

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/051/2024
(Present A. Chandrakumaran Nair)
Dated: 15-10-2024**

Appellant : Sri. Joy Joseph, Managing Director
M/s.Manjooran Housing, Development
Company (P) Ltd., J & R Complex,
Mamangalam, Palarivattom,
Ernakulam Dist.

Respondent : The Deputy Chief Engineer,
Transmission Circle, KSE Board Ltd,
Kalamassery, Ernakulam Dist.

The Deputy Chief Engineer, Electrical
Circle, KSE Board Ltd, Palarivattom,
Ernakulam Dist.

ORDER

Background of the case

The appellant M/s. Manjooran Housing Development Company who is a builder applied for power requirement with 630 KvA as contract demand for their residential project 'Orchid Meadow' under the electrical section Thrikkakkara. The power supply is to be extended from 11 Kv feeder originated from Thrikkakara, Substation. As the capacity of the existing power transformer were exceeded, the licensee had augmented the capacity of the substation by investing the money expecting that the invested amount could be recovered from the consumers on pro-rata basis. Accordingly the licensee has demanded Rs. 14,67,900/- as the transmission developmental charges. The appellant has remitted Rs.8,50,500/-and then disputed this demand raised by the licensee. The appellant has filed the petition to the Hon'ble High Court of Kerala vide WP (c)/4600/2012. The Hon'ble Court has pronounced the order dated 20/02/2024 stating the appellant is permitted to approach the statutory authorities if they wish provided the statutory authorities are confined to examine the quantification of the amount as transmission side development charges and not the legality of the demand. Then they filed the petition to CGRF and CGRF issued order

stating that the quantification was correct. Aggrieved with the decision of CGRF this appeal petition is filed to this office.

Arguments of the Appellant

The Appellant is a private company incorporated under the provisions of the Companies Act 1956, engaged in construction and development of residential apartments and other buildings. This appeal is submitted being aggrieved by the order issued by the Learned CGRF upholding the demand and illegal levy of per KVA Development Charges by Respondents 1 to 3 when the Appellant applied for power connection for one of its residential apartment projects under the jurisdiction of the 3rd Respondent.

The Appellant, as a part of its legitimate business activity and to meet the power requirement of one of the residential apartments under the name and style "Orchid Meadow" had applied for electricity connection to the 3rd Respondent. On receipt of the application, the 3rd Respondent informed the Appellant that they had to remit a sum of Rs. 8,50,500/- as "per KVA development charges" computed at the rate of approximately Rs.1350/- per KVA for expansion of common transmission facilities at Thrikakkara Sub Station and not for any exclusive facility for the Appellant. The Appellant remitted the above amount of Rs.8,50,500/- on 16.9.2009 and submitted an application on the same day before the 3rd Respondent. The true copy of the receipt dated 16.9.2010, for Rs. 8,50,500/- and the application for power to the extent. The Appellant understands that the connection to the Appellant's premises is to be given from the existing BDPP feeder and that no exclusive transmission infrastructure was installed for the purpose of giving connection to the Appellant. The Appellant has already installed the Distribution transformer for receiving power in the premises of the Appellant. The Appellant is producing herewith, a true copy of the proceedings dated 4.8.2011 of the Deputy Chief Electrical Inspector, Ernakulam, granting energization sanction for the electrical installations at the Appellant's end. Even after obtaining the energizing sanction, when power connection was not effected, the Appellant had caused inquiries to be made at the office of the 2nd and 3rd Respondents. The Appellant was then informed that the Appellant had to pay a further sum of Rs.6,17,400.00 as per KVA pro rata Development Charges before power could be given to the Appellant's premises. The Appellant then addressed the 2nd Respondent through a letter dated 12.10.2011 requesting that further demand may be waived.

