

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

PRESENT: Sri.K.J. Mathew, Chairman
Sri. P. Paramaswaran, Member
Sri. Mathew George, Member

January 23, 2012

Petition Nos. OP No.6/12 & 7 /12

I. A. Nos.1/12 & 2/12

In the matter of

i) Denial of Service Connection to the consumers who have executed MG Agreement & ii) Review of collection of connection charge from LT IV consumers vide order No OP 15/ 2011 dated 10-11-2011.

- 1) President, Kerala State Small Industries Association (EKM Dist.) : Petitioner
- 2) General Secretary, Kerala State Small Industries Association : Petitioner

The Chairman, Kerala State Electricity Board. : Respondent

ORDER

Background

1. A miscellaneous petition has been filed by the President, KSSIA, Ernakulum District in the matter of denial of service connection to the consumers who have executed Minimum Guarantee Agreement with KSEB . Two Interlocutory Applications were also filed on the above petition seeking interim order for relief to the consumers who have executed MG agreement. The plea was for a relief to the 49 consumers in the list appended (Exhibit 5) and for future LT-IV Industrial Consumers. In the Interlocutory Applications subsequently submitted by him, 15 Nos of consumers and 24 Nos of consumers were respectively added as the affected consumers.

2. A review petition has also been filed by the General Secretary, Kerala State Small Industries Association (KSSIA) in the matter of collection of connection charges from LT IV consumers (OP15/11) to give connection to those SSI units coming under LT IV category who have taken steps towards obtaining connection and who have executed agreements under the Minimum Guarantee Scheme across the state.

3. KSEB in their order No.BO (FM) No.2536/2011(KSEB/TRAC/S Code/R2/09) dated 28.10.2011 directed field officers to scrupulously follow the procedure laid out in the Supply Code while processing applications for supply of power from consumers. The Supply Code approved by the Commission does not have any provision for giving connection to applicants after executing the Minimum Guarantee (MG) Agreement. Hence the field officers of KSEB are reported to have denied connections under Minimum Guarantee applications. Because of this, industries which had executed the agreement and waiting for connection were not getting connection based on the MG agreement.

4. According to the petitioners, in view of the order dated 28-10-2011 of the KSEB and the order of the Commission dated 10-11-2011, KSEB has stopped giving connections under the Minimum Guarantee Scheme. There are quite a number of SSI Units which had taken steps including execution of agreement with KSEB, issuing letter of intent to the licensee etc. to get connections under the MG scheme. These SSI Units have made their financial planning to start their enterprise by raising the required capital by way of equity and availing bank loans. If these SSI Units are forced to make further investment which has not been planned to get electricity connection, their projects will suffer adversely leading to sickness before inception and hence they have sought relief.

5. The request of the Petitioners was to continue the MG scheme, which had been in existence for the last few decades and to provide connection to the applicants who had executed MG Agreements before the recent orders of the Commission and the Board.

Hearing

6. Petitions from Shri. Shaji Sebastian, President, KSSIA (EKM) dated 12-12-2011 and Petition from Shri. Damodar Avannoor General Secretary KSSIA dated 15-12-2011 were taken up together for hearing on 29-12-2011 to decide on the admissibility of the petitions. The petitioners were present in person along with many members of their Association who were affected by KSEB's alleged decision not to provide electricity connection under the Minimum Guarantee Scheme. The first petitioner, Shri. Shaji Sebastian presented the case, filed an additional written statement along with several documents. The second petitioner presented the case on behalf of the members of the SSI Association through out the state of Kerala.

7. Shri. Abdul Latheef, Additional Director of Industries participated in the hearing and supported the case of the petitioners for continuing the MG scheme. Industry owners Shri. T.H. Badarudeen and Shri.P.M. Aliar, Shrio. Zacharias Mathew, Shri. K. Uthaman, Shri. Balakrishnan and Shri. P.O Paul also made statements demanding that the KSEB should continue to provide connection to small industries under the MG scheme.

8. KSEB was represented by Smt. Gayathri Nair, Chief Engineer (C&T), Smt. B. Sreedevi, Dy. Chief Engineer and other officials. Shri. B.Pradeep

Executive Engineer presented KSEB's case and responded to the statements made and provided clarification.

9. Shri. Shaji Sebastian, President, Ernakulam District stated that service connection to the consumers who have executed MG Agreement has been denied by the Board. He also presented a large number of cases where connections had been denied.

10. Shri.B. Pradeep, Executive Engineer, for Respondent has stated that as per the communication from the Commission, the petitions are now considered for its admissibility .The Petitions cannot be admitted since the Commission has already established the mechanism for grievance redressal as provided in the Electricity Act-2003 by establishing CGRF and Ombudsman which are functioning effectively. Section 42.5, 42.6 and 42.7 of the Electricity Act 2003 provide for redressal of grievances of individual consumers. Consumers can approach these forums for redressal of their grievances. The Appellate Tribunal for Electricity has held in various judgements that the State Electricity Regulatory Commission has no jurisdiction to look in to the individual grievances of the consumers. He argued that the Petitions for redressal of grievances should not be admitted by the Commission.

