

Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore

Present: B.R.Jayaramaraje Urs, IAS (Retd.)

Electricity Ombudsman

Case No.OMB/B/G-120/2011/281

Dated 15.02.2012

BETWEEN

M/s.National Centre for Biological Sciences,
 GKVK Campus,
 Bellary Road,
 Bangalore-560065

**(Represented by Sri M.A.Delvi, Advocate -
 Authorised Representative)**

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
 C-7 Sub Division,
 BESCOM,
 Yelahanka,
BANGALORE-560064

2. The Chairperson,
 Consumer Grievance Redressal Forum,
 B.E.S.C.O.M. Corporate Office,
 K.R.Circle,
BANGALORE-560001

.. **Respondents**

1. This is an appeal under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum Bangalore (hereinafter referred to as the 2nd Respondent) vide No. CGRF/44/2010-11/322-26 dated 30.09.2011 in respect of the Appellant's grievance relating to levying Fixed Charges of Rs.1,95,47,880/- by the Asst.Executive Engineer, C-7 Sub Division, BESCOM, (hereinafter referred to as the 1st Respondent) for unavailed portion of sanctioned power and refusal of the 2nd Respondent to issue any directions to the 1st Respondent not to collect the fixed

charges of Rs.1,95,47,880/-. Aggrieved by the 2nd Respondent's order (the impugned order), the Appellant has submitted its case as under:

2. National Centre for Biological Sciences Bangalore is a Government of India funded organisation (herein after called NCBS). This organisation comes under the Department Of Atomic Energy, Government of India. NCBS applied for 2000 K.V.A power with the 1st Respondent in 1996 to be availed in three phases in following time frame:

- | | |
|----------------------|------------------------------------|
| a) From January 1997 | 500 K.V.A |
| b) From January 1998 | 1000 K.V.A (Additional 500 K.V .A) |
| c) From January 2000 | 2000 K.V.A (Additional 1000 K.V.A) |

3. On 14.08.1998, the Appellant availed the contract demand of 500 K.V.A. and later, based on the requirement, availed 300 K.V.A. in the year 2002. The Appellant could not avail the sanctioned load of 2000 K.V.A. power as per the time schedule indicated in the Sanction letter as it had to draw power line from Yelahanka Sub-Station from a distance of 5 KMs and 1 KM of 11 K.V.A. from the proposed 66 K.V.A. Sub-Station at R.M.Layout. The Appellant entered into a fresh agreement when 300 K.V.A. power was sanctioned in 2002. When fresh agreement was entered, earlier agreement dated 14.08.1998 became defunct and of no consequence. Under Clause 14 of the Agreement, sanctioned demand and contract demand are different and they are incomparable. Though the 1st Respondent had sanctioned 2000 K.V.A. power, the Appellant had availed only 500 K.V.A. and, hence, not liable to pay Augmentation Charges. In spite of this, the 1st Respondent collected Rs.5.00 lakhs as Augmentation Charges as per the contract demand from the Appellant. As per Clause 8.08 of K.E.B. Electricity Supply Regulations, 1988, if the H.T. Consumer has paid towards line extension, he is not liable to pay Line Minimum Charges. When the Appellant applied for additional power of 400 K.V.A in 2009, the 1st Respondent did not respond for one year and all of a sudden in 2010, it came out with a demand for Rs.1,95,47,880/- as unspecified short claim. As per clause 29.03 of conditions of Supply of electricity of Distribution Licensees in the State of Karnataka, the Licensee is mandated to issue 15 days notice to the consumer calling for objection whenever

it makes supplementary claim. In the present case such a procedure has not been followed.

4. As per the original power sanction letter issued by the Chief Engineer, Electricity (General) dated 13.01.1997, the Appellant was given opportunity to avail power in a phased manner. Contrary to this, the 1st Respondent took a stand that the Appellant was liable to pay Fixed Charges for the entire sanctioned power of 2000 K.V.A including unserviced portion based on the Audit report. Fixed Charges can be levied for the serviced portion and not for the unserviced portion and, hence, prayed this authority to issue directions to the 1st Respondent not to collect Fixed Charges for the unserviced portion of sanctioned power.

