BEFORE THE CONSUMER GRIEVANCES REDRESSAL FORUM
(*Under the Electricity Act, 2003*)
PUDUCHERRY
***

PRESENT:

THIRU T. GOPALAKRISHNAN, B.E.,
CHAIRMAN

THIRU A.S. JITENDRA RAO, B. Tech., M.B.A.,
LICENSEE MEMBER

THIRU R. KRISHNAMURTHY, B.Com., LLB., PGDFL.,
JERC NOMINATED MEMBER

THURSDAY, THE 4TH DAY OF MAY 2023

CONSUMER CASE No. 54/2023

V.S.K. Ferro Alloys Ltd.,
Represented by its Power of Attorney
Sambhandam Mouttou,
No.4, Second Street,
Kilpauk Garden Road,
Chennai-600010 .... Complainant

Vs.

1) The Executive Engineer Rural(North),
Electricity Department,
Puducherry.

2) The Assistant Engineer –Sedharapet,
Electricity Department,
Puducherry.

3) The Financial Controller,
Electricity Department,
Puducherry. .... Respondents

This case in C.C. No.54/2023 came up before this Forum for final hearing on 20/04/2023. After hearing both sides and having stood over till this date for consideration this Forum has delivered the following:

The case of the complainant is as follows.

A Complaint was received from V.S.K. Ferro Alloys Ltd., Represented by its Power of Attorney Thiru Sambhandam Mouttou,on 08/02/2023. In the complaint the Complainant stated that the Company is located at Thuthipet Village, Puducherry with a capacity to produce 10 MT of Ferro-silicon per day with connected load of 4600KVA. The company was closed in the year 1996. Thereafter no production in the company and electricity connection was disconnected on 17/09/1996. The Electricity Department had also encashed the Bank guarantee amount of Rs.50 Lakhs and the property of the Complainant was also attached by the proceedings of the Debt Recovery Tribunal-I, Chennai in O.A.No.715 of 1999. It was constrained to challenge the proceedings initiated under Pondicherry Revenue Recovery Act by the Tahsildar of Thuthipet, Puducherry in W.P. No.13896 of 2014 before the Hon'ble High Court of judicature at Madras. After due proceedings, the Hon'ble High Court of Madras by its Order permits the Petitioner to approach within 4 weeks from the date of the Order before the CGRF to redress the grievances of the consumer. Therefore, the Complainant filed this Complaint accordingly before this Forum. Hence the complaint.

2. The complaint has been registered as C.C. No.54/2023 on 09/03/2023 and copy of the complaint was sent to the Executive Engineer –Rural (North) and others for giving reply by 20.03.2023. Respondents filed Affidavit on 21/03/2023. The case was posted for hearing on 29/03/2023.

3. In the Affidavit dated 20/03/2023, the Assistant Engineer, Sedharapet / Respondent No.2 for himself and on behalf of Respondent No.1 and 3 has stated that a requisition letter was received from the Senior Accounts Officer, Electricity Department on 06/09/1996 vide letter No.247/ED/SAO/HT/95096/5175 to disconnect the HT service M/s VSK Ferro Alloys Ltd., Thuthipet, after giving 24

hours notice for non-payment of current consumption charges for the month of July 1996 amounting to Rs.33,12,440/-. Based on the requisition of the Senior Accounts Officer, 24 hours notice had been issued to HT consumer on 11/09/1996 to remit the July 1996 current consumption charges of Rs.33,12,440/- with information that current consumption charges may remit within 24 hours failing which service will be disconnected through Junior Engineer, Ramanathapuram. The Ramanathapuram O&M had reported that the HT service had been disconnected on 17/09/1996 at 12-05 hours vide letter dated 17/09/1996. The report of disconnection of HT service of M/s VSK Ferro Alloys Ltd., had been sent to the Senior Accounts Officer vide letter dated 24/09/1996. Copies of letter submitted to the Forum.

4. Hearing was held on 29/03/2023. Both the Complainant and the Respondents were present. The Complainant authorised One Thiru. D. Anbarasu to represent the case on his behalf vide his letter dt.29.03.2023. The Complainant was directed to file Rejoinder if any by 05/04/2023 with other details as discussed during the hearing. The Respondents No.1 and 2 were directed to file additional Affidavit producing all the documents such as date of energisation, copy of agreement etc., and the case was adjourned for further hearing on 11/04/2023.

