

## **Before the Electricity Ombudsman**

(Appointed by the Joint Electricity Regulatory Commission  
for the State of Goa and UTs, under Section 42 (6) of the Electricity Act, 2003)  
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**Appeal No. 6/2012**

**Representation/ Appeal Before the Electricity Ombudsman for JERC for the State of Goa and UTs filed by M/s Goa Steels Limited, Radhakrishna Industrial Estate, Bicholim, Goa- 40350 [HT Installation No. HTC-21 (B), Consumer's Code: D) 5-121], against the order dated 17.01.2012 of CGRF, ED, Goa, in the matter relating to Billing Dispute, Manner of Determination of Arrears/ Dues and Payment thereof.**

1. M/s Goa Steels Limited,  
Radhakrishna Industrial Estate,  
Bicholim, Goa- 403504.

**Appellant**

V/s

2. The Chief Electrical Engineer,  
Electricity Department,  
Govt. of Goa, Vidyut Bhawan,  
Panaji, Goa- 403001.  
Through the Office of the Executive Engineer,  
Division V, Electricity Department,  
Government of Goa, Bicholim, Goa

**Respondent**

**Present:** Mr. V. K. Khanna, Electricity Ombudsman  
for JERC for Goa and UTs

**On behalf of the Appellant:** Shri Kundan Kumar A. Shetye, Director,  
M/s Goa Steel Ltd in the **hearings on 20.03.2012  
and 26.04.2012 at Goa.**

**On behalf of the Respondent:** Shri R. G. Dessai, Executive Engineer, Division V,  
Bicholim- Goa in the **hearings on 20.03.2012  
and 26.04.2012 at Goa** (as per authorisation letters  
dated 19.03.2012 and 20.04.2012 respectively by  
the Chief Electrical Engineer, Electricity  
Department, Govt. of Goa)

### **ORDER**

30.05.2012

1. The above cited representation/ appeal delivered on 15.02.2012 in the Office of the Electricity Ombudsman for JERC for the State of Goa and UTs, was admitted on 22.02.2012 and a copy of the same as received from the

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complainant was forwarded to the Respondent with the direction to submit their remarks/ counterstatement on each of the points/ issues relating to the matter of this representation, to the Office of the Electricity Ombudsman for JERC latest by 4<sup>th</sup> March, 2012, supported by copies of relevant documents with a copy of the same to the petitioner of this representation.

2. However, on the request made by the Respondent that due to Assembly Elections in Goa State on 03.03.2012 and declaration of results on 06.03.2012 since most of the senior officials of the Department would remain busy with the election work/ duties, the period for submission of replies to the Appellant's representation was extended by 10 days.

**The brief facts of the case are as follows:**

3. The Appellant Consumer is a private limited company registered under the Companies Act. It is engaged in the business of manufacturing steel, having electricity connection bearing consumer code cited above since the year 1995 with an Agreement dated 23.11.1995 executed with the Electricity Department, Government of Goa for supply of electricity with Contract Demand of 1800KVA on the terms and conditions as specified in the said Agreement.
4. The consumer successfully carried out its operations of steel manufacturing from 1995 to 2000. However, in the year 2000, due to recession, the factory of consumer had to be closed down and the consumer on account of its mounting financial losses failed to pay energy charges to the Electricity Department/ Licensee. Consequently, the supply of electricity to the installation of the consumer was disconnected.
5. In the year 2001 the consumer was able to revive the company's business and its operations. It was then that he approached the Licensee for restoration of HT supply to his installation and reconnection. At this time i.e. by May, 2001, the dues / arrears were reported to be of the order of Rs. 30,89,533. Based on the discussion the consumer, at this stage, had with the then Chief Electrical Engineer, Electricity Department, Goa, the HT supply to consumer's installation was restored/ reconnected with the arrangement that besides furnishing the fresh bank guarantee of Rs. 12.5 lakh, the reconnection charges will be paid. Further that the consumer will pay Rs. 2,00,000 per month during the first three months and thereafter an amount of Rs. 3,00,000 per month along with payment of monthly bills of electricity consumption till the above said outstanding arrears of Rs. 30,89,533 are fully cleared by the consumer. Subsequently, an additional amount of Rs. 12.5 lakh was also deposited by the consumer with the Electricity Department in lieu of the Bank Guarantee that it was required to furnish.