5. The 1st Respondent's comments were called vide letter No OMB/B/G-120/2011/11111 dated 24.10.2011. The 1st Respondent furnished his comments vide (1) letter ಸಕಾವಿಇ(ಎ)ಸ-ಲೈಯಲಹಂಕ/4968-72 dated 09.11.2011 and (2) AEE(E)/AAO/SA/A (HT)/YNK/6824 dated 09.01.2012.

6. In his comments, the 1st Respondent submitted that the Appellant had been sanctioned 2000 K.V.A power by the Chief Engineer (General), K.E.B vide letter No. T/COM.2/AEE-4/13567 dated 13.01.1997 under the self-execution scheme as per the request of the Appellant under Clause 3.6.7 of E.S.D Code and, hence, the augmentation charges collected was in order. The Appellant's argument that it was ready to avail only 500 K.V.A power initially and the balance quantity in a phased manner and 2000 K.V.A was just a future plan of consideration could not be considered because the Test certificate of transformers installed in the Appellant's premises and the Electrical Inspectorate report revealed that the Appellant had installed 2 numbers of 1500 K.V.A transformers in the year 1998 itself and this clarified that the actual requirement of the Appellant was 2000 K.V.A.

7. Further, the 1st Respondent submitted that as per the power sanction letter issued by the Chief Engineer (General), 11 K.V.A extension work from the station was to be carried out by the consumer under Self Execution Scheme. The Appellant,

after the completion of the work, approached the 1st Respondent for service of the installation with all the documents. The 1st Respondent serviced the installation after executing a joint agreement. Joint Agreement provided the following time frame for the Appellant to avail 2000 K.V.A power.

From August 1998 the contract Demand as 500 K.V.A.

From August 1999 the contract Demand as 1000 K.V.A

From August 2000 and thereafter the contract Demand as 2000 K.V.A

8. The 1st Respondent raised a demand for Rs.1,95,47,880/- as per the Contract Demand which had not been done earlier. In 2002, the Appellant requested for additional load of 300 K.V.A to the existing load of 500 K.V.A (on 20.05.2002) and the Appellant stated that he had executed a fresh agreement during the service of additional load of 300 K.V.A on 01.12.2002. Legally speaking, the first agreement executed on 14.08.1998 had not only been sufficient to service the additional load of 300 K.V.A but also the entire Contract Demand of 2000 K.V.A. Hence, the purported Agreement which had been executed second time on 01.12.2002 had not been valid. This Agreement had neither been required nor signed by the 1st Respondent. As per Clause 14 & 15 of the Agreement, the fresh power agreement had to be entered into by the Appellant only when it desired to increase the contract demand. In view of this, the 1st Respondent was justified in raising the demand for Rs.1,95,47,880/-. Further, the 1st Respondent at no point of time refused supply of power as alleged by the Appellant as the 1st Respondent had collected necessary infrastructure and augmentation charges from the Appellant. Hence, prayed this Authority to dismiss the appeal.

9. The case was taken up for hearing on 28.11.2011 and arguments got concluded on 03.02.2012. On behalf of the Appellant, Advocate Shri M.A Delvi appeared and put forth his arguments. On behalf of the 1st Respondent Asst. Executive Engineer (Ele), C-7 Sub-Division appeared and put forth his arguments.

10. The Appellant's Advocate, reiterating the submissions made in the appeal memo, argued that the 1st Respondent at the time of executing fresh agreement on 01.12.2002 should have demanded the Appellant to avail the balance power as per the original sanction letter issued by the Chief Engineer (General) K.E.B. When the Appellant made an application for sanction of additional power of 400 K.V.A on 19.06.2009, K.E.B instead of sanctioning power, sat on the proposal for one year and after a lapse of one year, served notice for payment of Rs.1,95,47,880/- as an audit short claim, pointing that the entries made in the defunct agreement dated 14.08.1998 had no validity nor legally enforceable.

