

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

FILE NO. EOM. 26/2015

Petition No.: 4/2015

Appeal Petition dated 26-10-2016 under Sec. 42(6) of the Electricity Act 2003 read with clause 5(1) of the Guidelines for Redressal consumer Grievances assailing the order dated 29-09-2015 passed by the Learned CGRF Guwahati zone.

Appeal petitioner - M/S Plant India Enterprise (P) Ltd.
EPIP, AIDC Complex, Amingaon,
Guwahati-781031, District-Kamrup (Rural),

Represented by P.K. Soni
S.K. Kejriwal Advocate for the Petitioner

Vs.

Respondent - The Area Manager
Industrial Revenue Collection
Area II APDCL
Jalukbari, Guwahati – 14

Represented by Area Manager IRCA- II APDCL
Jalukbari, Guwahati-14

Mr. P. Bhowmik , Advocate
for the Respondent

Date of Order – 29-02-2016

The appeal petition dated 26.10.2016 submitted by the Appellant has been received on 28.10.2015. The petitioner moves petition for violation of provisions of sec 47(4) of the Electricity Act 2003 read with clause 6(5) of the Supply Code before the CGRF. The petitioner is not satisfied with the order dated 29-9-2015 passed by the CGRF as it does not contain direction or instruction to calculate interest as per the provisions of the Act and Supply Code on the amount of load security.

Hence this appeal

The petitioner and the Respondent are directed to appear before this forum on 15/12/2015 for conciliation as per clause 7(3) of the Guidelines.

The complaint is not settled by agreement under clause 7 of the Guidelines due to difference of opinion. Therefore the proceeding is started a fresh as per clause 8(1) of the guidelines.

The petitioner states that he has deposited Rs. 9,10,678/- as load security on release of requisite load for running the industrial unit. The load security has been deposited as below.

- i) Rs. 2,15,105 on 03-07-2002
- ii) Rs. 6,090 on 26-03-2003
- iii) Rs. 689483 on 03-04-2004

The petitioner surrendered the load and power supply permanently disconnected on 16-10-2014. Therefore Respondent is duty bound by law to refund the interest on the load security amount within 60 days as per clause 6.5 of the Supply code.

On demand made by the petitioner on 20-04-2015 the process for refund of load security started on 22-04-2015.

The Appellant issued further letter on 17-08-2015 to the Respondent that nothing had been done so far. The Appellant informed that withholding of appellant hard earned money by the Respondent amounted to violation of provision of Indian contract Act as well as Articles 265, 300 A of the Constitution of India.

The Appellant moves CGRF Guwahati zone on 07-09-2015 for refund of load security along with interest up to date. CGRF in its order dated 29-09-2015 says that fund be released on 1st week of October 2015 and not mention any thing about the payment of interest etc as per the Supply code and the Electricity Act.

Therefore the Appellant now approach this forum for release of load security along with interest with effect from 16-03-2003. As there was no direction from CGRF on calculation of interest, the Respondent on 16-10-2015 releases Rs. 10,01,518/- only including interest @ 9.5% for the period from 01-04-2014 to 31-05-2015.

The Appellant further says that he is entitled to interest w.e.f 10-06.2003 the date of Electricity Act 2003 made applicable by the Judgment reported in 2009 (2) GLT - 212 (Nanotech Pvt. Ltd. & others vs. ASEB & others) in the state of Assam

In view of applicability of the Electricity Act 2003 w.e.f 10.06.2003 in the state of Assam, the Appellant has recalculated interest and claims Rs. 6,49,143/- as receivable after adjusting amount received.

Respondent APDCL states that formal application was received on 24-04-2015 for release of load security. Accordingly action has been taken and Rs. 10,01,518.00 including interest of Rs. 100933 (01-04-2014 to 31-05-2015) released to the Appellant on 16-10-2015 by cheque.

The calculation given by the Respondent on the interest to be released is based on the ASEB circular dated 25-08-2005 no ACE (COM)/ T- 7(3) PT / 2003 / 47. Therefore calculation of interest is to be done w.e.f 2004-05.

Respondent says that an amount of Rs. 2,60,458.71 is still to be released as interest (2004 - 05 to 2014-15) and not Rs. 6,49,143.00 as claimed by the Appellant.

Observation and findings - It is seen from the above discussion and perusal of all relevant records submitted by the Appellant and Respondent that the subject of dispute in the present case is the effective date for calculation of interest on the security deposit given by the Appellant.

The Respondent submitted the ASEB circular dated 25-08-2005 and said that the circular is based on the tariff order 2005-06 issued by the Assam Electricity Regulatory Commission and the Electricity Act 2003 mandates that state Commission shall have power to make regulations and tariff order.

The electricity Act 2003 published in the Gazette of India on 10-06-2003.

Sec. 172 (d) of the Electricity act 2003 specifically provides that the state Government may by notification declare that any or all provision contained in this Act shall not apply in the state for such period, not exceeding six months from the appointed date, as may be stipulated in the notification. No notification having been issued by the state Government exempting application of Sec. 47(4) of the Electricity Act 2003 in the state of Assam and therefore the said provision came into force with effect from 10-06-2003 i.e. the appointed date. The above observation has been reflected in the Judgment of Hon'ble Gauhati High court reported in 2009 (2) GLT - 212 (para 34)

The Assam State Electricity Regulatory Commission makes the Electricity Supply code and related Regulation and the clauses 6.3 and 6.5 of the said Regulation came into force on 17-02-2005 published in the Assam Gazette on 17-02-2005.

Award - In view of above discussion and as per provisions in the Act & Regulation the interest shall be recalculated.

- a) Interest on security deposit shall be as per Sec. 47(4) of the Act w.e.f. 10-06-2003 to 16-02-2005.
- b) Interest on security deposit w.e.f. 17-02-2005 to 16-10-2015 date of payment of principal amount as per clause 6.3 of the Supply code.
- c) As the interest to be released shall be calculated now therefore the basic rate of interest shall be of current year bank rate (2015-16).
- d) Deduction if any including income tax shall be made as required.

The Appeal petition dated 26-10-2015 is disposed off with above observations.

The proceeding requires more than three months to complete in view of prayer given by the Appellant and Respondent for extension of time for hearing due to absence on leave.

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

Memo No. EOM. 26/2015/14-A
Copy to:

Dated Guwahati the 29th February, 2016

1. **M/S Plast India Enterprise (P) Ltd.**, EPIP, AIDC Complex, Amingaon, Guwahati-781031, District-Kamrup (Rural), Assam for Information.
2. **The Area Manager**, Industrial Revenue Collection Area II, APDCL, Jalukbari, Guwahati- 14 for Information.

Secretary,
O/o the Electricity Ombudsman