

BEFORE THE ELECTRICITY OMBUDSMAN
For the State of Goa and Union Territories (Except Delhi)
3rd Floor, Plot No. 55-56, Udyog Vihar-Phase IV, Sector 18,
Gurugram (Haryana) 122015

Ph.0124-4684715, Email: ombudsmanjerc@gmail.com

APPEAL No. 110/2019

Date of Hearing: 25.06.2019 at Puducherry

M/s Sree Rajeswari Mills Ltd.,
Thennenudi Village, Ilyandudi Road,
Thriunallar Commune
Karaikal, Puducherry – 609 607.

...Appellant(s)

Versus

Superintending Engineer cum Head of Department,
Electricity Department- Puducherry,
137, Nethaji Subhash Chandra Bose Salai,
Puducherry- 605 001


...Defendant(s)

Parties present:

Appellant	No one attended the hearing on behalf of appellant
Respondents	Sh. Rajesh Sanyal, Executive Engineer, Karaikal Sh. Perambalan, Assistant Engineer (Rural), Karaikal

Date of Order: 04.07.2019

The Appellant has preferred an appeal for cancellation or withdrawal of demand Charges or any other charges levied even by Rs.1/- on any form after removal of Fuse or disconnection and Suspension of CGRF Ex- Parte Order. The Appeal was admitted on 15.04.2019 bearing Appeal No. 110 of 2019.



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A. Submissions by the Appellant:

1. The Cancellation (or) withdrawal of Demand Charges (or) any other charges levied even by Rs.1/- on any form after removal of Fuse or disconnection and Suspension of CGRF Ex- party Order when there are many objections raised including absence of a Judicial Member and the present Order was passed only by Retired Superintending Engineer as a Chairman and Working Executive Engineer of the Department as a licensee Member which is Unlawful and Principles of Natural Justice was not followed.
2. The Appellant has sought withdrawal of Demand charges levied on them during Fuse Removal period i.e. March 2018 to August 2018 in absence of any new agreement binding both Consumer and the Supplier and their previous agreement made during 1988-89 has no such condition.

B. Submissions by the Respondent:

1. It is informed that HT power supply in favor of M/s Rajeswari Mills Limited, Thennankudy was disconnected on 15.03.2018 due to non-payment of CC charges for the month of January 2018 for an amount of Rs 7,13,473/- after issue of notice on 12.03. 2018. The service connection was restored on 27.09.2018 after payment of first installment of Rs. 10,73,266/- by the consumer and to pay balance amount of Rs 17,00,594/- upto August 2018 as per permission accorded by the Financial controller on 18.09.2018. However, the consumer without even paying any instalment of arrears has filed a petition before CGRF requesting waiver of demand charges for the disconnection period from 15.03.2018 to 27.09.2018 on 10.10.2018. It is submitted that as the bills for the payment of minimum charges for the disconnection period has been raised only as per clause 9.3(C) of Supply Code and Tariff Order 2017-18 of the Hon'ble JERC, the representation of the consumer requesting withdrawal of demand charges after disconnection cannot be considered. The above petition was also dismissed by the CGRF vide Order dated 20.02.2019.
2. It is stated based on the order of CGRF, a notice was issued to the consumer on 07.03.2019 to pay the demand charges amounting to Rs. 17,00,594/-. But as the amount



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was not paid, the service connection was disconnected on 15.03.2018. Based on the request submitted by the consumer, the Senior Accounts Officer- HT has accorded permission to the consumer to pay the pending amount in 4 installments on 25.03.2019. In this regard, the consumer has paid the first installment of Rs 6,00,000/- vide receipt no. 19118, dated 28.03.2019 and the service connection was reconnected on 28.03.2019. The second instalment of Rs. 6,00,000/- has been paid by the consumer vide receipt no. 19147, dated 03.05.2019. Therefore, there is no merit, in the appeal, which is liable to be dismissed.