11. The Advocate for the Appellant further submitted that a case had been made out by the 1st Respondent that availing additional power entailed Fixed Charges regardless of the Appellant availed power or not. Fixed Charges could not be levied for the unserved load. Mere sanction of power and incorporating sanction in the agreement did not warrant levy of fixed charges. He contended that Fixed Charges were collected only on servicing of load and not on the basis of an adhesion contract. Fixed Charges were always connected with the serviced load and there was no provision to levy any fixed charges on a load not serviced, although agreed to avail the same at a future date. Even in the agreement entered into, every component of the future demand was shown as a separate contract demand. Contract demand means load which was availed and serviced and not just sanctioned.

12. Arguing on the agreement, the Advocate for the Appellant submitted that on 30.08.2000, when the Appellant approached the 1st Respondent for additional load of 300 K.V.A, the Appellant had been advised to:

- a) Execute an agreement in the prescribed form.
- b) Produce necessary license
- c) Submit contractor's completion/test report in duplicate showing details of machinery/ make / capacity/ lay out plan etc
- d) Produce the approval of the installation issued by the Electrical Inspectorate

Accordingly, the Appellant complied with the said requirements and executed a fresh agreement wherein once again the Appellant's future power requirement was re-phased in the following manner:

- a) December 2002 to December 2004 - 800 K.V.A (serviced one)
- b) December 2004 to December 2005 - 1000 K.V.A
- c) December 2005 - 2000 K.V.A.

13. Second agreement was signed and filed with BESCO by the Appellant at the time of availing additional 300 K.V.A power. This became an agreement. Sometimes, the authorised signatories of the company first obtain the signature of the consumer on the agreement and lodge such agreements in their office without putting their signature for an indefinite period. This did not mean the agreement had no validity.

14. In view of the fresh agreement, the earlier agreement executed on 14.08.1998 had become defunct and also could be construed that there was no justification to interpret that just showing intention of availing power supply entailed any financial implications. It was apparent that there was no provision under K.E.B. Electricity Supply Regulations, 1988 or any other law justifying such spurious claims.

15. The Advocate for the Appellant added that at this stage, the 1st Respondent ought to have notified to the Appellant that he had been liable to pay the so called minimum charges and as per power sanction letter, the Appellant was to avail power in a phased manner based on the requirement by observing the required formalities such as filing of contractor's completion Report, approval of the electrical inspectorate and any other requirement pointed out by the licensee. With regard to sanction of additional requirement filed during September, 2009, the licensee had shown deficiency in service and hence it was liable to pay penalty as prescribed under Section 42 of the Electricity Act, 2003.

Hence, prayed this authority to set aside the impugned orders of the Forum and to issue directions to the 1st Respondent not to collect Fixed Charges.

17. The 1st respondent, countering the arguments of the Appellant, averred that the Appellant applied for 2000 K.V.A power in 1995 and the Appellant indicated in his application that he would avail power in the following manner:

- a) By 1995 December 90 K.V.A
- b) By 1997 January 500 K.V.A (H.T)
- c) By 1998 July 1000 K.V.A (H.T)

been on account of the supplier. It had been on account of the Appellant. As per the original sanction, whether the Appellant availed the sanctioned power as per time schedule or not, K.E.B had to levy fixed charges. The Appellant claimed that he had been exempted from payment of Augmentation charges under Clause 7.03 & 41.2 of K.E.B.Electricity Supply Regulations, 1988 (amended) on the ground that the contract demand had been for 500 K.V.A, but he had not referred to the original application, sanction order and agreement. The K.E.B had taken the actual power requirement of the consumer and accordingly had sanctioned power. The Appellant was liable to pay fixed charges based on the sanctioned power. In the case of the Appellant, the sanctioned power was 2000 K.V.A. K.E.B had powers to levy Fixed Charges as per the original sanction letter, original time schedule and original agreement. As per K.E.B. Electricity Supply Regulations 1988, the consumer and the department could enter into fresh agreement only after the original demand for power had been met. In the present case, the second agreement had been proposed by the Appellant in 2002 and even the draft agreement had been sent to the supply company, but the supply company had not signed the agreement. Hence, it could be construed that the Department had entered into only one agreement in the year 1998 and hence the contract demand was only for 2000 K.V.A.

