July 2005.

VII. Findings

Based on the facts and the arguments advanced, the following issues emerge:

1. Whether the Complainant was unaware of the procedure to be followed in availing the benefit of the SIS?
2. Whether the Complainant resorted to the procedure laid down to avail the SIS?
3. Whether the Respondent Licensee also resorted to the procedure laid to extend the benefit of the SIS?
4. Whether the Complainant's demand that the benefit be extended from July 2005 is in order?
5. Whether the order passed by the 2nd Respondent needs any intervention?

Issue 1:

The Complainant has stated at para 4 of appeal Memo submitted on 7.1.2010 that the Complainant is having two H.T. installations – RR No.KHTP-1 and RR No.HT 45. **Right from the inception of the SIS, KIOCL is availing the benefit for Kudremukh unit RR No.KHTP-1.** It means that the complainant was fully aware of the procedure to be followed in availing the benefit of the SIS.

Wherefore, this issue has to be held in the negative.

Issue 2:

The Complainant as per the provisions of Clause 20.10(i) of Amended Tariff Order 2003, **which reads as "The scheme is applicable to all HT 2(a) consumers in the State subject to the eligibility mentioned below. The benefit of the scheme shall be extended to all eligible HT2 (a) consumers upon their request,"** made a request on 11.4.2008 to allocate 29 MU, 20 MU and 20 MU for the months of April 2008, May 2008 and June 2008 and subsequently made corrections by its letter dated 15.4.2008 as 1.9 MU, 2.0 MU and 2.0 MU for the months of April 2008, May 2008 and June 2008. This request was made prospectively as per the procedure laid down by the Clause stated above.

Hence, this issue has to be held in the positive.

Issue 3:

No sooner the request was received, the Respondent Licensee has extended the benefit from 1.5.2008 for the months of May 2008 and June 2008. The request was made on 11th and 15th April 2008 and the benefit was extended from the next meter reading date that was 1.5.2008. This action is as per the provisions of Clause 20.10 (i) and the effect is given prospectively.

Hence, this issue has to be held in the positive.

Issue 4:

Knowing fully well the procedure and the provisions of the Tariff Order, the Complainant made a request on 11th and 15th April 2008 demanding the benefit of SIS prospectively for April 2008, May 2008 and June 2008 and availed the benefit from 1.5.2008. **As an afterthought, they made a request on 7.1.2009 and 30.4.2009 to extend the benefit of the SIS from October 2005 retrospectively and subsequently demanded the benefit of the SIS from July 2005 retrospectively by a letter dated 21.5.2009.** The learned Counsel for the Respondent in his arguments cited above at para VI(A), 12 & 13 has made it clear that no request was made earlier to 11.4.2008, even though the Complainant was

aware of benefit of such scheme. Therefore, it has to be construed that the consumer took conscious and informed decision not to avail the benefit of the scheme and has now sought to avail the same retrospectively as a clear afterthought.

The benefit ought to be extended on request. The Respondent's Counsel argued that a request was necessary to plan power procurement taking various factors into consideration. This contention cannot be denied as the request made can be granted prospectively and, therefore, the demand of the Complainant to extend the benefit of the SIS from July 2005 retrospectively is not in order.

Wherefore this issue has to be held in the negative.

Issue 5:

From the aforesaid reasons, this Authority does not find any fault in the findings and decision arrived at by the 2nd Respondent and, hence, concludes that its order needs no intervention.

Hence, this issue has to be held in the negative.

Having regard to the facts, analysis and findings, the following order is passed:

VIII. ORDER

The Order No. ^a 11A. < . 3 PIA/UA@PA.P/E. < . ^a 14/09-10 dated 09.12.2009 passed by the 2nd Respondent is upheld and the prayer of the Complainant is rejected.

(S.D.Ukkali)
Ombudsman

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2. Consumer Grievance Redressal Forum, MESCOM, Paradigm Plaza, A.B.Shetty Circle, Mangalore.

3. The Superintending Engineer(Elc)(C&RP), MESCOM, Paradigm Plaza IV Floor. A.B.Shetty Circle, Mangalore.

4. The Managing Director, MESCOM, Paradigm Plaza, A.B.Shetty Circle, Mangalore.

6. PS to Hon.Chairman, KERC

7. PS to Hon.Member(H), KERC

8. PS to Hon.Member(S), KERC

9. PS to Secretary, KERC

10. Director(Tariff)

11. Deputy Director(Legal)

12, OCA