

**OFFICE OF
THE ELECTRICITY OMBUDSMAN
ASSAM ELECTRICITY REGULATORY COMMISSION**

FILE NO. EOM. 27/2015

Petition No.: 5/2015

Appeal Petition of: **M/S Keshari Industries,
Abhoypur, North Guwahati
Kamrup, Assam
u/Sec 42(6) of the Electricity Act
2003 read with clause 2(1)(c)(III) and 5(1) of the
Guidelines for Redressal of
Consumer Grievances
Received on 28-10-2015**

ORDER SHEET

Appellant - M/S Keshari Industries,
Abhoypur, North Guwahati
Kamrup, Assam
Represented by
1. Pawan kr Soni
2. S. K. Kejriwal, Advocate for petitioner

Vs

Respondent - 1. The Chairman cum General
Manager CGRF, GZ,
APDCL () Six Mile,
Guwahati – 22
2. The Area Manager
Industrial Revenue Collection
Area II, Jalukbari
Guwahati - 14
Represented by
1. The Area Manager,
IRCA II Jalukbari
Guwahati – 14
2. P. Bhowmik,
Advocate for

Respondent

Date of Order :28.01.2016

Appeal Petitioner M/S Keshari Industries vide petition dated 7/9/2015 submitted Appeal petition before the CGRF Guwahati claiming refund of excess amount paid as load security. The basis of load security calculation is the dispute. The matter is pending at the Hon'ble Guwahati High Court for adjudication. Therefore the CGRF observes no decision can be taken.

Hence the present appeal.

Appeal Petitioner and the Respondent are requested to attend hearing on 10.12.2015 to take up appeal petition dated 28.10.2015 for conciliation as per clause 6(3) of the Guidelines. Conciliation fails as difference of opinion continues. Therefore the proceeding is taken up afresh as per clause 8(1) of the Guidelines.

The contention of the petitioner is that APDCL has approved connected load of 660kw for its industrial unit and petitioner paid Rs 1872941/- for the said load connection as load security.

Later on the appellant applied for additional load of 80KW and the Respondent accorded sanction of additional load of 80KW on 8/8/2014.

Thereafter Appellant approached several time for issuance of bill for load security. When the Appellant further moved in the month of April 2015, he was informed that Appellant was served with one provisional bill dated 19/01/2015 amounting to Rs. 74,67,272/- on account of alleged defective period and said demand is subject matter of dispute before the Hon'ble Ombudsman, AERC, no additional load can be released until the said amount is cleared.

The Appellant on 2/5/2015 informed that Sec 43 of the Electricity Act and Chapter III of Electricity Supply Code has no such provision that additional load cannot be released without clearance of disputed bill and requested to issue bill to deposit security for additional load.

In response the Appellant received the letter dated 6/5/2015 from the Respondent that bill dated 13/11/2014 needed revision due to tariff revision in December 2014. Therefore revised bill for security deposit is issued for Rs. 37,34,169/- demanding Rs. 18,61,228/- after adjusting Rs. 18,72,941 paid earlier as load security.

While issuing the revised bill for load security, the Respondent took into consideration the amount covered by the provisional bill dated 15-01-2015 amounting Rs. 74,67,272/- as part of consumption during the year (2014-2015) for calculation of load security bill.

The Appellant was in urgent need of additional load, the Appellant deposited the load security on 7/5/2015 under protest.

The Appellant raises the point that the Respondent issued inflated bill on account of load security by including provisional bill dated 19.1.2015. Therefore the Appellant demanded release of excess deposit of Rs. 5,10,257 as load security.

Respondent vide letter dated 8-6-2015 requests Appellant to wait for final order on the matter of disputed bill dated 19/1/2015 from the learned Ombudsman.

The learned Ombudsman vide order dated 29/8/2015 set aside the bill dated 19-1-2015 holding the same not enforceable. The Appellant vide letter dated 13-7-2015 requests to refund the excess load security with interest within 15 days. With holding Appellant's heard earned money by Respondent is amounts to violation of public policy as indicated at the India contract Act as well as articles 205 and 300 A of the Constitution of India.

The Appeal petitioner further states that after inordinate delay the Respondent preferred a writ petition being WP(C) 4758 of 2015 before the Hon'ble Guwahati High court on 13-8-2015 assailing the award. The Hon'ble High court being prime facie satisfied while issuing notice of motion fixed the matter for consideration of maintainability point at admission stage. No interim order whatsoever was granted in favour of the Respondent.