5. Next Hearing was held on 11/04/2023. Both the Complainant, his authorised representative and the Respondents were present. The Respondents were directed to clarify whether the agreement is for 5 years or for 10 years period as the arrears was re-revised. The case was adjourned for further hearing on 20/04/2023.

6. In the additional Affidavit dated 20/04/2023, the Respondent No.3 stated that a complaint was received form one Thiru Sambandham Mouttou, Power of Attorney of M/s VSK Ferro Alloys, Puducherry has made suitable corrections to

the prayer and is now seeking to set aside the letter sent by the Electricity Department, Puducherry dated 28/04/2013 to the Collector of Chennai (Mistakenly mentioned instead of Collector of Pondicherry) for collection of amount of arrears dues from the defaulted consumer as specified and the said letter with correct date of 29/04/2013 was one of the documents filed by the Electricity Department before the Hon'ble High Court of Madras in WP No.13896 of 2014 along with the Counter Affidavit which is not maintainable either in law or the facts and hence liable to be dismissed in toto.

7. The Respondent No.3 stated that the date of energisation of the firm is 16/07/1990 and the date of signing of agreement which was executed between the firm M/s VSK Ferro Alloys Ltd., Thuthipet and the Licensee, Electricity Department, Puducherry on 20/09/1993. The Agreement executed between the firm M/s VSK Ferro Alloys and the Electricity Department, Puducherry was signed belatedly on 20/09/1993 with the period of agreement had been mentioned therein as 10 years commencing from 02/07/1992. There may be typo error in mentioning the date of commencement of agreement as 02/07/1992 instead of 16/07/1990. Even though the Agreement was executed after notification of the Terms and Conditions on 19/04/1993, the period of Agreement is agreed by both the parties as 10 years based on the service connection date of 16/07/1990. Hence the Terms and conditions prevailing at the time of Energisation is applicable. With the above clarification that the firm was energized on 16/07/1990 with the extension of HT power supply for a CMD of 4600KVA in the above said address. Their initial agreement period was 10 years and the same ends on 15/07/2000. During the month of April 1996, a cheque for payment of current consumption charges of December 1995 submitted by the firm to the Electricity Department was bounced and the same was returned by the Bank to the Licensee. Further, it is pertinent to state that the above current

consumption charges and other charges for December 1995 seems to be remitted by the firm to the Department and has the clear state of non-existence of the unpaid amount / arrears of current consumption charges of December 1995 in succeeding bills like in July 1996. Ultimately the July 1996 bill which was generated therein has the entry of unpaid status of current consumption charges of June 1996 only and the same was taken into account of recovery since then under The Pondicherry Revenue Recovery Act, 1970.

8. As per the Joint Electricity Regulatory Commission (Electricity Supply Code) the current consumption charges bill which is raised initially and correction made later during the process of Court proceedings, the treatment of BPSC is applicable subject to any specific direction received from any Court of Law with instructions for correction, then the same should be complied including the treatment of BPSC as per Court Orders. If any difference of amount arrived during the revised calculation of the arrear dues of the consumer during the court proceedings the arrear dues which are prepared subsequently and exactly as per the agreement will be taken as correct one and will be insisted for recovery subsequently. A notice was published in the month of May 2002 through Dina Malar Newspaper by the Office of the Revenue General, Electricity Department, Puducherry relating to the non-payment of arrears dues of various firms and one among them was M/s VSK Ferro Alloys Ltd, Puducherry. Further, it is thus by assumption as per the Terms and Conditions, 1993 five years of agreement period was wrongly persisted from the belated date of execution ie., on 20/09/1993 to September 1998. Accordingly, the arrears of current consumption charges up to the date of disconnection i.e., 17/09/1996 is arrived to the tune of Rs.19,05,642/- and monthly minimum charges upto the end of the agreement period i.e., September 1998 was arrived to the tune of Rs.63,54,750/- inadvertently against the actual minimum charges upto the period of July 2000.

