



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 12 of 2012

Thiru T. Subramaniam
Pro. Sri Venkateswara Carbides,
C/o C. Kandavelan,
22, Ramamoorthy Avenue,
Sakthi Nagar, Porur,
Chennai – 116.

. . . . Appellant
(Rep. by party- in- person)

Vs

The Superintending Engineer
TANGEDCO
Tuticorin Electricity Distribution Circle / South,
Ettayapuram Road,
Tuticorin

. . . . Respondent
(Rep by Thiru. P. Ayyanar/AEE/
Distn/Kayathar)

Date of hearing : 14-6-2012

Date of Order : 4.7.2012

The above appeal petition No. AP 12 of 2012 came up for final hearing before the Electricity Ombudsman on 14-6-2012. Upon perusing the appeal petition, counter of the respondent and after hearing both the parties, the Electricity Ombudsman passes the following order.

Order

1. Prayer of the Appellant :

The Appellant prayed for refund of the security deposit in respect of Service No. 123 (which has been disconnected) along with interest till the date of refund. He also prayed to calculate the interest at 5% for the security deposit upto 31-03-2003 and at the rate of 6% from 1-4-2003 till the date of payment.

2. Brief history of the case:

The petitioner was running a carbide industry having HT Service No.123. The service was under the jurisdiction of Superintending Engineer / Tuticorin Electricity Distribution Circle. Theft of energy was detected in the above HT industry on 8-10-1996. The service connection was disconnected on 1-6-1998. The Appellant has stated that he was acquitted by the trial court Tuticorin, in criminal appeal N o. 39 of 1999. The revision filed before the Hon'ble High Court of Madras in Criminal R.C. 154/2000 by TNEB was dismissed on 14-1-2003 and the SLP filed before the Hon'ble Supreme Court of India was also dismissed on 15-11-2011. Hence, the Appellant informed that there is no pendency of theft case against him and hence he has requested to give order on whether the Appellants Industry is eligible for interest till the date of refund. The petition filed before the CGRF of Tuticorin Electricity Distribution Circle was dismissed citing Regulations 5(1) and 5(11) of the forum regulations. Against the above order, the Appellant has filed the petition before Electricity Ombudsman.

3. Contentions of the Appellant:

The Appellant has contended the following in his appeal petition.

- I) The petitioner was running a carbide industry having **HTSC No. 123** coming under the control of S.E. Tuticorin. Since running of the industry is not viable due to free import of carbide the industry was closed and the service connection was disconnected on 01-06-1998.
- II) The appellant made many request to the office of the S.E. Tuticorin for refund of Security Deposit with interest till the date of payment. Since there was no reply the appellant has no option except file a petition on 29-06-2011 under sec.6 of the Right to information Act, to furnish the details regarding payment of interest for Security Deposit till the date of payment.
- III) By communication dated 11-08-2011, the S.E. Tuticorin informed appellant that for industry which has been closed interest will be calculated for a period of 5 years only and as per the above, interest was calculated upto 31-03-2003 and according to him a sum of Rs.4,87,566/- is with them towards Security Deposit.
- IV) Even as per the communication dated 15-05-1996, from the respondent, revised CCD required 7,98,170/-, CCD available with interest 4,46,911/- additional CCD required 2,51,259/-. The appellant has also paid the additional CCD. Hence the total CCD available with the respondent is **Rs.7,98,170/-** Hence the entire calculation by the respondent as per the communication dated 11-08-2011 is wrong and misleading.
- V) With regard to pendency of case, it is submitted the petitioner has already deposited Rs.10 lacs as per the directions of the court. Since it is not agreeable on the part of the TNEB, direction has been given to refund the above amount. Against the above order the TNEB filed an appeal before the High Court and the same was dismissed and the review petition filed by the TNEB was also dismissed. An SLP has

been filed against the High Court order before the Supreme Court and the same was also disposed of recently in favour of the petitioner.