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6. The narration of events contained in the representation of the complainant reveal that while the consumer continued to make payments partially, he was irregular in making payment to the Department due to various financial difficulties he was stated to have been encountering in the company.
7. The grievance of the Appellant is basically relating to billing and calculation of the amount of dues / arrears being shown by the Department against him including the delayed payment surcharge (DPS) calculated at the rate of 2% per month (compounded) from time to time which, he is disputing.
8. The billing dispute raised in the representation revolves around the letter dated 06.01.2004 from the Executive Engineer (Commercial), Electricity Department, Goa to the Executive Engineer, O&M, Division No. V, Electricity Department, Bicholim- Goa, wherein the concerned Operation Division of the Department was conveyed the approval of the Chief Electrical Engineer to freeze the arrears of Rs. 30,89,533/- w.e.f. 20.04.2001 (i.e. the amount outstanding at the time of reconnection of the above HT installation) and to reconcile the HT bills issued for the month of October and November, 2000. Further direction was that the revised HT bills be issued to the Consumer on month to month basis and final arrears/ credit position shall be arrived at and intimated to the consumer. Despite several reminders and continuous follow up including personal meetings of the Appellant with the concerned officials of the Electricity Department, no action was taken on the decision of the Chief Electrical Engineer. The grievance of the Appellant is that it was on account of non- action on the part of the Department in neither cancelling the approval of the Chief Electrical Engineer nor implementing the decision in favour of the Appellant for a long period that led the dues/ arrears payable by him mounting to Rs. 1,50,47,866/- (endorsed by the Billing Dispute Redressal Committee) which were finally conveyed to him by the Department vide letter dated 08.12.2009 for payment.
9. The Appellant is aggrieved because of non- action of the Department on the decision of the Chief Electrical Engineer conveyed as early as on 06.01.2004. Had the officials of the Respondent revised the bills and recalculated the arrears in terms of the said letter and communicated to him the correct outstanding dues on the basis of freezing of arrears at Rs. 30,89,533/-, he would have cleared the same and payment of delayed payment surcharge at the rate of 24% per annum (2% compounded on month to month basis) on the dues/arrears would not have arisen. He would not have been called upon to pay the hefty amount of Rs. 1,50,47,866/- which, as submitted by the Appellant, is wholly arbitrary, illegal, capricious, unreasonable and unjustified.
10. The Appellant is also aggrieved on account of the Department levying late payment surcharge on the dues/ arrears in his case at the rate of 24% per annum (2% compounded on month to month basis). The contention of the Appellant in this connection is that the simple interest rate of 18% per annum should have

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been charged to him on the arrears/ dues based on the judgement of Hon'ble Supreme Court in the case of M/s Venkateshwara Alloy (P) Limited V/s State of Goa and Ors in the Civil Appeal No. 4408 of 2010 arising out of S.L.P. (C) No. 12887/2009 disposing of the appeal with clarification that the interest is to be charged on the basis of simple interest and not compound interest with the order that the Respondent (herein State of Goa and Ors) to raise fresh bills on the basis of simple interest at the rate of 18% per annum.

11. Another grievance in his representation was with respect to excess payment of Rs. 8,40,000/- raised on him on account of wrong billing for consumption on the basis of 2040 KVA (240 KVA in excess of the contract demand of 1800 KVA) for five months from 13.05.2001 to 09.10.2001 due to fault in the meter. (This grievance of his representation was later withdrawn by the Appellant himself, informing that this matter since stands settled with the Department and to his total satisfaction and he does not propose to pursue the same).
12. The Appellant, after having repeatedly addressed representations/ communications to the Respondent Department calling upon them to address the issues and to revise/ recalculate his arrears/ dues in terms of the Chief Electrical Engineer's letter dated 06.01.2004 and thus having failed to have the above grievances settled with the Respondent and faced with a threat of paying hefty amount of Rs. 1,50,47,866, had, in the normal course, the remedy of approaching the CGRF for redressal of his grievances. But unfortunately the Electricity Department, Govt. of Goa (deemed licensee), despite there being clear mandate under sub-section (5) of Section 42 of E.A, 2003 to establish the Forum for redressal of consumers' grievances within 6 months from the appointed date or date of grant of licence, had not created such a Forum. Under these circumstances, the Appellant had no other option except to knock at the doors of the courts. The Appellant had approached the Hon'ble High Court of Bombay at Goa by way of Writ Petition No. 847/2009, seeking direction of the Court to the Department to revise and recalculate the consumer arrears in terms of decision to freeze the arrears of the consumer at Rs. 30, 89,530 conveyed vide letter dated 06.01.2004 and by adjusting the amount of Rs. 8,40,000 erroneously billed towards contract demand and directing the Department to refund to the consumer along with interest all such amounts found to be in excess of the actual arrears of energy charges of the consumer or in the alternative to adjust the same against future monthly energy bills.
13. The Hon'ble High Court first heard the matter on 17.12.2009 and finally on 02.03.2010. In its order dated 02.03.2010, the Court observed that the consumer petitioner had deposited Rs. 50 lakh in the registry of the Court (which the Court ordered can be withdrawn with accrued interest by the Chief Electrical Engineer, Govt. of Goa) and further a sum of Rs. 13 lakh with the Goa State Govt. On a statement made by the learned Advocate General of the State on behalf of the Respondent that the recovery initiated against the

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petitioner consumer was now to the tune of Rs. 1,63,00,000 out of which Rs. 63,00,000 the petitioner had already deposited, the Hon'ble Court directed the petitioner consumer to deposit the remaining amount in 20 equal monthly instalments from 10.03.2010 onwards with the Govt.