The arrears of current consumption charges Rs.91,05,642/- and minimum charges Rs.63,54,750/- were added up and given in the newspaper as Notice in order to insist the default firm to make the payment vide public announcement through Dinamalar newspaper. Based on the request of the firm vide letter dated 22/03/1999 for payment of arrears in 6 instalments which has been considered by the Superintending Engineer-I vide this Office letter of even no. dated 07/04/1999 to liquidate the outstanding arrears of Rs.1,66,61,142/- and directed to pay the arrears first instalment from the month of April 1999 which is inclusive of both arrears of current consumption charges upto the period of disconnection and minimum charges from October 1996 to the month of March 1999 excluding meter rent and fixed service charges.

9. The Respondent No.3 further stated that in the matter of Revenue Recovery Act, the firms who are in default for non-payment of current consumption charges are normally referred to the District Collector, Puducherry. Revised amount if any arise after referring the case under Revenue Recovery Act, the same need to be intimated to the District Collector, Puducherry. However, in the instant case, the matter is being heard by the Hon'ble High Court of Madras and Hon'ble CGRF, Puducherry and therefore based on the Orders / Judgement the fact will be intimated to the District Collector, Puducherry accordingly. The Complainant firm has an outstanding arrears of current consumption charges upto the date of disconnection i.e., 17/09/1996 and minimum charges upto the period of agreement i.e., 15/07/2000 amounting to Rs.3,36,47,248/-. Hence, the firm is requested to pay the current consumption charges arrears dues and minimum charges bill upto the agreement period of July 2000. The CGRF may please be considered about the serious issue of non-remittance of the said arrears by the Complainant-Industry which brings revenue loss to the

Department. And it brings severe financial impact for the pre-purchase of power from the generating stations and to distribute and transmit the same to all the consumers without interruption.

10. The Complainant had not filed bank statement for encashment of Bank guarantee amounting to Rs.50lakhs and payment made to the Respondents in 1995 and hence the pleadings were not considered..

Observation:

The present case relates to the request of the Company to set aside the Department's communication to the Collector sent for collection of Rs.2,97,74,263/- under The Pondicherry Revenue Recovery Act. The claim has arisen because of the interpretation of certain clauses of the Agreement Terms and Conditions of supply existing at that point of time. Hence, the entire issue has been divided into the following specific issues wherein the decision of the Forum is also indicated.

I. Applicability conditions of supply: Power supply to M/s VSK Ferro Alloys for a CMD of 4600 KVA was extended on 16/07/1990. At the time of effecting of supply the conditions of supply notified in the Notification dated 10/04/1961 were in existence. Due to non-payment of current consumption charges, the power supply to the industry was disconnected on 17/09/1996. At the time of disconnection, the terms and conditions of supply notified by Government of Puducherry vide G.O.Ms No.28 dated 19/04/1993 were in vogue. Now the present issue is to decide what are the terms and conditions applicable in the present case. Para (c) under the heading Rules and Conditions of supply notified on 10/04/1961 is reproduced below:

> *Date of presentation means the second day after date of any bill rendered by the Department. Once the supply of electricity has commenced or has been made available to the consumer by the Department, the consumer and the Department shall be bound by the terms and conditions of supply etc., set forth in this pamphlet or <u>any modifications thereof from time to time</u>.*

It may be observed from the above para that the Terms and Conditions of supply set forth in this handbook and notification amended from time to time are applicable. The Terms and Conditions were subsequently amended in 1993 by Notification issued vide G.O.Ms. No.28 dated 19/04/1993. It has been clearly specified that this Notification of 19/04/1993 superseded the Notification dated 10/04/1961. Combined reading of both above will make it clear that the Terms and Conditions as approved vide G.O.Ms.28 dated 19/04/1993 are only applicable for the present case.

<u>II Agreement and Period of Agreement</u> (a): As per the Condition No.29 of Rules and Conditions of Supply dated 10/04/1961

“ Period of agreement (Except for domestic supply)- All intending consumers under small industries, agricultural services, medium industries and high tension consumers will be required to sign an agreement with the Department on a stamped paper, duly registered in the Revenue Office, Pondicherry, agreeing to take supply for a period of two years, in the case of LT industrial and agricultural tariff and <u>for a period to be specified in each case in the case of HT consumers,</u> from the date of service connection before the supply is made available to them and also to take supply the supply is made available to them and also to take supply within 3 months of laying lines for them failing which minimum charges will be levied till the supply is taken.

As per the Condition in vogue, a separate Order fixing the time of agreement for the company ought to have been issued. But there is no such Order and as per day to day practice at that time, the Department had obtained agreement for a period of 10 years.