The Appellant understands that the demand for Rs.2330/- per KVA is to offset the cost of one 10 MVA transformer that the Respondent had sanctioned for installation at the Thrikakkara Substation at a cost of Rs. 233 lakhs. The Appellant is producing herewith, a true copy of the B.O (FM) NO. 2542/2007(TPC2/210/2007) dated 7.11.2007 issued by the Respondent. It is evident from that the installation of the above Sub Station transformer at

the Thrikakkara Sub Station was a part of the Respondent's normal development plan and the same is not connected with the application of the Appellant, which was submitted only in September 2010. As evident the administrative sanction was for enhancement of the Thrikakkara sub station was accorded in the year 2007 and in the said order there is no modalities fixed for collection of the enhancement charges from the consumer. Thus the levy or demand in the said case is highly improper and liable to be withdrawn, since it is evident that the said enhancement was part of the annual approved development plan of the board. Further this would form part of the asset of the Board.

The Appellant submits that the demand and collection of the sums of Rs. 8,50,500/- as per KVA, and the demand for further amount of Rs. 6,17,400/- under the same head are directly contradictory and in violation of the statutory provisions of the Supply Code and the KSEB Terms and Conditions of Supply, 2005. More importantly, the said action of the Respondents 1 to 3 is contradictory to an order issued by the Commission to the Respondents directing it not to collect Development charges on per KVA basis. The fact that the Commission had turned down a specific application of the Respondents for levying per KVA development charges, was kept under wraps by the Respondents while making the illegal demand.

The demand of development charges on per KVA basis is also contrary to regulation 7(3) of the Supply Code 2005 which stipulates that the "expenditure charges by the licensee shall be based on the schedule of rates approved by the Commission and published by the Licensee annually effective from every first day of April". It is noted that demand of Development Charges on KVA basis is not approved by the Commission. Further there is also a violation of proviso to sub regulation 7(1) which states that the Respondent "shall not be entitled to recover such expenditure if such expenditure is under the scheme approved by the Commission or otherwise charged in the Annual Revenue Requirements of the Licensee". If it abundantly clear that "Cost of equipment required for development of the system is to be borne by the licensee. Such expenditure incurred is recovered by way of interest and depreciation included in the ARR approved by the Commission. The capital works include all the development works in Generation, Transmission and Distribution". There is also a specific prohibition against collecting any amount for which provision is made in the ARR. The cost of materials for giving power connection to the Appellant's two apartment buildings were met by the Appellant in addition to paying the development charges. The Respondent cannot arrogate to itself powers that are not vested in the Licensee under the terms of the KSEB Terms and Conditions of Supply 2005. The demand of levy of development charges, is therefore not only illegal, arbitrary, unauthorized, but the fact that such levy is done after suppressing the order of the Commission, makes such action fraudulent and a means of making illegal gains at the expense of consumers like the Appellant and other similarly situated persons. In similar cases,

Hon'ble High Court has been pleased to pass interim direction to Respondents to provide power connection without collecting per KVA Development Charges. A true copy of the interim order dated 19.11.2011 passed in WPC No. 30911 of 2011 is produced herewith.

Hence being aggrieved by the illegal act of the respondents, the complainant had filed writ petition before the Hon'ble High Court of Kerala which was numbered as WPO No:4600/2012, which was disposed of by the Hon'ble High Court vide judgment dated 20.02.2024. The true copy of the judgment dated 20.02.2024 in WPO No:4600/2012 and connected cases are produced herewith. It is directed that the appellant had filed complaint before the Learned CGRF, Ernakulam which was numbered as OP 127/2023-24. After detailed hearing without considering the objections raised by the appellant, the Learned CGRF had disposed of through an order dated 11/06/2024 by CGRF, Ernakulam. The true copy of the order dated 11/6/2024 in OP No. 127/2023- 24 on the files of CGRF, Ernakulam and the same was received on 15.06.2024 at the office of the appellant.

