

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

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-57/09/7978
Dated 26.03.2010**

M/s. Maris Spinners Limited,
Kattemalalavadi-571134,
Hunsur,
Mysore District
(Represented by Sri M.G.Prabhakar
Authorised Representative)

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Complainant

Vs

1. Chamundeswari Electricity Supply Corporation Ltd.(CESC)
Represented by its
Assistant Executive Engineer,
O & M Sub Division,
CESC, Hunsur,
Mysore District.

2. Consumer Grievance Redressal Forum (CGRF),
Chamundeswari Electricity Supply Corporation Ltd.,
No.1633, Sri Annapoorneshwari Complex,
1st Cross, Anikethan Road (North)
P.T.Block, Kuvempunagar,
MYSORE-570023

I. This is a representation filed by the above named Complainant under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the letter dated 29.09.2009 passed by the 2nd Respondent in letter No. $\text{a} \text{AAEA}(\ll)/1 \text{fDgiJ}\text{¥i}/\gg \text{C}_\text{,} \text{100-106}$.

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

The Complainant has availed High Tension electrical connection bearing R.R.No.HT-6 situated at Hunsur with a contract demand of 1590 KVA. The Company availed special incentive schemes as approved in the Tariff Order of the Hon. KERC. The Respondent Licensee while issuing the bill based on this Scheme is alleged to have wrongly claimed demand charges for 120% of the contract demand stated to be contrary to the general terms and conditions of tariff issued by the Hon. KERC. He has quoted the relevant provisions issued by Hon. KERC that **"the billing demand during unrestricted period shall be the maximum demand recorded during the month or 75% of the contract demand whichever is high."** Completely opposed to these above provisions, the Respondent Licensee is stated to have charged excess towards the demand charges and has collected Rs.1,38,873. The Complainant filed a representation before the 1st Respondent vide letter No.14 dated 6.4.2009. It was confirmed by the 1st Respondent on 23.4.2009 that the claim made was correct. Thus, the grievance was not redressed by the 1st Respondent. A complaint was made before the 2nd Respondent. This Forum neither conducted any proceedings nor gave an opportunity to the Complainant of being heard in the matter. It is alleged that a letter purported to be the order was issued on the letter head of the 2nd Respondent dated 29.9.2009 signed by two Members in their capacity as General Manager (Tech) and Chief Engineer(Ele), no reference was made to the 3rd Member who is a Consumers' Representative. It is further alleged that in the last para of the said letter, a reference is made that **"after verification of the representation along with other documents with it, it was felt that there was no need to hold a meeting of the consumer and the Member and to hear the matter."**

The Complainant stated that this is a gross violation of the relevant Regulations and also the provisions under Section 42(5) of the Electricity Act 2003 and that he was relying upon the judgement of Appellate Tribunal for Electricity in the matter of BSES Rajdhani Power Limited Vs Delhi Regulatory Commission and another in appeal No.180 of 2008 decided on 30.3.2009.

The Complainant has further submitted that the violations on the part of the Respondent Licensee fall within the purview of the Hon. KERC in whose jurisdiction this

dispute squarely falls in the event of the Respondent Licensee not willing to admit his claim. **He has further submitted that the Respondent Licensee also in the beginning charged at the actual billing demand for the periods of June 08 to December 08 at 75% of the contract demand and subsequently, for some unknown reason, has raised a short claim for a sum of Rs.1,04,066 vide letter dated 3.1.2009 towards 120% of the contract demand.** This action was contrary to the stand the Respondent Licensee took earlier in charging 75% of the 100% of the contract demand.

He has further stated that the billing done by the Respondent Licensee is totally opposed to the procedures adopted by other ESCOMs, namely, BESCO, GESCOM and has produced the bills of the above Companies as evidence that demand charges could be restricted only to 75% of the contract demand or the maximum demand indicated in the meter. He has submitted that his Company has not exceeded the contract demand of 1590 KVA at any time during the avilment of special incentive scheme and, therefore, the Complainant prayed for the following relief.

III.

P R A Y E R

1. Quash the order passed by the 2nd Respondent.
2. Refund the excess amount collected with interest.
3. Provide such other reliefs as may be felt necessary

IV. Settlement by Agreement

Both the parties were offered to explore the possibilities of settlement by conciliation and mediation vide this office letter No.OMB/B/G-69/09/7311 dated 03.11.2009. The parties were heard on 24.12. 2009. During the hearings, efforts were made to reach an agreement based on conciliation and mediation. However, no accord could be reached between the Complainant and the 1st Respondent and, therefore, this Authority decided to pass an award after hearing.

Shri M.G.Prabhakar, appearing on behalf of the Complainant, during the deposition on 24.02.2010, has stated that the interpretation employed by the Respondent Licensee is incorrect for the reason that the intention of Hon. KERC at para 11.15 (V) of the Tariff Order 2005 relates to penalty exceeding the maximum demand and is not to be confused with the minimum demand that has to be raised on the consumer. He has contended that the Complainant has not even exceeded the contract demand of 1590 KVA in any of the months under the present dispute. He has argued that in case the Complainant had contracted more than 120% of 1590 KVA, then the interpretation rendered by the Respondent Licensee could have been considered by this Authority. **He has further stated that the Complainant did not ask for any enhancement in the contract demand during the periods for which special incentive scheme have been availed.**

Quoting the operative portion of the Tariff Order 2005 at Annexure 10 of the Tariff Order, he submits that it is incorrect to interpret the meaning as sought to be done by the Respondent Licensee and has requested to consider the prayer made by the Complainant and grant relief/s as prayed.