Definition of Contract: *" A Contract is an agreement between parties creating mutual obligation that are enforceable by Law. The basic elements required for the agreement to be legally enforceable contract are 'Mutual Assent, expressed by a valid offer and acceptance; adequate consideration, capacity and legality'. Contract duration is the term used to describe the period through which the contract is effective. This can also be understood as the period between the contract effective date and the contract end date – Both of which are typically outlined within the contract and will be agreed to by both the parties."*

I. Legal enforceability of Agreement

As per the available records Agreement was entered on 20/09/1993 between the Company and the Licensee. The agreement was executed for a period of 10 years commencing from 02/07/1992. Therefore, the Agreement is void as per the provisions of Contract Act. Therefore All the Terms and Conditions stipulated in the Agreement become infructuous. As per the additional Counter filed by the Respondent No.3, the date of energization of the firm is on 16/07/1990 and the date of commencement of agreement which was executed between the Complainant Company and the Licensee is on 20/09/1993. Therefore, it is presumed that even though the Terms and conditions of electricity specifies the execution of agreement between the parties before energization, there is no agreement executed between the parties at that time of energization. Even though the Junior Accounts Officer(Rev-2) had issued a letter to the Assistant Engineer (Construction) dated 20/04/1990 mentioning that the agreement from the Company has been collected and kept in the office and is in Order, then what is the necessity of executing another agreement on 20/09/1993. Therefore, it is crystal clear that no agreement has been executed on the date of energization ie., 16/07/1990. As per the Terms and Conditions of Supply of Electricity 1993, the period of agreement to be executed is only for 5 years. Therefore, the agreement executed on 20/09/1993 is void on the eye of law and has no legal enforceability.

(b) As per the Terms and Conditions notified on 19/04/1993, under Section 68 specifies that the minimum period of agreement for HT supply shall be for a period of 5 years. The 10 years period for which initially agreement has been signed, has been reduced to 5 years. The Terms and conditions as and when revised will be made applicable to the old consumers and new consumers. As such the period of agreement for the present case can only be for 5 years starting from 16/07/1990. The agreement period expired by 15/07/1995. It is understood from the Respondents that there is no practice of sending notice to the Consumers asking them to execute revised agreement as and when the agreement period is changed by virtue of amendment to the Terms and Conditions of supply. It is not out of way to mention that the period of agreement has further been reduced by JERC Supply Code to two years in 2010 and one year with effect from 2022. On the day of disconnection i.e., 17/09/1996, the Terms and Conditions notified vide G.O. Ms No.28 dated 19/04/1993 were in vogue and hence the agreement period as per the Condition No.68 of the said Notification is 5 years is considered for further discussions.

<u>III. Disconnection and Termination of Agreement:</u> The power supply to the said VSK Ferro Alloys was disconnected on 17/09/1996 due to non-payment of current consumption charges, the supply was not restored to the company after that. The Condition No.72 of Terms and Condition of 1993 is reproduced below:

<u>*72.* ***Termination of Agreement for HT consumers where supply of Electricity remains Disconnected:***</u>

Where any consumer whose supply is disconnected for non-payment of any amount due to the department on any account, fails to pay such dues and regularize his account within three months from the date of disconnection, the department after giving three months notice, may terminate the agreement with effect from the date of expiry of initial period of agreement or six months from the *date of disconnection whichever is later. Such termination shall be without prejudice to the rights and obligations incurred prior to such termination.*

By virtue of the above condition, since the consumer has not taken any measure for getting re-connection within 3 months from the date of disconnection i.e., by September 1996, the Department should terminate the agreement by giving 3 months notice i.e., by March 1997. The service connection should have been cancelled by March 1997. But it is seen that the service connection has been cancelled in 2011 i.e., after a lapse of 14 years. The cost of administrative delay in cancellation of service connection cannot be passed on to the consumer who had not utilized any power after September 1996. The actual amount at the time of disconnection is stated to be Rs.33,12,440/-. There was consumption subsequently for another 2 months. Hence, the arrear amount based on the consumption as per the records of the Respondents are

Month	Amount (including ST) (Rs.)
June 1996	29,69,427
July 1996	33,12,440
August 1996	17,91,573
September 1996	10,32,202
Total	91,05,642

Further, the Complainant could not produce details of making payment accumulated before disconnection as stated in their Affidavit nor the encashment of Bank guarantee of Rs.50,00,000.