14. The Hon'ble Court, however, kept open the right of the consumer to approach the Grievances Dispute Redressal Committee.

15. As at present, all the dues/ arrears stand paid by the Appellant to the Department as per the order of the High Court. Further, all the monthly energy bills are also being paid regularly by the Appellant consumer.

16. In the meanwhile, since the CGRF had been established by the Electricity Department, Govt. of Goa, and the institutional mechanism for redressal of consumers' grievances had come into being, the Appellant filed his grievance application before the Forum on 21.11.2011 which came up for hearing on 20.12.2011 and 03.01.2012. The CGRF in its order dated 17.01.2012, by taking a majority view and by rejecting enblock the views expressed by one of the members of the Forum contrary to the majority view (views expressed by this member Mr. P.K. Kamalan, quoted as Dissenting note in the order), dismissed the petition with the conclusions that:

- a. Levy of delayed payment surcharge included in the energy charges of Rs. 1,50,47,866 raised on the consumer as conveyed by the Department in their letter dated 08.12.2009 is correct and the reasonings put forth by the consumer is devoid of substance and is accordingly rejected.
- b. The grievance of the consumer regarding erroneous billing of Rs. 8.4 lakh and demand to adjust the same is, prima facia, untenable and rejected.
- c. Prayer made to levy DPS at the simple rate of interest of 18% for calculation of energy charges, is also not tenable and rejected.

**17. Aggrieved by this order passed by CGRF, Goa, the Appellant filed this representation before the Electricity Ombudsman for JERC, with the following prayer.**

#### **Prayer**

- i. The CGRF's order dated 17.01.2012 be quashed and set aside.
- ii. The calculations of the Electricity Department, Govt. of Goa and endorsed by Bill Dispute Redressal Committee that the amount due from the consumer towards arrears is Rs. 1,50,47,866 as conveyed by their letter dated 08.12.2009 and allow the settlement of the complainant's billing dispute on payment thereof, be quashed and set aside.

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- iii. Arrears be revised and recalculated in terms of the decision of the Department to freeze the arrears of the complainant at Rs. 30,89,533 conveyed vide letter dated 06.01.2004.
- iv. Amount paid in excess of the amount so recalculated/ determined on actual arrears of energy charges and other charges due from the consumer, be adjusted against future energy bills in respect of HT installation of the consumer.
- v. Alternatively, the billing dispute of the consumer be settled by levying DPS at a flat rate of 18% simple interest from the date of reconnection of the consumer's HT installation in May 2001 till the deposit of the amount in terms of the judgement of the Hon'ble High Court of Bombay at Goa in the writ petition No. 847 of 2009.

### **Settlement by Agreement**

18. Both the parties to the dispute were informed by the Office of Electricity Ombudsman on 12.03.2012 to appear before the Ombudsman for the preliminary hearing on 20.03.2012 at Goa, indicating them to put forth and explain the case in person, answer all material questions and produce relevant documents relating to the subject matter of the representation. It was indicated that the endeavour of the Ombudsman during this preliminary hearing primarily shall be to facilitate and explore the possibilities of settlement of the grievance/dispute through conciliation and mediation.
19. Both the parties appeared and were heard. It was ascertained as to whether at this stage they were willing for any settlement mutually agreeable to both of them. The Appellant submitted that he on his part was willing for settlement if the delayed payment surcharge at a flat rate of 18% simple interest is charged to him on the arrears/ dues from the date of reconnection of its installation till the full amount was paid by him to the Department in terms of the order dated 02.03.2010 of the Hon'ble High Court of Bombay at Goa in writ petition No. 847 of 2009. The representative of Respondent present during this preliminary hearing was neither willing to accept this mode of settlement made by the Appellant nor was equipped to offer any alternative mid course settlement. Finding that no mutually agreeable settlement appeared to be insight, the preliminary hearing concluded with direction to both the Appellant and the Respondent to make available the additional information as directed during the course of the preliminary hearing. It was therefore decided to pass an award only after another hearing and providing further reasonable opportunity to both the parties to argue and put forth their pleadings.
20. The next hearing in the matter was held at Goa on 26.04.2012.