It is respectfully submitted that a reading of Section 46 the State Commission may authorise the distribution licensee by way of regulation to charge any person for the any reasonable expenses incurred for the supply of electricity line or electrical plant for the purpose of giving supply. It is based on the said power order was issued by the Hon'ble Regulatory Commission in TP 87/2011. Further as per the dictum laid down by the Hon'ble Supreme Court in Ninan K C Vs. Kerala State Electricity Board (2023 KHC 6598) held that any demand or regulation contrary to the Act is invalid. The forum in its order had found the quantification of the transmission side development charges by the licensee to be correct. But the same was decided without considering the arguments raised by the appellant. It is important to note that neither electricity act or supply code or TP 87/2011 on the files of order passed by the Hon'ble Regulatory Commission provides any guidelines or mention any procedures for demanding or collecting pro-rata development charges, which have been calculated at a rate of Rs. 2330 per kVA. The Learned Forum without applying the proper application of mind decided that the quantification of charges is in tune with orders in TP 87/2011, and failed to consider the fact that TP 87/2011 is silent about how these charges can be collected from the consumers.

Now, the rates provided in the present demand for transmission development is very high compared to the rates fixed by the Board for the year 2011. Thus the even assumed for argument sake the claim for transmission charge is liable to be paid, the method of calculation in deriving claim is highly excessive. Thus on that ground also the demand is illegal and unsustainable. It is respectfully submitted that finally even if it is assumed for argument sake that respondents are entitled to collect transmission development charges, the same can only be collected at the

rate of Rs.1350 per kVA, which came to effect from 01.06.2010 as per the direction given by the Deputy Chief Engineer, Transmission Circle vide communication dated 09.07.2010. It is under these circumstances, and in the absence of any further statutory remedy against the illegal action by the Respondents 1 to 3, and having exhausted all available statutory remedies, the applicant filed this present complaint before this Hon'ble Ombudsman on the following, among other grounds, that are set out in the alternative and without prejudice to one another.

For these and other grounds to be urged at the time of hearing, it is most humbly prayed that this Honourable forum may be pleased to grant the petitioner the following reliefs in the interest of justice. (1) To pass orders setting aside order dated 11-06-2024 in OP No.127/2023/24 by the Consumer Grievance Redressal Forum, Ernakulam. (2) To issue direction calling for the records of the case up to and including Exhibit P 6 and to quash Exhibit P 2 and Exhibit P 6. (3) To issue a direction commanding the Respondents to forthwith refund the sum of Rs. 8,50,500/- illegally demanded and collected from the Complainant as Development Charges, together with commercial rate of interest for the period from the date of payment by the Complainant (16-09-2010) till date of repayment. (4) To issue such other appropriate orders or directions that Hon'ble Forum may deem fit and proper to grant on the facts and circumstances of the case. (5) To grant the costs of these proceedings to the appellant.

Arguments of the Respondent

The appellant herein assails the legality of the order issued by the Consumer Grievance Redressal Forum Central Region dated 11.06.2024 whereby the forum have after a detailed hearing of the facts and law involved have found that the appellant consumer is liable to remunerate the transmission side development charges quantified by the licensee as the same is in order. The appellant have approached the CGRF pursuant to the judgement rendered by the High Court in WPC No. 4600/2012. While disposing WPC No. 4600/2012 along with other cases, the High Court has made it clear that the legality of the demand for transmission side development charge shall be subject to the orders to be issued by the Supreme Court in SLPs filed against the judgement in WA No. 900/2013 and connected cases and if the petitioner have a case that, in view of the provisions contained in the Supply Code, 2014, they are not liable to pay the transmission side development charges, the said issue can be raised before the statutory authority in accordance with the law, provided that they have not approached the Consumer Grievance Redressal Forum with their grievances. The High Court also made it clear that the proceedings before the statutory authority will be confined to the quantification of the amount due as transmission side development charges and not the legality of the demand as aforementioned. The writ petition has been closed making it clear that if the petitioner has have not approached the statutory forum with regard to the dispute relating to the quantification of amount due as transmission side development

charges they can avail their statutory remedy except to the extent that their claim would be that no demand for such charges can be raised against them in terms of the provisions contained in the Kerala Electricity Supply Code, 2014. The true copy of the judgement in WPC NO. 4600/2012 of the High Court of Kerala dated 20.02.2024 is produced herewith.

