

Before the Ombudsman

**KPFC BHAVAN, C.V.Raman Pillai Road , Vellayambalam,
Thiruvananthapuram-695 010.**

Order Dated 25th April 2007

Present: M.Sivathanu Pillai, Ombudsman-in Charge.

Appeal petition No 3 of 2007.

Order No.CGRF-CR/Comp.117/2006-07/300 dated 08-02-07 of
CGRF,Ernakulam.

The General Manager
Carborandum Universal Ltd,
Electro Minerals Division,
Kalamassery Development Plot.P.O,
Kochi 683 109.

Appellant

Vs

Chief Engineer (Electrical) Transmission-South,
KSEB, Vaidyuthi Bhavan,
Pattom,Thiruvananthapuram 695 004.

Respondent

Date of hearing: 28th March 2007 and 18th April 2007.

a. Appellant in the appeal has stated as follows:

We are having manufacturing facilities at Koratty and Kalamassery. We are two independent EHT consumers of KSEB(herinafter called Board) under Consumer No. 8/84 and 8/1234 respectively. Our present contract demand for Koratty is 5000 KVA at 110 KV and for Kalamassery 7500 KVA at 66 KV.

We have submitted two applications for additional power allocation for both the Plants to the extent of 5000 KVA. Due to various reasons our applications have not been considered by KSEB and accordingly we have filed a complaint to the CGRF at Ernakulam. Unfortunately even without calling us for a hearing CGRF has taken a unilateral decision of dismissing our petition. All the details in this regard are enclosed herewith, which are self-explanatory. You may kindly note that we are two independent EHT consumers of KSEB and there is no dues from us towards electricity charges, except for a disputed bill amount pertaining to our Koratty Plant for which a legal case is pending in the Honourable Supreme Court.

You may kindly note that our applications are pending for more than two years. In the absence of additional power allocation our proposed expansion activities are totally pending and hence we request you to examine the merit of the case and issue favorable orders at the earliest.

- b. CGRF has dismissed the petition on the stand that there is no merit.
- c. The appeal was heard on 28th March 2007. During the hearing appellant stated that Board approved a reduction in contract demand from 10000 KVA to 7500 KVA for the Edappally unit in June 2003. Hence there is no logic in the statement that no additional power allocation can be given because arrears were due from the consumer. Appellant stated that from August 2002, the adjustment of generation from the captive plant at Maniar in the invoices for Palakkad unit only has been stopped by Board which means that Board has been treating the Palakkad unit as different from Koratty and Edappally units. Appellant also submitted a copy of the judgement issued by First class Magistrate I Palakkad in which the accused in the theft case at Palakkad unit is SEPR and not Carborandum Universal.

Respondent stated that the contract demand was reduced in 2003 but could not clarify the circumstances or justification in allowing the reduction without linking the same to the issue of arrears. A copy of the judgement issued by the First Class Magistrate I, Palakkad was handed over to respondent. Also respondent had no comments regarding the logic behind disconnection of Palakkad unit alone when theft was detected in 2002 in Palakkad unit. If the consumer is the same in all the cases disconnection could have been effected at all the units.

Appellant clarified that the three units viz., Palakkad, Koratty and Edappally units were having separate agreements with Board. Respondent could not point out to any provision in the agreement, which provides for linking of the agreements in the case of arrears. In letter No. COM I/EHT/Carborandum/06-07/1505 dated 7th February 2007, Chief Engineer (Transmission) of Board has stated that additional power allocation cannot be issued because as per rules in force, the same is prohibited if arrears are due. But respondent who is

a Chief Engineer (Transmission) of Board could not point out the relevant rule. Respondent stated that the letter was written on the basis of directions from Board. But respondent agreed that the agreement was signed by the Chief Engineer (Transmission). It was then pointed out that when the respondent has signed the agreement the rules on the basis of which the letter was addressed to the appellant should also be known to him.

Respondent wanted more time to look in to the agreement, Conditions of Supply of Electrical Energy and the circumstances under which change in power allocation was granted in Aug 2003. The next hearing was posted for 18th April 2007.

- d. The next sitting was held on 18th April 2007. Appellant and respondent stated that they have no further points to add with reference to the power supply agreements. Appellant clarified by producing invoices for the Palakkad unit that there was no adjustment for demand charge in the case of Palakkad unit from August 2002 which means that Board has denied the benefit of the adjustment to Palakkad unit. Appellant further stated that the present owner of the Palakkad unit has given an undertaking to Board to the effect that they will abide by Court order in the case of settlement of arrears. When respondent was requested to clarify whether the decision to allow the reduction in contract demand was taken by Chief Engineer, respondent stated that the same will be clarified before 25th April 2007 positively. But vide letter dated 24th April 2007, Chief Engineer (Transmission) has only confirmed that the reduction in contract demand from 10000KVA to 7500 KVA was done with effect from 01-04-03 ie. a reduction of 25%.
- e. When appellant has requested for additional power allocation for Koratty and Kalamassery units Board has taken a stand that if ownership is to be transferred and if transferee desires to enjoy service connection, then transferee shall pay the dues. It is further stated that as per rules in force no power allocation or additional power allocation should be issued to the applicants from whom payment of arrears is due. This statement given in Board order dated 13th December 2006 refers to a clause in the Conditions of Supply in the case of denial of transfer of ownership but no clause in any rule has been quoted in the case of denial additional power.

- f. The agreement clauses do not provide any linking clause.
- g. Reduction in contract demand has been given in the case of Koratty and Kalamassery units even after the detection of irregularity in Palakkad unit ie. without linking the issue of arrears. This leads to an important conclusion viz. Board has no objection even in the closure of Koratty and Kalamassery units which are in the name of Carborandum Universal. This being the case, there is no justification for denying the request from Carborandum Universal to transfer the ownership of the Palakkad unit by terminating the agreement with Carborandum Universal if all the units are treated as one consumer. Also denial of transfer of ownership will tantamount to de-linking of the agreements of all units because different stands are taken in the case of Palakkad and other units. Hence denial of ownership of Palakkad unit leads to the conclusion that Palakkad unit is separately treated.
- h. One third of the arrears has already been remitted as per Court order.
- i. Present owner of Palakkad unit has agreed to abide the Court order.
- j. As disconnection of Palakkad unit alone was done in 2002, no disconnection of other units may not be possible for non settlement of arrears for the Palakkad unit.
- k. The issue of arrears has not been settled even after a lapse of four years.
- l. Even if the arrears from the Palakkad unit are not paid by the present owner of the unit, Board cannot proceed with revenue recovery from the Palakkad unit because this unit is not owned by Carborandum Universal. Board also cannot recover the arrears from other units before recovering it from Palakkad unit. Thus Board has put itself in a dilemma by refusing transfer of ownership.
- m. If reduction in contract demand is allowed, there is no logic in denying increase in contract demand. Increase in contract demand

- means that the consumer is expanding and hence the chances of a closure are less.
- n. Considering all the above facts it is concluded that there is no justification in denying the request for increase in contract demand for Koratty and Kalamassery units. Board has to issue approval for the same. The petition is disposed off.

Sd/-
OMBUDSMAN

P3/2007.....Dated

Forwarded to

The General Manager
Carborandum Universal Ltd,
Electro Minerals Division,
Kalamassery Development Plot.P.O,
Kochi 683 109.

Chief Engineer(Electrical)Transmission-South,
KSEB, Vaidyuthi Bhavan,
Pattom,Thiruvananthapuram 695 004.

Chief Engineer(Electrical)Transmission-North,
KSEB, Vaidyuthi Bhavan,
Gandhi Road , Kozhikode. 673 011.

Officer(Engg).