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## **Pleadings by the parties to the Dispute**

### **I. The Appellant**

21. During this hearing, the Appellant reiterated the grievances as detailed in his representation/ appeal. The submissions, in nutshell, were as follows:

- i. He submitted that the billing dispute primarily is the consequence of the Respondent failing to abide by and implement its own decision conveyed vide its letter No. 154/IV/HTC/CEE/TECH/2056 of 06.01.2004. This was a letter addressed by the Executive Engineer (commercial) in the office of the Chief Electrical Engineer, Govt. of Goa to the Executive Engineer, O&M, Division No. V, Electricity Department, Bicholim, Goa in whose jurisdiction the Appellant consumer falls and is served with electricity supply. This letter conveyed to the concerned Operation Division the decision of the Chief Electrical Engineer to freeze the arrears of the Appellant consumer at Rs. 30,89,533 (i.e. the amount outstanding at the time of reconnection of the Appellant HT installation, 20.04.2001). It further conveyed to reconcile the HT bills issued to the Appellant consumer for the months of Oct. and Nov., 2000 as demand charges are billed as per the billing/ contract demand. It further directed the operational Division that HT bills of the Appellant consumer shall be revised on month to month basis and final arrears/ credit position shall be arrived at and intimated to the consumer.
- ii. As regards reconciling the bills for Oct. and Nov., 2000, the Appellant submitted that in respect of bills issued after disconnection (13.10.2000), full contract demand charges were billed for Oct. 2000 instead of billing on pro rata basis. For Nov. 2000, full contract demand charges were billed instead of billing on annual line minimum charges of Rs. 2813. This alters the position of overall arrears which gets reduced and like wise DPS thereon.
- iii. He submitted that despite several reminders and continuous follow up and personal meetings with the concerned officials of the Electricity Department, no action was taken by the Department on the decision of the Chief Electrical Engineer, Government of Goa. He informed that a copy of the said letter was made available to him by the officials of the Department which subsequently was also made available to him officially together with records of official notings (leading to taking this decision of freezing the arrears by Chief Electrical Engineer, Govt. of Goa), as a follow-up of his RTI application. This led him to believe that arrears stood frozen and the final bill after recalculation and adjustment on the basis of the CEE's approval conveyed vide the above said letter will be intimated to him

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for making the payment. The reading of the internal noting of the Department (obtained through RTI application) revealed that special dispensation was granted to him in the overall interest of continued revenue generation by the Department and facilitate him to continue to run his plant which was in the overall interest of socio- economic development of the area in which the plant is running. The letter and spirit of the notings on the file (obtained through RTI) made him doubly sure that the decision of Chief Electrical Engineer will be implemented. Hence he relied on the same and waited all along for its implementation by the concerned Executive Engineer of the Department. Further, he submitted that the Department all along had been realising his difficult financial position at different points of time and facilitating him to clear the dues in instalments instead of the harsh action of proceeding against him for recovery of dues in one lump sum and taking action under Section 56 of the Electricity Act, 2003 to disconnect the supply. As the Department had been facilitating him in this manner, he was pretty sure that the approval as contained in the letter of 06.01.2004 will finally be implemented.

- iv. He submitted that it was solely on account of non- action on the part of the Department (neither cancelling the approval of the Chief Electrical Engineer nor implementing the decision in favour of the Appellant Consumer) for a long period of about six years that hefty dues inclusive of DPS were lately calculated at Rs.1,50,47,866/- and endorsed by the Billing Dispute Redressal Committee and were finally conveyed to him by the Department vide their letter dated 08.12.2009. He failed to understand the motives of the officers down below the Chief Engineer level in not implementing his decision and keeping the matter hanging for so long. He submitted that had the officials of the Respondent Department revised his bills, recalculated the amount of arrears/ dues as per the direction of the CE and communicated to him the outstanding arrears on the basis of freezing of arrears at that point of time, he would have cleared the bill and the question of payment of delayed payment surcharge at the rate of 24% per annum (2% compounded on month to month basis) on the arrears would not have arisen. He would not have been called upon to pay the bloated amount of Rs. 1,50,47,866/-. He submitted that raising of bills by the Respondent at this late stage was wholly arbitrary, illegal, capricious, unreasonable and unjustified.
- v. The Appellant also submitted that there are instances in the Department (i.e. the Respondent herein) where they have waived off late payment surcharge in certain cases. He submitted that the Appellant may similarly be granted this waiver of payment of DPS.

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- vi. On the matter relating to levying of delayed payment surcharge on the dues in his case by the Department at the rate of 24% per annum (2% compounded on month to month basis), the Appellant referred to the judgement of Hon'ble Supreme Court in the case of M/s Venkateshwara Alloy (P) Limited V/s State of Goa and Ors in the Civil Appeal No. 4408 of 2010 arising out of S.L.P. (C) No. 12887/2009 disposing of the appeal with clarification that the interest is to be charged on the basis of simple interest and not compound interest and ordering the Respondent (herein State of Goa and Ors) to raise fresh bills on the basis of simple interest at the rate of 18% per annum.
- vii. He submitted that in his case also the simple interest rate of 18% per annum should similarly be charged to him on the arrear/ dues.
- viii. The Appellant Consumer submitted that his grievance with respect to excess payment of Rs. 8,40,000/- arising on account of wrong billing for consumption on the basis of 2040 KVA (240 KVA in excess of the contract demand of 1800 KVA) for five months from 13.05.2001 to 09.10.2001 due to fault in the meter, may be treated as withdrawn as this matter since has been settled with the Department to his entire satisfaction. The Appellant informed that a memo/ rejoinder to withdraw this part of grievance in his representation before the Ombudsman has since been submitted and is in record. This was also confirmed by the representatives of the Respondent Department present during the hearing.