The Company had made initial Security Deposit of Rs.11.5 Lakhs by way of Fixed Deposit Receipt and NSC which was enchased by Respondent No.2 which was adjusted. The Respondent No.2 submitted that additional Security Deposit was not collected from the company. However, the consumer stated that they have Bank Guarantee for Rs.50 Lakhs which could not be ascertained by the Company and they have not produced valid documentation to establish the fact. Since the complainant has not produced any records regarding payments made and deposits made, the forum is accepting the figures furnished by the Respondents in respect of arrears from June 1996 to September 1996 and Security Deposit paid by the complainant.

<u>IV. Minimum charges for the balance Agreement period / notice period:</u> By extending the provisions of the condition 70 of the Terms and Conditions of supply of 1993, the Department had calculated minimum charges for the balance period of initial agreement i.e., July 1996 to July 2000. The agreement period applicable for the present case is 5 years. The supply was effected on 16/07/1990 and was disconnected on 17/09/1996 which shows that the consumer had utilized power for more than the agreement period and hence the calculation of minimum charges from 1996 to 2000 does not arise. Regarding minimum charges payable for the notice period, Condition 60 of Terms and Conditions of 1993 mentioned that "the HT and LT consumers shall pay Minimum Charges every month as prescribed in the Tariff rates till the agreement is terminated. Even if no electricity is consumed for any reasons ……….", the Tariff conditions prevailing on the date of disconnection as approved vide notification issued G.O.Ms. No.53 dated 31/10/1994 is reproduced below:-

"The above tariff is subject to minimum payment of ¾ times of contracted load in KVA x Rs.840 <u>per annum"</u>.

At the time of issue of this notification, the demand charges were Rs.70/KVA per month and the same demand charges prevailed even during 1996. i.e., the period of disconnection of M/s VSK Ferro Alloys. The annual minimum charges payable by the consumer as per the above tariff conditions is Rs.28,98,000/-. Whereas as per the statement of the Financial Controller, for arrears to be paid by the consumer for the period from June to September, itself is more than 92 lakhs. The Consumer had consumed power for an amount which is more than the minimum charges required. Hence, the consumer need not pay any minimum charges even for the notice period of 6 months.

V. Charges to be paid by the Company: In view of the above detailed discussion, the Forum decides that the arrears to be revised based on the following factors:

(a) Actual arrears payable by the consumer on the date of disconnection + BPSC of 2% per month upto March 1997.

(b) The amount realized through encashment of FDR / Small Savings Certificate should be deducted from the amount arrived at (a).

(c) The cancellation charges as received from field to be added to the arrears arrived at (b) and total arrears to be arrived.

ORDER

i. In view of the above, the Respondents are directed to revise the arrear amount to be paid by the complainant as per Para V in observations, within 15 days from the date of this order and revised demand be served to the complainant with a copy to this Forum.

ii. The complainant shall pay the amount within 15 days from the date of receipt of demand from the Respondents. In case, the complainant needs any instalments to clear arrears, he may approach Respondent 1 for availing instalments. If the complainant fails to clear the dues, the Respondents can collect the arrears under the provisions available to the Respondents.

iii. Thus the complaint is allowed to the extent indicated above.

iv. The Complainant, if aggrieved, by non-redressal of his / her grievance by the Forum or non-implementation of CGRF Order by the Licensee, may make an Appeal in prescribed Annexure-IV to the Electricity Ombudsman, Joint Electricity

Regulatory Commission for the state of Goa and Union Territories, 3rd Floor, Plot No. 55-56, Pathkind Lab Building, Service Road, Udyog Vihar, Phase IV, Sector -18 Gurugram, Haryana-122015; Phone 0124-4684708; email ombudsman.jercuts@gov.in within 30 days from the date of this Order under intimation to this Forum and the Respondents.

Dated at Puducherry on this the 4th day of May, 2023

Sd/-	**Sd/-**	**Sd/-**
(R. KRISHNAMURTHY)	**(A.S. JITENDRA RAO)**	**(T. GOPALAKRISHNAN)**
JERC NOMINATED MEMBER	**LICENSEE MEMBER**	**CHAIRMAN**