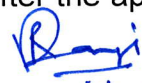
C. Consumer Grievances Redressal Forum (CGRF):

Consumer Grievances Redressal Forum, Puducherry in its order dated 20/02/2019 has decided as under:-

1. The complaint has been registered as C.C. No.36/2018 and notices have been served to the Respondents on 10/11/2018 to reply on or before 23/10/2018. During the hearing at Karaikal it is found that notice not sent to the Financial Controller, Electricity Department and hence fresh notice issued to the Financial Controller on 14/12/2018.
2. The reply from the Financial Controller received on 31/12/2018 and from Executive Engineer, Karaikal on 6/12/2018. Meanwhile, the Complainant had requested over phone to list the case for hearing in the end of December 2018 or January 2019. Accordingly, the hearing was scheduled on 11/01/2019 at Karaikal.
3. Meanwhile, the Complainant vide his letter dated 08/01/2019 had informed that he had received notice only on 08/01/2019 at 4 pm. Since, he has to get information based on the affidavit filed by the Respondent he had requested for further postponement of hearing.
4. During the hearing on 11/01/2019 Thiru Sundaram, employee of the Complainant had attended and requested for further postponement and also handed over letter dated 10/01/2019 signed by Joint Managing Director, requesting for the postponement of the hearing. As a goodwill gesture and to give an opportunity to the Complainant the case has been adjourned to 05/02/2010 at Pondicherry. The Representative of the Complainant has been clearly informed that no more adjournment will be given.


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5. The Complainant has sent another letter by Registered Post on 21/01/2019 requesting for further postponement of hearing as he has applied for a copy of Supply Code from the Public Information Officer under RTI and he has yet to receive reply from PIO. Then the Complainant has sent a letter dated 01/02/2019 as Reminder to the letter dated 29/01/2019 requesting again for a copy of Joint Electricity Regulatory Commission Supply Code from the Forum.
6. In the reply of the Respondent the Executive Engineer, Karaikal had stated that as per Section 6.9(2) of the Supply Code the consumer is liable to pay the minimum charges even for the disconnected period. The Financial Controller, in the reply had stated that Bills are being claimed as per the Tariff Orders of the Hon'ble JERC and hence, the minimum charges could not be waived.
7. During the hearing on 05/02/2019 the Respondents were present and the Complainant was called absent. The representative of Financial Controller have also furnished additional details like bill copies, details of arrears of the consumer etc., The Assistant Engineer/ Rural Karaikal had further informed that the consumer is liable to pay the minimum charges as per Clause 9.3 (c) of Supply Code also. The representative of the Financial Controller had also handed over a copy of the letter No.703/ED/HT/SAO-I/18-19/866 dated 18/09/2018 wherein the complainant has been asked to pay the remaining among of Rs.17,00,594 in 2/3 installments along with upcoming months current consumption charges bill and informed that the Complainant had not paid even a single instalment of the arrears of Rs.17,00,594 which are minimum charges for the period from 15/03/2018 to 27/09/2018, when the unit was under disconnection.
8. OBSERVATION: The Complainant in his letter dated 10/01/2019 had sought an adjournment of the hearing on the grounds that:
 - (i) He has to go through the provisions and he wants to get a copy of the supply code from the Department.
 - (ii) Since there is no proper judicial member and the present Chairman is Ex department retired Superintending Engineer, there is a possibility of preconceived notion and his grievances may get rejected due to the absence of proper judicial member.
9. In the letter dated 29/01/2019 the Complainant informed that he had applied for Supply Code under RTI on 14/01/2019 and had asked CGRF to ask Superintending Engineer, Electricity Department to furnish the copy of JERC Supply Code, as the Complainant had not received from the Department even after 12 days after the application. He had also


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sought a copy from CGRF. The Complainant further reminded the Chairman, CGRF on 01/02/2019 either to send a copy of JERC or ask Superintending Engineer O&M, to furnish the details immediately.

10. On the observation made in the previous paras, the CGRF remarks are as follows:

(a) The Complainant must be aware that the post of Chairman/ Member of the CGRF are selected by Hon'ble JERC after following the procedure prescribed in the regulations of JERC constituted under Electricity Act 2003 passed by the Parliament. The allegations against the Chairman is nothing but insulting the process of Hon'ble JERC. Further when the Complaint had filed the petition on 10/10/2018, the post of Member Judicial was vacant and hence seeking postponement due to non-filling up of the post of Judicial Member by JERC is simply not acceptable. If the Complainant wants the presence of Judicial Member he could have filed his petition itself after the filling up of the post of Judicial Member.