11. The Petitioner Shri. Shaji Sebastian submitted that Shri.Paul. P.O, one of the persons listed in his original petition, approached the CGRF Ernakulam and obtained an order from CGRF Central Region on 22-12-2011 in which the forum stated that CGRF cannot take a decision on the validity of the MG agreement and feels that the petition is not an isolated case and there are many more cases similar to this one. It is further stated by CGRF that clarification is to be given by the KSERC, and the CGRF forum did not take decision on the validity of the MG agreement. The individual complaints received by the Commission from Trichur and Malappuram also reveal that there are applicants who have already executed MG agreements but are deprived of service connection after executing the MG agreements before the Board order dated 28-10-2011. The Petitioner pointed out that as per the order dated 28-10-2011 the KSEB themselves have directed that the Chief Engineer (Commercial & Tariff) shall approach the Commission for obtaining clarification on the matter of release of service connection to the applicants who have already registered prior to issuance of this order, without realising the entire expense as per the rates approved by the Commission. This shows that the respondent Board was also aware of the difficulties of the applicants.

12. Under Section 86 (i) of the Act 2003, the Commission can specify or enforce standards with respect to quality, continuity and reliability of services by licensees. In the light of the contents of the petitions, observation of the CGRF Central Region, the complaints received by the Commission and the Board's order dated 28-10-2011 directing Chief Engineer Commercial & Tariff to approach KSERC for obtaining clarification on the matter of release of service connection, a situation exists under the licensee that the applicants who are now deprived of service connections due to the Board order dated 28-10-2011, were otherwise eligible since KSEB, a Licensee was following the practice till that date. Instead of the Licensee taking up the responsibility of ensuring smooth transition to the

regulatory regime, it appears that the officers of the licensee are interpreting the Board's order all of a sudden according to their whims and fancies and hence the consumers are running to the CGRF, Board Offices and to the Commission seeking relief. The Petitioner pointed out that a continuity of service by the licensee has to be ensured by the Commission to address the above situation under Section 86 (i) of the Act.

13. The General Secretary of the Association pointed out the fact that MG schemes were in existence in the State, which had not been properly reported by the Board and the Order deserves to be reviewed on the ground. He also advocated the continuance of the scheme.

Analysis and Decisions of the Commission

14. The primary point to be decided by the Commission is on the admissibility of the Petitions and the justification for any interim order in the matter. It is clear that the Petitioners have brought up the difficulties experienced by a large number of small industries in the state. This has come out of a general order issued by the Board based upon some directives of the Commission. These issues can not be termed as individual grievance as claimed by the respondent Board. The issues could be resolved only by general directives by appropriate authorities. Hence the Commission concludes that the issues raised by the petitioners do not come under the purview of individual grievances to be addressed by the CGRF or Ombudsman. The Commission decides to admit the Petitions for consideration.

15. Even though the hearings were posted for deciding the admissibility of the Petition the issues involved were presented by the Petitioners at length and the Respondent have also responded to the same. The main request of the Petitioners was for the continuation of an existing scheme practised by the Board. Hence the Commission does not envisage any objection from the Respondent KSEB on the pleas of the Petitioners.

16. The General Secretary of the Association had pleaded for a review of the Commission's order on OP 15/2011 dated 10.11.2011 on the grounds that the existence of the MG scheme was not reported by the representative of the Board during the hearing. The petition filed by the State General Secretary of (KSSIA) includes a request for review of the order of the Commission on OP NO 15/ 2011 in the matter of collection of connection charges from LT consumers filed by KSEB. Here, it is appropriate to examine the relevant portion related to the Minimum Guarantee Agreement in the order dated 10-11-2011 of the Commission on OP15/11.

"2. In the petition, the Board has stated that they had a practice based on the prevailing statutory provisions, for giving new electric connections to the applicants without realizing the actual cost incurred for providing supply. All new connections within a distance of 235 meters from the distribution mains were

provided under 'Normal Plan Works'. For works like line extension beyond 235 meters, installation of transformers etc., minimum revenue realization was ensured through Minimum Guarantee (MG) agreements. Among such works, new connections for productive sectors like industrial, agriculture etc. were released under special priority. For connections not included in the MG category, line rental charges were collected for a period of 3 years." (para.2, page 2)