- VI) Refund of deposit and calculation of interest till the date of payment has nothing to do with pendency of case. There is no provision either under the Electricity Act or under the Electricity supply code.
- a) Interest will be calculated only upto 5 years from the date of disconnection of service.
 - b) Pendency of a case will be a bar in refunding the Security Deposit with interest till the date of payment.
- VII) The Superintending Engineer, Tuticorin has not applied his mind which has been established namely in one letter dated 15-05-1996. The Appellant was informed that a sum of Rs.4,46,911/- was lying security deposit in respect of the service connection No.HTSC 123 EDC, Tuticorin. From the fact that the petitioner also made sum of Rs.2,51,259/- on 15-07-1996 and the total deposit with them is Rs.7,98,170/- it is very clear that the actual amount lying with the Electricity Board was Rs.7,98,170/-. On the other hand by communication dated 11-08-2011 it is simply stated that only sum of Rs.4,87,566/- is available with the board. In other words the Superintending Engineer, Tuticorin is not at all aware of the actual amount available with the board towards security deposit in respect of service connection HTSC No. 123.
- VIII) With regard to allegation of Theft of energy it is submitted that the appellant was acquitted by the trial court Tuticorin in criminal Appeal No. 39 of 1999 dated 30-11-99. Against the order of acquittal. The T.N.E.B Tuticorin filed a revision before The Honourable High Court, Madras in criminal R.C. 154/2000. The Honourable High Court also dismissed the Cr. R.C. 154/2000 on 14-01-2003. Against the above order, the T.N.E.B Tuticorin filed S.L.P before the Honourable Supreme Court of India New Delhi and the same was also dismissed on 15-11-2011. In other words the acquittal by the trial court with

regard to the theft of energy has been approved by the Supreme Court New Delhi. Hence the question of pendency of the theft of energy case does not arise .

- IX) Further it is submitted that the Forum has not decided the core question whether the petitioner industry is eligible for interest for the security deposit till the date of payment. The question of determination of interest is one thing and payment of the same is different thing.
- X) The Superintending Engineer, Thoothukudi Electricity Distribution Circle has relied in notification No. TNERC/CGR & EO/6/1 dated 08-01-2004, rule 5 (i) & (ii) in rejecting payment of interest till the date of payment. It is submitted that the Superintending Engineer, Thoothukudi Electricity Distribution Circle has not applied his mind in rejecting the claim of the appellant.

As per the above notification the forum shall take up any kind up grievances / complaints as defined in clause 2 (f) of the Forum Regulations. However, the consumer's grievances concerned with

- (i) Unauthorized use of electricity as detailed u/s 126 and
- (ii) Offences and penalties as detailed u/s 135 to 141 of the Electricity Act 2003 are excluded from the purview of the forum.

XI) It is submitted that sec.126 applies to unauthorized use of electricity, and sec 135 to 141 relates to theft of energy, theft of electrical lines etc. In the present case, the one of the only question to be decided is whether to pay interest upto the date of disconnection or payment of interest upto the date of refund. In other words there is no question of determination of unauthorized use of electricity or theft of energy. Hence the notification cited by The

Superintending Engineer, TEDC, Toothukudi is not at all relevant to the facts and circumstances of the case.

XII) In an identical matter in the case of M/s. AD Textiles, Vs C.G.R.M Karur in O.P. No. 8/06 dated 20-07-2006 there was a direction for payment of interest till the date of refund.

4. Contentions of the Respondent:

The Respondent has furnished the following in his counter.