V. Contention of the 1st Respondent:

The 1st Respondent vide his submission dated 26.10.2009 has clarified that as per para 2 of the letter No.3478 dated 16.11.2007 issued by the Hon.KERC, the demand claimed is in order. He has reiterated the above stand further in the proceedings of AEE dated 04.02.2010.

During his deposition before this Authority on 24.02.2010, the 1st Respondent has contended that there was a provision to increase the contract demand by 20% for the consumers availing the scheme during the currency of the special incentive scheme. The minimum billing demand would be the maximum demand recorded for the month or 75% of 120% of the contract demand whichever is higher and that this policy is uniformly incorporated throughout the CESC area. The same policy has been adopted in the case of the Complainant also.

As regards exploring the possibilities of conciliation and mediation, after due discussions with his superiors, he has stated that the CESC Corporate office has directed him to take action as per the directions of KERC regulations. He has declined to comment on the method adopted by other ESCOMs like Bangalore Electricity Supply Company (BESCOM), Gulbarga Electricity Supply Company (GESCOM) and that his Company is following the method based on the guidelines issued by the Hon. KERC and that there is no need to change the system at present.

VI. Discussions and Analysis:

This scheme was meant to woo back the industrial consumers to the grid who were resorting to captive generation. The scheme was introduced with certain conditions taking into consideration the financial effect etc. on the distribution licensees. There were several bottlenecks in implementation of this scheme. The Hon. KERC issued clarifications.

Out of the clarifications issued by the Hon. KERC on the Special Incentive Scheme, the following two are important to be noted:

1. Clarification dated 23.02.2004 issued by the Secretary, Hon. KERC, Bangalore to the MD, GESCOM, marking copy to MDs of other Licensees in the State and is reproduced here below:

"Please refer to the above letter seeking clarification the Special Incentive Scheme, para 20.10(v) of Tariff Amendment Order provides that the consumers can avail the additional energy, without formally requesting for enhancing contract demand upto 20% of the contract demand. I am directed by the Commission to clarify that if the consumers can avail the additional energy without enhancing the contract demand they shall be permitted to do so and be allowed to continue at the same level of contract demand."

2. Clarification dated 16.11.2007 addressed to the Complainant and copy marked to MD, CESC, Mysore by the Secretary, Hon.KERC, Bangalore.

Paras 2 and 3 are reproduced here below:

"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 120% of the sanctioned contract demand. The minimum billing demand shall also be enhanced accordingly.

As per the above condition, the minimum billing will also be enhanced for those who opt for the special incentive scheme i.e. the minimum billing demand would be the maximum demand recorded for the month or 75% of 120% of the CD, whichever is higher. Hence, the action of CESC in increasing the billing demand is in compliance with the Commission's order."

The correct interpretation and implementation by the Respondent Licensee is essential.

VII. Findings

The scheme was introduced to encourage usage of additional energy at concessional rates and intention was not to claim certain additional charges.

- a) In the instant case, the Complainant neither made any request for increase in contract demand nor exceeded the contract demand. **As per clarificaton (1) at para VI above, the Complainant is permitted to continue at the same level of contract demand.** Thus, though he has availed the Special Incentive Scheme, his recorded demand has remained within the contract demand and is allowed to continue the same level of contract demand.
- b) The Respondent Licensee initially has rightly claimed the demand charges based on 75% of the contract demand, but has later due to confusion has revised the claims.

- c) The claims made at 75% of 120% of contract demand is held not justifiable and needs to be refunded and adjusted in future bills.

Having regard to the facts and discussions and the findings, the following order is passed.

VIII.

ORDER

1. The order No. ^aÄEA(«)/1fDgiJ¥i/»C, #100-106 dated 29.09.2009 passed by the 2nd Respondent is set aside.
2. The excess amount collected be refunded by way of adjustment against the future bills of this installation bearing R.R. No.HT-6.

(S.D.Ukkali)
Ombudsman

- 1.M/s.Maris Spinners Limited, Kattemalalavadi-571134, Hunsur, Mysore District.
2. Consumer Grievance Redressal Forum, CESC, NO.1633, Sri Annapoorneshwari Complex, 1st Cross, Anikethan Road (North) P.T.Block, Kuvempunagar, Mysore-23
3. The Asst.Executive Engineer(Ele), O & M Sub Division, CESC, Hunsur, Mysore District.
4. The Managing Director, CESC, 927, L.J.Avenue Commercial Complex, New Kantharaj Urs Road, Mysore-570009
5. PS to Hon.Chairman, KERC
6. PS to Hon.Member(H), KERC
7. PS to Hon.Member(S), KERC
8. PS to Secretary, KERC
9. Director(Tariff)
10. Deputy Director(Legal)
- 11, OCA