## **II. The Respondent**

22. Responding to the above submissions of the Appellant, the Respondent in the course of its submission/ replies and through its representative during the course of the hearings denied enblock the contentions of the Appellant. He submitted that the bills of arrears/ dues (including levying of DPS) have been raised by the Department correctly and in this connection submitted as follows:

- i. The entire billing dispute raised by the Appellant revolves around the letter dated 06.01.2004 from the Executive Engineer (Commercial) of the Office of the Chief Electrical Engineer in which approval of the Chief Electrical Engineer was conveyed to freeze the arrears of Rs. 30,89,533 w.e.f. 20.04.2001. In this regard, it was submitted that the said letter under reference by the Appellant is an internal correspondence from the office of the Chief Electrical Engineer to the Executive Engineer, Division V, Bicholim, Goa. A copy of the same was neither furnished nor endorsed to the Appellant. The Appellant therefore cannot take shelter of this letter for demanding the freezing of

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arrears. It was further submitted that the Chief Electrical Engineer had no powers to freeze the arrears as it amounted to 'write off of loss of revenue'. The power of Chief Electrical Engineer on this matter is limited to Rs. 20,000 only. A copy of the Govt. Notification on financial power has since been submitted and is on record.

- ii. On the question raised by the Appellant as to why the Electricity Department took long time of about six years to take a final view on the approval of CE conveyed vide letter dated 06.01.2004 and as to why the Department and the Appellant did not resolve mutually the matter contained in the said letter and consequently as to why the dues/ arrears were allowed to accumulate for such a long period, the representative of the Respondent submitted that the contention of the Appellant in this regard is not tenable. The Chief Electrical Engineer vide letter dated 02.05.2005 addressed to the Executive Engineer, Division V, Bicholim, had given clear instruction to ensure recovery of all outstanding dues by 31.10.2005 and for this purpose had granted the consumer instalment facilities for paying not less than Rs. 3 Lakh per month towards arrears in addition to the regular monthly bills. A copy of the said letter was also marked to the Appellant requesting him to clear all outstanding arrears along with regular monthly bills by 30.10.2005. This settled the issue of freezing of all arrears and the matter stood closed with the issue of this letter dated 02.05.2005. Accumulation of arrears arose only because the Appellant was irregular in payment of monthly bills. The Department was not responsible for accumulation of arrears to the extent of Rs. 30,89,533. The Department vide its letter dated 02.05.2005 had in fact in good faith given the Appellant opportunity to clear the outstanding bills rather than giving him the notice at this stage itself for disconnection. This liberal and helpful attitude of the Department towards the consumer was in recognition of financial stress the Appellant consumer was facing at different points of times and was also with a view to facilitate him to continue to run his plant. The representative of the Respondent concluded this point by submitting that the Appellant's reliance on the letter dated 06.01.2004 is totally misplaced and is not sustainable.
- iii. As regards the contention of the Appellant to levy in his case delayed payment surcharge at the rate of 18% per annum simple interest based on the judgement of the Hon'ble Supreme Court in the case of M/s Venkateshwara Alloy (P) Ltd. V/s State of Goa and Ors, the representative of the Respondent referred to the order of the CGRF and submitted that the case of this judgement pertained to recovery after permanent disconnection through Revenue Recovery Court (RRC). In this case as per prevailing conditions of supply the interest rate chargeable was 18% p.a. Whereas, the Appellant consumer happens to be the HT consumer of the Department and levy of DPS in his case has been done correctly in accordance with the general condition of supply then prevailing.