- (i) The statement of appellant that the availability of security deposit of Rs.4,87,566/- as on 31-03-2003 based on the RTI reply letter dated 11-08-2011 is acceptable.
- (ii) The appellant has paid the additional CCD amount of Rs.2,51,259 and the available CCD as on 31-03-1996 is Rs.4,46,911/-. Hence the total CCD as on 31-03-1997 is Rs.6,98,170/- only. It was calculated as Rs.7,98,170 due to over sight. Further ACCD for the period as on 31-03-1998 was reviewed and excess amount of Rs.2,52,335/- was adjusted in the CC bill of 05/1997. After adjusting the amount, the CCD available as on 31-03-1998 is Rs.4,69,490/- along with interest totaling to Rs.4,87,566/-. As the required CCD as on 31-03-1998 is Rs.13,29,240/- the consumer has been informed to remit the ACCD amount of Rs.8,41,674 vide letter dt. 12-05-1998 in three instalments. But the appellant has not paid the said ACCD amount. Hence the balance available SD of Rs.4,87,566/- was adjusted against the CC arrears along with BPSC as on 31-03-2003. Hence no amount is available as security deposit for refund.
- (iii) The appellant's statement that the cases appealed by the Board at Supreme Court / New Delhi was disposed in favour of Appellant is not correct. The Supreme Court, New Delhi has disposed the case(CA No: 1616-1618/2004), with the direction to consider and dispose OS 8/1997 by the trial court, Chennai and refund of

amount Rs.10 Lacs paid as per the Court order and resumption of supply will be considered by the Trial Court.

- (iv) The refund of deposit if any could not be made, while the case related to theft of energy is pending. The appellant has a pending amount due to Board for Rs.2,42,22,338/- towards extra levy for theft of energy detected and also Rs.2,10,41,499/- towards current consumption arrears along with BPSC as on 31-03-12 is pending. But the appellant has only Rs.4,87,566/- as security deposit as on 31-03-2003. Hence refund of security deposit does not arise, since the appellant has the above huge amount pending due to Board.
- (v) The entire matter of AD textiles, Karur EDC was not mentioned elaborately by the Appellant and not even enclosed the order copy of OP No.8 of 2006 dt.20-07-2006. However in this case, the matter of refund of Security deposit and calculation of interest does not arise, since an amount of Rs.2,10,41,499/- is pending due from the appellant after adjusting the available security deposit of Rs.4.87,566/-
- (vi) The consumer redressal Forum has denied to consider the appellant's petition dt.20-01-2012 based on the notification No: TNERC/CGR & EO/6/1 dt.08-01-2004, Part II, regulation 5 (i) & (ii), since theft of energy was detected in this appellant's HT service No. 123, M/S. Sri Venkateswara Carbide on 08-10-1996 for an amount of Rs.2,42,22,338/- and the same is pending at court of law.
- (vii) Though the consumer was acquitted in criminal case CrI. RC 154/2000, he is entitled for payment of extra levy towards theft of energy. It is clearly instructed in memo no. CE/Comml/EE3/AEE3/F. Theft of Energy/D 93/12 dt.21-03-2012 that **determination of civil liability and compounding of offence to avoid criminal proceedings are two distinct**

exercises, in a case of theft of energy. Compounding of offence absolves a person of criminal liability with regard to commission of theft and it has no bearing on the recovery of actual loss committed by the accused in terms of civil liability.

- (viii) The appellant statement that the Board has appealed at Supreme Court (for civil case), against the acquittal by the trial court (for criminal case) with regard to theft of energy is not correct. The Board has appealed at Supreme Court vide CA No: 1616 to 1618 of 2004 against the dismissal of CRP No: 1648/2000, CRP NO:1649/2000 and Review application No:99/2000 in OS NO:8/1997 only.
- (ix) The appellant statement that the question of pendency of the theft of energy case does not arise is not correct. The main case OS 8/1997 is still pending and listed for trial at City civil court / Chennai.
- (x) The forum could not be able to decide the core question whether the petitioner industry is eligible for interest for the security deposit till the date of payment, since the petitioner was alleged with theft of energy and the same is pending at Court of law. Since the amount is pending due from petitioner, the determination of interest does not arise.
- (xi) The payment of interest for the security deposit in respect of HTSC NO:123 (which has been disconnected) alongwith interest till date of refund does not arise, **since there is no excess amount available in security deposit after adjusting the CC arrears and BPSC. Moreover the appellant only has to pay the balance of CC arrears and extra levy amount towards theft of energy.**

5. Hearing held by Electricity Ombudsman:

In order to enable the Appellant and the respondents to put forth their arguments in person, a hearing was held before the Electricity Ombudsman on 14-6-2012.