CGRF also declines to take decision in view of the fact that the subject matter of the bill dated 19-1-2015 is subjudice.

Appeal petitioner now moves for release of the excess deposit of Rs. 5,10,257 as load security in view of the fact that the order dated 29-06-2015 passed by the learned Ombudsman is in his favour. Further Hon'ble High Court has not also stayed the order of the learned Ombudsman on the WP(C) 4758 of 2015 which is pending for adjudication.

Respondent decided not to submit affidavit on the date of hearing on the condition that the matter is pending for adjudication at the Hon'ble High Court.

The Respondent sticks to the para wise comment submitted on 13.11.2015 vide letter no APDCL/AM/IRCA-A/11/L.P/A-289/2015/1357 dated 12.11.2015.

Respondent also says that the bill dated 19.01.2015 amounting to Rs. 74,67,272.00 has been taken into account while preparing load security bill for the additional load of 80KW applied by the petitioner. Respondent further says that they have followed procedures at clause 6.2.1.1 & 6.2.1.2.5 for computation load security for additional load.

The order of the learned Ombudsman dated 29.6.2015 is subjudice as the Respondent files WP(C) 4758 dated 19/8/2015 against the order dated 29.6.2015. Therefore question of refund of Rs. 5,10,257/- at this point is not considered.

Observation and Findings-

The basic point of dispute in the present case is the calculation for load security. The Respondent calculated the security for extra load of 80 KW by taking total energy consumption unit for the year 2014-2015 as 2,42,774 unit. The security amount stands at Rs. 35,43,416.00 + Rs. 1,90,753.00 for additional 80 KW extra load. Therefore total comes to Rs. 37,34,169. Additional amount now required as load security is Rs. 18,61,228.00 (37,34,169 - 18,72,941).

This calculation is not correct as per the Appeal petitioner as the unit consumption includes the units of bill dated 19-1-2015 which is set aside by the order of the learned Ombudsman. As such additional amount required as load security is Rs. 13,50,071.00. Hence there is excess amount of Rs. 5,10,257.00 taken by the Respondent.

The load security bill dated 6.5.2015 and payment by the Appellant on 7.5.2015 were prior to the order of the Ombudsman dated 29.6.2015. Therefore it is natural to claim the load security as stated above.

The calculation shown by the Appellant is under dispute. He is requested to wait for the final decision from the Ombudsman vide letter dated 8.6.2015 issued by the Respondent. Load security payment is however made on 7.5.2015 before the letter dated 8.6.2015 as additional load is - required by the Appellant urgently.

Now Appellant claims refund of Rs. 5,10,257 with interest as per clause 6.3, 6.4 and 6.5 of the Supply Code read with Sec 47(4) of

the Electricity Act 2003 on the strength of the order of the Ombudsman dated 29.6.2015.

In support of the claim of refund the Appellant further submitted that under the applicable law, unless and until the judgment/award/Decree appealed against is stayed by higher forum, the authority against whom the award/judgment/decree is passed is bound to implement the same (judgment reported in 1996 (2) Guwahati Law Reports - page 59, para - 12)

CGRF Guwahati zone does not decide the petition of the Appellant as the matter is pending before the Hon'ble High Court.

The writ petition submitted before the Hon'ble High Court by the Respondent is pending for adjudication. There is no interim order on the writ petition.

Therefore as on today the award of the learned Ombudsman dated 29.06.2015 is still in force.

Award: - In view of above discussion and observation and on the basis of available records it is concluded that the Respondent shall recalculate the load security bill dated 06.05.2015 on the basis of the award dated 29.06.2015. Refund if any along with interest shall be released or adjusted against the future bills. The interest as per clause 6.5 of the Supply code shall be calculated deducting 60days from the date of the award of the Ombudsman (29/6/2015) up to 28.01.2016.

This award shall be subject to the outcome of the WP (C) 4758/2015 pending for adjudication before the Hon'ble High Court.

Petition dated 28.10.2015 allowed with above conditions.

There shall be no cost.

Sd/-
(R.L. Duarah)
Electricity
Ombudsman

Memo No. EOM. 27/2015/43
Copy to:

Dated Guwahati the 28th January, 2016

1. **Pawan Kr Soni, M/S Keshari Industries**, for kind Information.
2. **The Area Manager, IRCA II Jalukbari, Guwahati – 14** for kind information.

Secretary,
O/o the Electricity
Ombudsman