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## Issues

23. The issues arising from the above are:

- i. What prevented the Respondent to implement its own decision to freeze the arrears of the Appellant at Rs. 30,89,533 (i.e., the amount of dues outstanding at the time of reconnection of Appellant HT installation on 20.04.2001) as conveyed by his office to the Executive Engineer of the concerned Operation Division vide its letter dated 06.01.2004.
- ii. Why didn't the Respondent, as per his own decision, reconcile the bills for the months of Oct. and Nov., 2000, and revise the bills on month to month basis and arrive at the correct and final amount of arrears/ credit position and then intimate to the Appellant consumer to enable him to clear the final bill.
- iii. Why it allowed the matter to linger on for a long spell of about six years (from 06.01.2004 to 08.12.2009) without any action either way to cancel/ withdraw its decision or complete action as per its earlier decision, straightaway within a reasonable period of the decision having been taken and commitment made (on 06.01.2004).
- iv. Was it logical or fair to burden the Appellant consumer with huge financial liability (accumulated amount of arrears/ dues) with DPS imposed at the rate of 24% per annum (2% compounded on month to month basis) arising on account of the Respondent's own inability to implement its decision of 06.01.2004.
- v. Would, the Respondent's delayed action, have been avoided or cut short and thereby lessened (made lesser) the huge burden on the Appellant, if it had created or established, in time, an independent institution for redressal of consumers' grievances (CGRF) as mandated under sub section (5) of Section 42 of EA, 2003.
- vi. Whether the Appellant deserves to be extended the benefit of the judgement of the Hon'ble Supreme Court in the case cited in the submissions of the Appellant for payment of DPS.

## Findings

24. The billing dispute under this representation primarily is the consequent upon the Respondent's inability to honour its own decision/ commitment conveyed vide letter No. 154/IV/HTC/CEE/TECH/2056 of 06.01.2004. The nature and content of this correspondence conveying decision of the Chief Electrical Engineer find elaboration in the 'Brief History of the Case' as also in the pleadings of both the parties and hence are not repeated here in this section.

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25. The basic issue, in the entire gamut of the Appellant's representation, is the Respondent's inability to implement its own decision and commitment made to freeze the Appellant's arrears/ dues of Rs. 30,89,533 w.e.f. 20.04.2001 (the amount of dues outstanding at the time of reconnection of Appellant's HT installation) and refusal to extend the benefit of this decision to the Appellant. The Respondent in support of its this inaction has taken the stand that the said letter of 06.01.2004 which the Appellant repeatedly relied upon in his submission to demand freezing of arrears, was an internal correspondence of Electricity Department from the Office of the Chief Electrical Engineer to the Executive Engineer of the concerned Operation Division (Division V, Bicholim) and that a copy of the same was neither sent nor endorsed to the Appellant. Further, the plea made is that the Chief Electrical Engineer had no powers to freeze the arrears of the Appellant amounting to Rs. 30,89,533 as per the relevant notification of Govt. of Goa, titled 'The Goa Delegation of Financial Powers Rules, 2008'. The freezing of arrears amounted to 'write off' of losses of revenue. The powers of the Chief Electrical Engineer (as Head of the Department) as per the delegation of power under these rules in this respect were limited to Rs. 20,000.
26. The Respondent escaping to implement its own decision on the ground of the plea that it was an internal correspondence and a copy of the same had even not been sent or endorsed to the Appellant, is simply irrelevant and meaningless. All decisions taken in any Department at different levels and points of time relating to its activities and operations in respect of its clients/ consumers (in the present case on the matter relating to billing and recovery of arrears of the consumer) are necessarily internal and not of any outside agency or the Department. The consumers concerned having implication of the so called internal decisions have access to such information, if not directly by the Department, through RTI which in the present case the Appellant is submitted to have obtained. Therefore, what is so internal about it, and advance it as a ground, to escape implementation, does not cut any ice. On the same analogy, the stand taken that the said internal correspondence was not sent or endorsed to the Appellant is also irrelevant here because the crux of the matter is the content and meaning of this correspondence which clearly directed the concerned Executive Engineer to revise the HT bills of the Appellant on month to month basis to arrive at the figure of final arrears/ credit position and **intimate** to the Appellant consumer. This intimation, the Respondent failed to do and this is what has aggrieved the consumer.
27. Another plea of the Respondent is that it was not within the power of the Chief Electrical Engineer to freeze the arrears as it amounted to 'write off' of revenue losses. As for as this plea is concerned, it is conceded that freezing of arrears amounting to Rs. 30,89,533 (the amount of dues of the Appellant outstanding at the time of reconnection of his HT installation) from 20.04.2001 onwards to the date of intimating the consumer the final amount of arrears/ credit position, meant foregoing revenue accrued to the Department on account of levy of DPS. This amounted to revenue losses for which the powers of the Chief Electrical Engineer were limited to Rs. 20,000 only.