6. Argument of the Appellant:

The Appellant himself presented the case. He reiterated the contents of the appeal petition. He argued that the criminal case against theft of energy is decided in his favour and he has been acquitted in the above case. Hence, he argued that there shall not be any civil liability on him and he may not have to pay any due on that account. Further he also informed that a case is also pending on the court with regard to current consumption charges. He also argued that the present case is only to decide whether interest for the security deposit will be paid up to the date of refund.

7. Argument of the Respondent:

The respondent was represented by Thiru P. Ayyanar, Assistant Executive Engineer / Distribution. He argued that acquittal of criminal liability does not absolve the Appellant from the civil liability. He also informed that the case No.OS8/1997 on the civil liability is pending in the city civil court. He argued that on getting final orders from the City Civil Court the civil liability towards theft of energy will be known. Further he also argued that the appellant has to pay CC arrears also for the period from 5/97 to 12/99. He also informed that the Appellant has made an appeal against the order of subordinate judge, Thoothukudi in AS 121/2006 and is pending in the Hon'ble Madurai bench of

High Court of Madras vide case No.SA(MD)705/2011. He further argued that as per the calculation of the licensee, the dues to be paid by the Appellant is more than the available security deposit. Hence, payment of interest to security deposit does not arise. However, he informed that the licensee will pay interest at the rates ordered by the Hon'ble TNERC upto the date of termination of the agreement.

8. Written Argument of the Respondent :

The respondent has furnished the following in his written argument submitted in 29.6.2012.

- (i) It is submitted that based on the outcome of the court cases in OS 8/1997 at VIIth Asst. City Civil Court/Chennai and SA(MD) 705/2011 at Madurai Bench of Hon'ble High Court of Madras the balance security deposit after adjusting the due amount, if any available would be refunded calculating the interest till date of payment.
- (ii) It is submitted that the security deposit if any to be refunded would be paid, after disposal of the case. Also the pendency of a case is a bar in refunding the security deposit, as the petitioner has to pay a huge amount in crores. As per the Circular Memo No.7038/85-3 (Secretariat Branch) dt.22.4.1985 "The decision of the Criminal Court, Acquitting /Convicting the accused person charged with an offence of theft of energy is not a bar for filing a civil suit to claim loss" and the same was reiterated vide Memo No.CE/Comml/EE3/AEE3/F. Theft of Energy/D.93/12 dt.21.3.2012.

Hence, the civil case filed for realizing the assessment amount is in order.

8. Issues for consideration:

I have heard the arguments of both the parties and perused the documents furnished. On a careful consideration of the oral submissions I fix the following as issues for consideration

- (i) What are the code provisions for refund to the security deposit available with the licensee ?
- (ii) Whether the agreement of the appellant is terminated ?
- (iii) Whether the security deposit could be refunded before termination of the agreement ?
- (iv) Whether security deposit could be refunded to the appellant along with interest.

9. Findings on the first issue:

9.1 Before going into the issue of refund of security deposit, first the necessity for collection of security deposit is to be understood. The payment of security deposit has been dealt with in section 47(1) of the Electricity Act. The said section 47(1) of the Electricity Act 2003 runs as follows :-

“Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43 to give him reasonable security, as may be determined by the regulations, for the payment to him of all monies which may become due to him.

(a) in respect of electricity supplied to such person: or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter.

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

9.2 A bare reading of the above Section 47(1) of the Electricity Act 2003 makes it abundantly clear that a licensee is entitled to demand security deposit as security for payment of charges in respect of supply of electricity.

9.3 With regard to refund of a security deposit regulation 33 of the Distribution code has to be referred. The relevant regulation 33(5) is reproduced below:-

33 Agreements

x x x x

(5) In the case of termination of the agreement either by the consumer under sub – regulation (3) or by the licensee under sub – regulation (4), as the case may be, the licensee shall recover the dues if any due from the consumer after making such adjustment of the dues, due to him by the consumer as may be necessary to clear the dues from the consumer against the security deposit or additional security deposit or any other deposit made by the consumer and after making such adjustment, refund the balance deposit, if any, to the consumer within three months from the date of termination of the agreement.”