(b) It is observed from the correspondences that the Complainant had applied to P.I.O. Puducherry for copy of Supply Code under RTI Act when P.I.O. is available in Karaikal itself. When the P.I.O. is having a maximum period of 30 days for giving reply under RTI Act, the reasons for asking CGRF to intervene after lapse of 12 days itself is not clear. The Complainant must be aware of the fact that the CGRF is a consumer Court set up by the Hon'ble JERC under the Provisions of the Electricity Act 2003. Hence asking the Court to supply a copy of the Code and then reminding the Court for not supplying code is viewed seriously. Based on the above, the Forum firmly believes that the Complainant is trying to keep the case pending with CGRF on one reason or other and not co-operating with CGRF in bringing the case to an end and also indulging in delay tactics for the payment due to the Department, causing loss to the Government of Puducherry.

11. In the reply of the Executive Engineer, Karaikal it has been stated that minimum charges are claimed as per Section 6.9(2) of the Supply Code. But during hearing the Assistant Engineer/ Rural, Karaikal had submitted that the minimum charges can also be collected as per Clause 9.3(c) of Supply Code. The Clause 6.9(2) comes into operation when the agreement is terminated. The present case is disconnection of power due to non-payment of current consumption charges and restoration of power supply which is governed under Section 9.3(c) of Supply Code. In the present case the supply was disconnected on 15/03/2018 and the notice period as per the Supply


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Code expires on 14/09/2018. The consumer had requested on 14/09/2018 for reconnection of power supply by enclosing the demand draft for Rs.10,73,266/- which are the arrears for the month of January and February, 2019. Hence, as per Section 9.3(c) the reconnection has to be done on the application by the consumer along with the copy of the receipt for payment due on reconnection charges. Since the agreement is live, the consumer has to pay all the charges as per the Tariff Order of the JERC. For the financial year 2018-19. The billing in case of HT/ EHT shall be maximum demand recorded during the month or 85% of the contracted demand whichever is higher. As per the Tariff Order 2017-18 the billing in case of HT/ EHT shall be maximum demand recorded during the month or 75% of the contracted demand whichever is higher. Hence the bills raised by the S.A.O. HT are in accordance with the Tariff Order of Hon'ble JERC.

ORDER

12. As discussed in Para 11, as per Section 9.3(c) of Supply Code and Tariff condition of the JERC, the Complainant has to pay the demand charges for the disconnected period of 15/03/2018 to 27/09/2018. Hence, the request for waiver of demand charges for the disconnected period is not agreed to.
13. As per Section 9.3(c) of Supply Code and condition of JERC, the Complainant has to pay demand charges for the disconnected period 15.03.2018 to 27.09.2018.
14. Complainant is trying to postpone the payment of arrears to the Department as the Complainant had obtained order to pay arrears in 2/3 installments on 18.09.2018 and had filed case before CGRF on 10.10.2018 and had not paid even a single installment of arrears and hence, the request of the Complainant for further postponement beyond 05.02.2019.
15. Therefore, the Petition is dismissed.

D. Discussions during hearing: -

1. Appellant(s): No one represented the Appellant.
2. Respondent(s): The Respondent submitted that payment of minimum charges has been made as per Clause 6.9(2) & 9.3(C) of Supply Code, 2010 during disconnection period and the agreement has not been terminated with the consumer by the respondent nor


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the consumer has ever requested for termination of agreement. The connection has been disconnected for 3rd time on 15.05.2019 as he has repeatedly failed to pay the installments of past dues.

E. Analysis & Decision:

1. As no one appeared on the date of hearing, it was ensured that notice of hearing has been served to the appellant.
 - (i) The notice of hearing has been sent by speed post No.EH592943483IN dated 10.06.2019 at the full address mentioned in the appeal which has returned undelivered with remarks '*Item returned addressee moved*'.
 - (ii) The Notice has also been sent on June 6, 2019 at 2:50 PM to email address sreerajeswarimills@yahoo.co.in as mentioned in the appeal.
 - (iii) However, no telephone number of Appellant is mentioned in the appeal.