20. The 1st Respondent maintained that the Appellant when approached BESCO on 19.06.2009 for supply of 400 K.V.A power, it informed the Appellant that it had already sanctioned 2000 K.V.A power and hence, further sanction had not been required. Further, BESCO made a short claim for Rs.1,95,47,880/- towards sanction of 2000 K.V.A dated 28.07.2010. In response to this short claim, the Appellant replied that it had not been able to pay Rs.1,95,47,880/- towards short claims and asserted that it would challenge such short claims before the 2nd Respondent. In view of the above, the 1st Respondent prayed this authority to uphold the impugned orders and to dismiss the appeal.

21. Both parties were informed vide letter No.OMB/B/G-120/2011/11483 dated 28.12.2011 regarding availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and & Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However,

both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

22. From the above rival contentions, the issue that emerges for our consideration is:

“Whether the Licensee’s short claims for Rs.1,95,47,880/- towards fixed charges on the Appellant is justified when the licensee defaults on servicing the balance quantity of power in the second and third phase respectively?”

23. In order to answer this question, we will have to examine the procedure laid down for availing permanent power supply under Clause 4 of K.E.B Electricity Supply Regulations, 1988. As per this Clause, the prospective consumer who intends to avail himself of the power supply had to apply for power supply in the prescribed form to the licensee along with the prescribed fee. The Licensee would conduct spot inspection jointly with the applicant/ contractor/supervisor to examine the feasibility. After satisfying the feasibility aspects, the licensee collected Meter Security Deposits, Supervision charges and also Contractor’s Completion cum Test Report and Electrical Inspectorate’s report. In case the above requirements were not complied within three months from the date of communication of power sanction, the sanction of power, as well as the registration would stand cancelled. The licensee would carry out its part of work only after the Appellant complied with the above requirements.

24. Further clause 4.11 states that **“normally, power supply will be arranged within three months of the compliance of the above requirements. The servicing will generally be done in the order of priority of receipt of completion report in respect of each category”**

25. Clause 4.12 says that **“after the Board’s portion of the work is completed, the applicant will be intimated to avail himself of the power supply within thirty days of the intimation”**

26. Clause 4.13 speaks about levying of fixed charges which says **“in case power supply is not availed of within thirty days of the intimation as stated above, the installation will be deemed as serviced on the date of expiry of the said 30 days period and the consumer is liable for payment of the required minimum charges from that date (Fixed Charges).”**

27. In the present case, K.E.B had sanctioned 2000 K.V.A power in favour of the Appellant in the year 1997. The sanction provided for utilization of power in three phases. The Appellant was to avail 500 K.V.A in 1997 and the balance in the subsequent two years in the order of 500 K.V.A and 1000 K.V.A respectively. It can be seen from Karnataka Electricity Board/ Wiring Contractor's Completion Test Report that the licensee had commenced the service on 14.08.1998 which carried a connected load of 427.75 K.W. The report also discloses that the Licensee, the Appellant's Authorised Engineer and Electrical contractor attested their signatures on the report which signifies that the licensee had intimated the Appellant of the commencement of the power supply. Intimation to the Appellant regarding commencement of the power is a pre-requisite for levy and collection of Fixed Charges regardless of the Consumer used the power or not.

28. In the instant case, the Appellant had not come forward to avail the second instalment of power in the year 1998 and even the licensee had not initiated the process on the due dates to service the balance quantum of 500 K.V.A power in the year 1998 and 1000 K.V.A power in the year 2000 respectively.

29. Further, the Appellant applied for sanction of 300 K.V.A power supply in 2002 and he claims that after sanction, he entered into a fresh agreement with the licensee and hence the earlier agreement becomes defunct. The licensee claims that it has not signed the agreement. In spite of not signing the agreement, the licensee is found to have serviced the installation with 300 K.V.A power without asking any questions regarding the earlier sanction of 2000 K.V.A in the year 1997 by the Chief Engineer (General) and non-availment of such power on the due dates by the Appellant. This shows that there is no mechanism put in place in the office of the Licensee to service the installation on due dates in phased supplies.