9.4 On a careful reading of the above regulation 33(5), it is noted that the security deposit could be returned to the consumer after adjusting the dues due from the consumer. It has been also stated that the balance security deposit if any has to be returned to the consumer within 3 months from the date of termination of the Agreement.

10. Findings on the second issue:

The respondent informed that the case No. OS8/1997, in respect of civil liability is pending in city civil court and another case SA(MD) 705/2011 on CC charges is also pending at Madurai Bench of High Court of Madras. As the court cases are pending, the Agreement is yet to be terminated.

11. Findings on the third issue:

11.1 Regarding refund of security deposit, the regulation 33(5) of the Distribution code has to be referred. The said regulation is reproduced below:-

33 Agreements

x x x x

(5) In the case of termination of the agreement either by the consumer under sub – regulation (3) or by the licensee under sub – regulation (4), as the case may be, the licensee shall recover the dues if any due from the consumer after making such adjustment of the dues, due to him by the consumer as may be necessary to clear the dues from the consumer against the security deposit or additional security deposit or any other deposit made by the consumer and after making such adjustment, refund the balance deposit, if any, to the consumer within three months from the date of termination of the agreement.”

11.2 On a plain reading of the above regulation 33(5) it is noted that the available security deposit will be refunded to the consumer after adjusting the dues that are due from the consumer. It is also noted that the balance security deposit if any has to be refunded to the consumer within 3 months from the date of receipt of the termination of agreement.

11.3 Hence it is held that the balance security deposit if any available could be refunded only after termination of agreement.

12. Findings on Fourth Issue :

12.1 In the instant case, it is argued by the respondent that the following are the dues from the consumer which are also under dispute and the cases are also still pending.

- | | | |
|--|---|---------------|
| (i) Balance amount to be collected from the Appellant towards cc arrears as on 31-3-2012 including BPSC after adjusting security deposit of Rs.4,87,566/- available as on 31-3-2003. | } | 2,10,41,499/- |
| (ii) Extra levy amount pending towards theft of Energy detected on 8-10-1996 (court case OS8/1997 pending at city civil court, Chennai | } | 2,42,22,338/- |

12.2 In view of the above pending dues, the respondent argued that the appellant has to pay the above dues even after adjusting the security deposit available and hence the refund of security deposit along with interest does not arise. However, the respondent informed that at the time of termination of agreement if any security deposit is available for refund then, the interest will be paid at the rate specified by the Commission till the date of termination of agreement. In the written argument he informed that interest will be paid till the date of payment.

12.3 But, the Appellant argued that in theft case he was acquitted in the criminal case and hence there cannot be any civil liability on him. Similarly

regarding CC arrears also, he informed that he filed an appeal petition and is also pending in Madurai Bench of Madras High Court. On receipt of final order from the court, the liability will be known.

12.4 On a careful analysis of the argument it is noted that two cases are still pending in the courts, one regarding civil liability on the theft case and other on the CC charges. Hence, the real due to be paid by the Appellant to the licensee is known only after final orders are issued by the respective Hon'ble courts in the pending cases and only after knowing the dues it can be adjusted with the available security deposit. The payment of interest will arise only if the security deposit available with the licensee is more than the dues to be paid by the Appellant.

12.5 In view of the above, I am of the view that the Appellant may approach the licensee at the time of termination of agreement for refund of security deposit along with interest. If there is any issue on calculation of interest he may raise the issue at the appropriate forum at that time.

13. Conclusion:

13.1 In view of my findings in paras 9 to 12 above, I am of the view that the Appellant may approach the licensee at the time of termination of agreement for refund of the security deposit along with interest.

13.2 With the above observations, the AP 12 of 2012 is finally disposed by Electricity Ombudsman. No costs.

(A. Dharmaraj)
Electricity Ombudsman

To

- 1) Thiru T. Subramaniam
Proprietor,
Sr. Venkateswara Carbides,
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- 2) The Superintending Engineer
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