So the notice of hearing has been duly served as per (i) & (ii) above. The appellant has neither requested for extension of date nor appeared for hearing at Puducherry. Accordingly, it appears that the appellant has nothing else to say.

2. The connection of the appellant has been disconnected repeatedly for non-payment of Electricity dues. So, the consumer appellant is always free to get his supply permanently disconnected or get his contract demand reduced, if the same is not required, to avoid/reduce fixed charges as per provisions of Electricity Act,2003 and regulations/orders made thereunder.

3. Clause 6.9 of JERC (Electricity Supply Code)2019 provides:

'Termination of Agreement'

(1) The agreement shall remain in force even after completion of the initial period of agreement until is terminated. Domestic category of consumers may terminate the after giving one month's notice. Consumers other than domestic and single phase non domestic LT category can terminate the agreement on giving three months' notice. In case of HT and EHT category six months' notice is required.

Provided that the agreement shall normally be terminated after expiry of the initial period of agreement. However, if the agreement, the consumer shall be liable to pay charges as per tariff order for the initial period of agreement, the consumer shall be liable to pay charges as per tariff order for the balance period of the said one year in

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case of LT and two years in case of HT and EHT or notice period specified in the agreement whichever is later.

The licensee shall arrange for special meter reading, at a mutually acceptable date, to facilitate preparation of the final bill of the consumer.

The agreement shall be terminated on the last day of the billing month and the licensee shall raise the final bill accordingly.

(2) If power supply to a consumer remains disconnected for a period more than notice period for non-payment of charges or dues or non-compliance of any direction issued under these regulations, the licensee shall issue a show cause notice, to be replied within seven days, to the consumer for termination of the agreement. In case no effective steps are taken by the consumer for removing the cause of disconnection and for restoration of power supply, the agreement of the licensee with the consumer for power supply shall be terminated on expiry of the period of seven days, provided the initial period of the agreement is over. If initial period of not over, the provision given under Regulation 6.9(1) above shall apply. **During the period of temporary disconnection, the consumer shall be liable to pay the demand charges or minimum charges as applicable.** The Licensee shall record and keep the total outstanding amount due to the Consumer on termination of the agreement and shall have the right to recover the same under the RR Act, Court of Law, if necessary.

(3) On termination of the agreement, the licensee shall be entitled to remove the service line and other equipment of the licensee for supply of power from the premises of the consumer. After permanent disconnection, if the consumer wishes to revive the connection, then it would be treated as an application for new connection and would be entertained only after all outstanding dues haven been cleared.

4. Clause 9.3 of JERC (Electricity Supply Code) 2019 provides:

Restoration of Power Supply:

(c) **if the disconnection was on account of non-payment of bill and in case the consumer requests for reconnection within a period of six months after disconnection, the connection shall be reconnected within 5 days** as specified in the Standards of Performance of Distribution Licensee regulations on an application by the consumer accompanied with a copy of the receipt for payment of dues and reconnection charges.

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5. The contention regarding suspension of ex-party order and principles of Natural Justice was not followed has also been examined and it has been found that sufficient opportunities of hearing have been granted to the appellant by the CGRF as is evident from the CGRF Order.
6. The other contention that absence of a judicial member in CGRF and hence the Order is unlawful has also been examined.

Clause 2(10) of JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulation, 2009 provides:

No act or proceeding of the Forum shall be deemed invalid by reason only of some defect in the constitution of the Forum or by reason of the existence of a vacancy among its members.

Accordingly, absence of any Member in CGRF doesn't make proceeding before the CGRF unlawful.

7. In view of the above, the CGRF Order is upheld.

The Appeal stands disposed-off accordingly.



(Rajesh Dangi)
Electricity Ombudsman
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1. M/s Sree Rajeswari Mills Ltd., Thennenudi Village, Ilyandudi Road, Thriunallar Commune, Karaikal, Puducherry – 609 607.
2. The Superintending Engineer, Electricity Department, 137, Netaji Subhash Chandra Bose Salai, Puducherry-605 001.

Copies to: -

1. Chairman, CGRF, Electricity Department, Puducherry.
2. Sh. Arvind Kumar, Sr. Assistant, for uploading the order on JERC website.