30. Again in 2009, the Appellant approached the Licensee for sanction of 400 K.V.A power and this time around Appellant avers that instead of sanctioning power, the Licensee sat on the proposal for an year and after an year served a demand notice for Rs.1,95,47,880/- based on the internal Audit report, terming it as Audit short claim. This goes to show that the Licensee has failed to see the original sanction letter issued by the Chief Engineer (General) and Agreement for 13 years and the licensee came to know of such a sanction only because of internal audit

report issued in the year 2010. It is true that the Licensee has sanctioned 2000 K.V.A power to the Appellant to be availed in a phased manner. This sanction involved substantial revenues and in order to protect the revenues, licensee should have initiated process to service the balance power on the due date with an intimation to the Appellant as per Clause 4.13 of K.E.B Electricity Supply Regulations, 1988. If the licensee had commenced supply of power on the due dates with an intimation to the Appellant and if the Appellant had failed to avail power within a period of one month, it would have amounted to **deemed service** and the licensee could have recovered Fixed Charges from the Appellant from the date of intimation irrespective whether the Appellant had availed such power or not. From the records placed during the hearing, it is seen that such a procedure is followed by the licensee only in the first phase. In the K.E.B/Wiring Contractor's Completion Test report dated 14.08.1998, the date of commencement of service is mentioned. Similarly the quantum of connected load is mentioned as 427.5 K.W. As proof of intimation to the Appellant regarding commencement of service, the signature of the authorised representative of the Appellant is taken. This report shows that in the 1st phase only 427.25 K.W power is serviced and a similar procedure ought to have been resorted to by the licensee as proof of servicing the balance power on the due dates in the remaining phases. In the absence of such reports, it is difficult to construe that the licensee has serviced the balance power on the due dates subsequently.

31. The arguments of the licensee that 2000 K.V.A was made available to the Appellant and the Appellant should have availed power on the due date and short claims are made on the assumption of deemed service cannot be accepted because the licensee has not initiated any process of supply on the due dates. Similarly, the Appellant without the approval of the licensee and without reports from the Electrical Contractor and Electrical Inspector cannot on his own avail the balance power. In the present case neither the Appellant nor the Licensee has initiated the process on the due dates. The Licensee has issued a demand for Rs.1,95,47,880/- and it claims that this is an Audit short claim. From the Audit report made available to this Authority, it is seen that nowhere the audit has pointed that such amounts should be

recovered from the Appellant. Relevant Audit paras are extracted and produced below:

“(4) On verification of the R.R File, it is noticed that agreement has been entered by both the parties for supply and availing of 2000 K.V.A in phased manner as indicated above but neither the consumer nor the BESCO officials have initiated the process on the due dates i.e on 14.08.1999 and on 14.08.2000. Had the process been initiated, the company would have come to know the stand of the consumer as regards availing the additional supplies as per agreement and if there is no response from the consumer, installation would have been treated as serviced and demand charges in respect of additional load would have been raised till date. As per the Regulation prevailing at that time and the agreement, if the consumer failed to avail power supply as agreed within the stipulated period the consumer is liable to pay the demand charges during the initial agreement period and also continue to pay as per the agreement. Due to non-initiation of process of servicing additional loads as per agreement, the company has sustained losses in the form of minimum charges to be collected with respect to sanctioned load. Hence, the loss of revenue is calculated as follows:

(5) The consumer has to pay the minimum demand charges during the initial agreement period of 5 years as per the provisions of Regulation 33.03 of ESR 1988 in the following manner.

- a) 75% of the initial contract demand of 500 KVA or maximum demand recorded whichever is higher from 14.08.1998 to 14.08.2003.**
- b) For another 500 KVA for the period from 14.08.1999 to 14.08.2004.**
- c) For 1000 KVA for the period from 14.08.2000 to 14.08.2005.**
- d) From 15.08.2005 onwards the consumer has to pay 75% of the contract demand of 2000 KVA or MD recorded whichever is higher till now.**

(6) The total loss incurred by the Company upto April 2010 is quantified at Rs.1,91,55,480.00.