" 17. Some industrial consumers who were present in the hearing have advocated for continuation of Minimum Guarantee Scheme which is being followed by the Board. Shri. Shaji Sebastian, representing Small Scale Industrial Association, supported the petition. He informed that the Minimum Guarantee condition which prevailed in the Board is essential to promote the small scale industries within the State. According to him, the Government under Section 108 of the Act has issued directions to the Commission for continuation of minimum guarantee conditions for promoting agriculture and industrial sectors in the State. He subsequently forwarded a written submission for continuation of the MG Scheme" (para 17, page 8)

17. The OP 15/2011 was not related to MG scheme and the Commission had not taken any position on the matter in the said order. As such the plea for review of the order based upon the non reporting of MG scheme cannot be approved. Since opportunities had been given for all stake holders to attend the hearing on the above petition, the arguments have been specifically mentioned in the order, and the Board had been directed to approach the Commission with specific proposal, the petition by the General Secretary KSSIA to review the order of the Commission dated 10-11-2011 on OP 15/11 cannot be considered.

18. Any how the Commission desires to examine the difficulties expressed by the Small Scale Industries in the State and the issues raised by the Petitioners are analysed below:

19. The Respondent has admitted that the Minimum Guarantee scheme had been in vogue for the last few decades for extending electricity to certain areas and certain consumers. As per Clause 20(b) of the erstwhile Conditions of Supply Regulations of KSEB of 1990 , *'the intention of the minimum guarantee agreement is to ensure that the required minimum revenue return is forth coming and will be charged only until the line extension becomes self remunerative as per norms fixed by the Board from time to time'*.

20. The Electricity Act 2003 was enacted in 2003. Section 46 of the Act covers the recovery of expenditure for providing an electric line or electrical plant to an applicant by the Distribution Licensee. Section 45 of the Act covers the prices to be charged by a Distribution licensee for the supply of electricity to a consumer. The concept of project wise revenue-linked return included in the MG scheme is not compatible with the Regulatory regime and accounting principles that came up with the Electricity Act 2003. Hence the Supply Code issued by the Commission in 2005 and the Terms & Conditions of Supply of KSEB 2005 did not envisage the continuation of the MG scheme.

21. But it has come to the notice of the Commission that KSEB had been continuing the MG scheme even after 2005 for providing power supply to Small Scale Industries without insisting the cost recovery as envisaged in Clause 7 of the Supply Code. When the Commission took a stringent view on the various lapses and deviations in implementing the provisions of the Supply Code, the KSEB issued an Order on 28.10.2011 directing the field officers to '*scrupulously follow the procedure laid out in the supply code and collect only the rates approved by the Commission from time to time towards the estimate of expenses for releasing that supply*'.

22. Following the above directions, it appears the field officers of the Board discontinued the practice of construction of lines and releasing services under the MG scheme. The Petitioners are aggrieved by this and want the Commission to direct the Board to continue the MG scheme further.

23. As discussed above, the MG scheme followed by the Board is not compatible with the Electricity Act 2003 and the Regulations made there under and hence the Commission is constrained to disallow the pleas of the Petitioners to direct KSEB to continue the Scheme. However in view of the difficulties expressed by the Petitioners who represent the Small Scale Industries of the State the Commission shall issue directive to the KSEB to honour the MG agreements *already executed* in the various field offices and to extend lines and release connections to such Minimum Guarantors without delay.

Orders of the Commission

On detailed examination of the submissions as above and hearing both the Petitioners and the Respondent, the Commission issues the following orders on the Petitions under consideration:

1. The Petitions and the Interlocutory applications submitted by the President, KSSIA, Ernakulum District and the General Secretary, KSSIA are admitted.
2. Kerala State Electricity Board shall honour the Minimum Guarantee Agreements *already executed* in the various field offices and shall extend lines and release connections to such Minimum Guarantors without delay.
3. Minimum Guarantee scheme which is reported to be continuing even after 2005 is violation of the provisions of Electricity Act 2003 and The Kerala Electricity Supply Code 2005 and can invite penal action under the Act and the Regulations.

4. As already directed in the orders of the Commission while disposing of Petition No. OP 15/2011, Board can approach the Commission with specific proposal with proper funding plan for any special scheme for the benefit of any consumer group. The Board can also seek clarification from the Commission as proposed in its order dated 28-10-2011 where existing practices or Board's or consumer's interest are involved.
5. While handling applications for connection from consumers, the licensee shall strictly follow Section 43 and Section 46 of Electricity Act 2003 and chapter III of The Kerala Electricity Supply Code 2005. For delay as well as for any denial of the connection, the licensee shall give a written reply for information and to enable the aggrieved consumers to redress their grievances if any through the CGRF or Ombudsman or any other appropriate forum.

The Petitions are disposed and ordered accordingly.

Sd/-	Sd/-	Sd/-
P.Parameswaran	Mathew George	K.J.Mathew
Member	Member	Chairman

Approved for Issue

Sd/-

Secretary