28. The decision of the Chief Electrical Engineer therefore to freeze the arrears of the said amount of Rs. 30,89,533 was not valid, preventing the Respondent to implement its own decision.
29. The Chief Electrical Engineer, Electricity Department, Govt. of Goa, as the Head of the Department, first having taken the decision, conveyed the same to the concerned Executive Engineer for implementation and later realising that it was not within his powers and then deciding not to implement it and at the same time not formally cancelling his decision, is a matter of serious concern. Prudence demands that in a situation like this, the Chief Electrical Engineer as Head of the Department, in order to keep up the commitment made by him to the consumer, which in fact is for a good cause and also a measure to improve recovery of arrears, should have placed the matter in proper perspective to the empowered/ competent authority in the State Govt. and sought post facto approval to be able to have implemented the decision. Freezing the arrears and in the process waive levy of delayed payment surcharges is a common practice which is resorted to by power utilities in many states as an incentive to consumers to clear their past arrears of bills and in the process utilities improve their recovery position. This appears to have not been done by the Respondent and resultantly the said consumer is left in lurch to fend for himself. Consumer's interest, it seems, has been of little interest to the Respondent.
30. The fact, however, remains as to why did the Respondent not formally through a letter cancelled its decision of 06.01.2004 with respect to freezing of arrears and intimated straightaway to the Appellant that the decision of the CEE conveyed vide letter of 06.01.2004 was not valid and stands withdrawn and, therefore, the Appellant need not take cognizance of this letter as regard freezing of arrears and keep on pressing the Department for implementation of this decision. The submission of the Respondent in this connection refers to CEE's letter dated 02.05.2005 to the Executive Engineer, Division V, Bicholim, (a copy of which is also marked to the Appellant requesting him to clear all the outstanding arrears along with regular bills by 31.05.2005), advising him to ensure recovery of all the outstanding dues by 31.05.2005 and grant the Appellant instalment facilities to clear the outstanding arrears along with payment of regular monthly bills. This letter in no way lead anyone to infer that the Respondent's earlier decision of freezing the arrears is said to have been cancelled. It is observed that this nature of letter dated 02.05.2005 warning the consumer to clear the outstanding arrears in full and at the same time permitting him the facility of payment in instalments was not something new and such warnings had even been given to the Appellant consumer even in the past and thereafter. It is, therefore, concluded that the said letter did not amount to cancelling of the decision conveyed vide letter dated 06.01.2004.
31. This lapse on part of the Respondent keeping the Appellant in dark all along till the time the Appellant knocked at the doors of the Court and approached the Hon'ble High Court of Bombay in Goa (in absence of an independent

institutional mechanism for redressal of consumers' grievances having not been created or established by the Electricity Department, Govt. of Goa, even though mandated under Section 42 (5) of the Electricity Act, 2003) caused the Appellant insurmountable financial burden by way of payment of DPS on arrears for a long spell of about six years. Had the Respondent advised the Appellant within a reasonable period of time about cancellation of its decision, the Appellant would have been clear in his mind that no such concession of freezing of arrears was forth coming from the Respondent. The Appellant's submission in this connection that he would have then made an alternative arrangement either through borrowings from banks or other sources at a much lower cost than the rate of DPS he was required to pay and cleared his dues in full and saved himself from paying the hefty amount towards DPS to the Respondent, has substance and cannot be lost sight of. It is recognised that the Respondent, realising the difficult financial position of the Appellant's company from time to time has been facilitating him to clear the arrears by way of instalments but that has hardly caused any substantial relief to him as DPS were continued to be levied on outstanding dues, escalating his financial outgo.

32. Keeping the Appellant under illusion is a great injustice done to him. The Appellant, therefore, deserves to be granted a relief by way of concession in payment of DPS which shall be based on the judgement of the Hon'ble Supreme Court in the case of M/s Venkateshwara Alloy (P) ltd. V/s State of Goa and Ors. The Appellant, despite under financial difficulties at different points of time, has always endeavoured and volunteered to clear his outstanding dues/arrears. Therefore, there is no reason why a consumer like the Appellant shall be treated adversely as compared to a consumer who defaulted in payment indefinitely, permanently disconnected and where the Respondent Department had to resort to the process of recovery of dues through Revenue Recovery Court (RRC). The relief in payment of DPS based on judgement of Hon'ble Supreme Court as cited above shall be granted to the Appellant from the date of reconnection of the consumer's HT installation in May 2001 till the deposit of the amount in terms of the judgement of the Hon'ble High Court of Bombay at Goa in the writ petition No. 847 of 2009.
33. Reconciling the bills of the Appellant, as pleaded by him, for the month of Oct and Nov. 2002 has to taken care of by the Respondent. The bills revised on month to month basis to arrive at the correct amount of arrears outstanding at the time of reconnection of the consumer's HT installation (20.04.2001) shall have to be finalised and the concession in levying DPS extended based on judgement of the Hon'ble Supreme Court as mentioned in the preceding paragraph. Levying of DPS on this basis would have to be only on such of the amount of outstanding dues/ arrears which remained unpaid by the due date.

Contd...