(7) Further the consumer has paid the ISD and other charges for the entire load and entered into the agreement as per the power sanction and hence he is liable to pay the demand charges as agreed by him in terms of the agreement. BESCO officers/offices who have signed the agreement shall have taken necessary action to initiate the process of availing additional power supply on the respective due dates and if the consumer fail to avail power supply as per agreement, demand charges for the additional load would have been raised as per rules. Leave alone the matter of initiating the process on the due dates of additional supply, the same could have been noticed during 2002 when the consumer had applied for additional load of 300 K.V.A stating that he has already got power sanction up to 2000 K.V.A vide letter No. T/COM2/A.E.E 4/3507 dated 13.01.1997. By exercising proper checks sub Divisional, Divisional and Circle Officers could have raised the issue of non-availing of additional power by the consumer which was due on 14.08.1999 and 14.08.2000 and have taken appropriate action to raise the demand charges."

32. From the above, it can be observed that the Audit has blamed the Licensee and its officers for their omissions and failure to act on the due dates and consequential financial losses to the Company. Conscious of the provisions available under the K.E.B. Electricity supply Regulations, 1988, Audit has pointed out that if the officers had initiated the process on the due dates and serviced the installation under intimation to the Appellant, the Licensee could have declared it as deemed service and could have recovered the Fixed Charges, even if the Appellant had failed to avail the power. Hence, attempt to interpret such claims as Audit short claim is nothing but evasion of responsibility on the part of the concerned officials. Audit report has highlighted the financial losses the Company had to suffer because of failure of the officers to act on the due dates. Auditors have viewed that this amount could have been realised, if the officials had acted promptly. Hence, the officers cannot take shelter under the Audit report to make short claims for Rs.1,95,47,880/- on the Appellant.

33. On the same issue, BESCO has called for a report from the Chief Engineer. The Chief Engineer (E1) BMAZ BESCO in his report vide

No.CEE/BMAZ/SEE(O)/AEE-2/15705 dated 17.03.2010 to the General Manager, BESCOM on this issue has made the following:

"Clarification was sought by the corporate office for the following points vide letter cited under reference (5) & (6)".

- 1. Were any notices served on the firm regarding "deemed to be serviced/commissioned" if the power is not availed within the stipulated time.**
- 2. Reasons for not availing the power supply as per the power sanction letter by the applicant.**
- 3. Explanation from the concerned officers.**

34. The reply furnished by the Superintending Engineer (E1), Bangalore Circle (North) for the above points is as follows:

"1. The then Executive Engineer (EI), Addl. Central Division has not applied his mind properly and blindly forwarded the proposal for sanction of additional power to an extent of 300 K.V.A vide letter No 4245-46 dt 27.02.2002 though power sanction was communicated in a phased manner.

2. Consumer has executed fresh agreement to avail 800 K.V.A from December 2002 to 2004, 1000 K.V.A from December 2004 to December 2005 and 2000 K.V.A from December 2005 and onwards. The agreement was signed by M/s NCBS and witness by the LEC but not signed by any officers of K.E.B."

So, it is evident from the reply furnished by the Superintending Engineer (EI), Bangalore Circle (North) that "No notices were served on the firm regarding "deemed to be serviced/commissioned" on the part of BESCOM.

As far as reason for not availing the power supply as per the power sanction letter of CEE (GI) by the applicant, both the Executive Engineer(EI) Additional Central Division and the Superintending Engineer(EI), Bangalore Circle(North) are silent on this issue.

Further, no explanation obtained from any of the officers/ officials have been forwarded to this office.

Under these circumstances, I am of the following opinion:

1. Sub Division has not collected Demand Charges for the phased deemed service in the absence of specific instructions in the original power sanction letter by the then chief Engineer,EI (General) regarding the extent and quantum of Demand charges supposed to be collected from the prospective consumer.

2. In the completion report it was mentioned that contract demand/ connected load was 427.5 K.W. Therefore, Sub_division has collected demand charges for only 500 K.V.A.