**ORDER**

34. Based on the above, the representation of the Appellant is disposed off with the following order:

- i. The impugned order of the CGRF, Electricity Department, Goa, is set aside.
- ii. Decision of the Chief Electrical Engineer, Govt. of Goa, conveyed vide letter dated 06.01.2004 to the concerned Executive Engineer, with respect to freezing of arrears of Rs. 30,89,533 w.e.f. 20.04.2001, which later realised to be not within the powers of the Chief Electrical Engineer as Head of the Department as per Goa State Govt. Notification on Financial Powers, and adjudged to be as not a valid decision, shall explicitly be cancelled forthwith so that clear message is sent to all concerned and the Appellant consumer, no longer, is kept under any more illusion.
- iii. Bills for the month of Oct. and Nov. 2000, as pleaded by the Appellant, shall be reconciled.
- iv. The bills shall be revised on month to month basis to arrive at the correct amount of arrears outstanding at the time of reconnection of the Appellant's HT installation in May 2001.
- v. DPS shall be levied based on the judgement of the Hon'ble Supreme Court in the case of M/s Venkateshwara Alloy (P) Ltd. V/s State of Goa and Ors i.e. at a flat rate of 18% simple interest from the date of reconnection of the Consumer's HT installation till the deposit of the entire amount by the Appellant in terms of judgement of the Hon'ble High Court of Bombay at Goa in writ petition No. 847 of 2009.
- vi. DPS shall be levied only on such of the amount of arrears/ dues which remained unpaid by the Appellant by due date.
- vii. Based on (iii) to (vi) above, month- wise statement, indicating (a) the amount of arrears payable (including levy of DPS), (b) amount paid by the Appellant consumer (including monthly current energy bills), and (c) the amount paid in excess or remaining to be recovered, shall be worked out, verified by the competent authority and made available to the Appellant.

(16)

- viii. Excess amount (if any), so determined, paid by the Appellant shall be refunded with interest equivalent to the bank rate (currently 6% p.a.) by way of adjustment against electricity bills of current consumption in respect of his HT installation to be raised on him hereafter.
- ix. No order on costs.

Dated: 30<sup>th</sup> Day of May

Sd/-

(V. K. Khanna)

Electricity Ombudsman for JERC for the State of Goa and UTs

Ref File No. 1/16/2012-EO

Forwarded to:

1. M/s Goa Steels Limited,  
Radhakrishna Industrial Estate,  
Bicholim, Goa- 403504.

They shall furnish to the Chief Electrical Engineer, Electricity Department, Govt. of Goa, within a period of one month from the date of issue of this order, a letter of acceptance that the award is in full and final

settlement of their representation/ claim. If they do not intimate the acceptance, the order shall not be required to be implemented by the Respondent Department/ licensee.

2. The Chief Electrical Engineer,  
Electricity Department,  
Govt. of Goa, Vidyut Bhawan,  
Panaji, Goa- 403001

The Respondent shall comply with the award/ order within 15 days of the receipt of the intimation letter of acceptance from the Appellant and intimate the compliance to the Electricity Ombudsman for JERC. Non-compliance shall constitute violation of JERC regulations and may attract remedial action under Sections 142 and 146 read with Section 149 of Electricity Act, 2003.

Copy also to:

1. The Secretary, JERC for Goa and Uts
2. The Secretary (Power), Govt. of Goa, Panjim.
3. The Chairman, CGRF, ED, Govt of Goa.

## **Before the Electricity Ombudsman**

(Appointed by the Joint Electricity Regulatory Commission  
for the State of Goa and Uts, under Section 42 (6) of the Electricity Act, 2003)  
Second Floor, HSIIDC Office Complex, Vanijya Nikunj, Udyog Vihar, Phase-V, Gurgaon (Haryana)  
Ph: 0124-2340954, Telefax: 0124-2342853, E-mail: [vkkhanna2002@gmail.com](mailto:vkkhanna2002@gmail.com)

Date: 04<sup>th</sup> June, 2012

**Representation/ Appeal Before the Electricity Ombudsman for JERC for the State of Goa and Uts filed by M/s Goa Steels Limited, Radhakrishna Industrial Estate, Bicholim, Goa- 40350 [HT Installation No. HTC-21 (B), Consumer's Code: D) 5-121], against the order dated 17.01.2012 of CGRF, ED, Goa, in the matter relating to Billing Dispute, Manner of Determination of Arrears/ Dues and Payment thereof-**

**Order dated 30.05.2012 passed in respect thereof.**

### **CORRIGENDUM**

Correction, as indicated below, shall be carried out in the above said order:

The figure 6% appearing after the word 'currently' in the bracket under item (viii) on page 16 of the Order, shall be read as 9%.

Sd/-  
V. K. Khanna  
Electricity Ombudsman

Ref No. 1/16/2012-EO

**To,**

1. Shri Nirmal Braganza  
Chief Electrical Engineer,  
Electricity Department,  
Govt. of Goa, Vidyut Bhawan,  
Panaji, Goa- 403001.
2. M/s Goa Steels Limited,  
Radhakrishna Industrial Estate,  
Bicholim, Goa- 403504