Atleast even at the time of sanctioning of additional power of 300 K.V.A vide letter Ref (3) for the above said installation during 2002, had the Superintending Engineer(EI) Bangalore Circle North

exercised proper checks, the above mistakes could have been avoided and the quantum of the demand charges supposed to be collected from the consumer could have been limited to only 4 years up to 2002."

35. The above extracts (internal correspondence between the Chief Engineer and G.M. BESCO) have brought out clearly the lapses committed by the officers and non-service of notice on the consumer on the due dates.

36. The 2nd Respondent's order also suffers from serious inconsistencies. Discussions and the orders are not complimentary to each other. Excerpts of the 2nd Respondent's order is given below:

"the date of commencement of supply is also defined as it means the date of actual availing power supply by the consumer or the date of expiry of a period of 30 days from the date of intimation to the consumer of the availability of the power whichever is higher. The above definition is perused by the Forum carefully, it states that, the date of commencement of supply is the date of actual availing the power supply or the period expiring 30 days by way of a notice. In the instant case the consumer has availed the power supply on 14.08.1998 for a load of 427.5 K.W which is as per the part of the power sanction letter dated 13.01.1997.

Further the Respondent never issued a notice regarding availing the balance of 500 K.V.A as on Aug 1999 and 1000 K.V.A as on August 2000 which is as per the terms of the agreement entered between the two parties. It is relevant to mention here that a 30 days notice is a must in the case of fixing the date of commencement of supply. It is the basic fundamental duty of the respondent.

It is relevant to mention here that the Respondent has not actually serviced the installation for the balance of the sanction load and as there is no requirement the complainant is also not requested the respondent to service the balance of the sanctioned load.

It is further noticed that the complainant's installation is a Central Government organisation and the complainant has accepted that there was a delay in augmentation programme accordingly they were unable to avail the entire sanction load. This accepts clearly shows that the complainant was very much aware of the facts of the conditional power sanction letter and there was no delay from the respondent. However, respondent is also erred in not issuing a notice to the complainant. However, the distribution company which

is a public oriented entity should not put to loss by virtue of dereliction of duties by its employees.”

37. It is clear from the above that the 2nd Respondent in the body of its order appreciates that without issue of notice and without really servicing the balance quantity of power, the Respondent cannot levy Fixed Charges but suddenly it brings in extraneous factors into the discussions and concludes that the Complainant is a Central Government organisation and also that the Licensee should not be put to loss and, hence, the Complainant should pay the Fixed Charges. This clearly shows that the 2nd Respondent has not based its order on legal parameters but on some other considerations like the complainant is a Central Government organisation and that the Respondent Company should not be put to loss, etc. Such considerations are legally untenable.

38. (a) Audit Report, (b) internal correspondence between the Chief Engineer and the General Manager, BESCO and (c) the 2nd Respondent's impugned order have conclusively established that the Licensee has not serviced power on the due dates as specified in the original sanction letter and Agreement. These are overwhelming evidences. Since the Licensee has failed to service power on due dates, question of sending intimation under Clause 4.13 of KEB Electricity Supply Regulations, 1988 does not arise. Hence, Licensee cannot claim the benefit of **deemed service** and, as such, Short Claims made for Rs.1,95,47,880/- would become irregular and does not satisfy Clause 4.13 of KEB Electricity Supply Regulations, 1988. Therefore, the impugned orders of the 2nd Respondent do not stand the scrutiny of the law and, hence, deserve to be quashed.

Hence, the following order:

ORDER

38. For the foregoing reasons, the impugned order of the 2nd Respondent is hereby **set aside and the appeal is allowed in terms of the following:**

39. **Short claims made by the 1st Respondent for Rs.1,95,47,880/- on the Appellant is quashed.**

(B.R.Jayaramaraje Urs)

Electricity Ombudsman

1. M/s.National Centre for Biological Sciences, GKVK Campus, Bellary Road, Bangalore-65
2. Consumer Grievance Redressal Forum, BESCO Corporate Office, K.R.Circle, Bangalore.
3. The Asst.Executive Engineer (Ele), C-7 Sub Division, BESCO, Yelahanka, Bangalore - 560064
4. Managing Directors of all ESCOMs.
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. OCA