The dispute raised by the consumer with regard to the quantification of development charges have been analysed by the Consumer Grievance Redressal Forum and the forum have after considering the facts and circumstances, vide its order dated 11.06.2024, have held that, "the quantification of the transmission side development charges demanded by the licensee is found to be correct". It is respectfully submitted that the total transmission development charge demanded by KSEB was Rs. 14,67,900/- of which Rs. 8,50,500/- have been remitted on 16/09/2010 and the balance amount of Rs. 6,17,400/- is due from 09/11/2011 which has to be paid along with statutory interest (18%) amounting to Rs. 14,21,576/- as on 20/08/2024. Hence the total balance amount of Rs. 20,38,976/- (Rs. 6,17,400/- Rs. 14,21,576/-) is outstanding and is liable to be paid by the appellant. True copy of demand notice dated 21.8.2024 is produced herewith.

The facts leading to the case are as follows. The consumer, M/s Manjooran Housing Development Company(P) Ltd., which is engaged in the construction development residential apartments and other buildings, applied for power requirement of 630KVA to one of their residential project "Orchid meadow under Electrical Section Thrikkakara dated 14.10.2009. Similar consumers also had raised demand in the likewise manner. The capacity of 66 KV Substation Thrikkakara was 16 MVA having 2 Nos of 8 MVA Transformers. Due to the increasing demand for power, it became unable for the KSEBL to allocate power to the new applicants from the limited capacity of the Substation. Therefore, KSEBL decided to install one number 10 MVA additional Transformer and 4 Nos 11 KV outlets in 66 KV Substation Thrikkakara for catering the power requirement of the existing and the prospective applicants. The Board vide its order dated 07.11.2007 accorded Administrated sanction to an estimate amounting to Rs. 233lakhs for installation of fan additional 10MvA, 66/11Kv transformer and providing 4nos 11Kv outlets at 66Kv Substation Thrikkakara. The true copy of the Order dated 07.11.2007 issued by the Secretary, Transmission Profit Centre is produced herewith. Accordingly the work was entertained and the installation were completed and energisation was done on 31.03.2010. Based on the prevailing orders, the Deputy Chief Engineer had vide proceedings dated 09.10.2010 issued orders to collect the uniform rate per KVA as development charge for transmission part from the applicants seeking SOP above 100KvA. The true copy of the order of the Deputy Chief Engineer on 09.07.2010 is produced herewith and marked as Annexure 3. Accordingly, an amount of Rs. 1900 per KVA for consumers who are being billed on the basis of contract demand and Rs. 1350 Per KvA for the consumer who are billed on the basis of connected load was issued to the

consumers. As against the appellant, towards the expenditure incurred as development charges, on per KVA basis, the licensee raised a demand of Rs.8,50,500/- for 630KVA power requirement of the consumer at the rate of Rs.1350/- per KVA. They remitted the amount on 16/09/2010. In the meantime, the Kerala State Electricity Regulatory Commission considered the issue of approval of cost data for transmission works in TP 87/2011 and vide its order dated 23.05.2011 ordered that KSEB can recover the transmission side development charge in accordance with the methodology devised by the commission for estimating the cost of providing HT/EHT connections and for executing transmission works in favour of other beneficiaries. The true copy of the order of the Kerala State. Electricity Regulatory Commission in Petition No. TP 87/2011 dated 23.05.2011 is produced herewith and marked as Annexure 4.

Accordingly, the licensee worked out the expenditure payable by the appellant in terms with the methodology devised by the commission and arrived at the actual estimate for transmission development charge for enhancing the capacity of 66KV Thrikkakara Substation by installing one number 66/11 KV 10MVA Transformer and 4 Nos KV outlets per KVA rating as Rs.2330/-. The estimate for enhancing the capacity of the substation with the addition of 10 MVA transformers was prepared using standard rates approved by the Regulatory Commission. The estimated amount was Rs. 2,33,00,000/- (Rupees Two Crore Thirty-Three Lakh only) which was converted to Rs. 2330 per KVA. Accordingly, demand notice was issued to the petitioner on 09/11/2011. Though the Regulatory Commission had in its order specified that any dispute on the matter, including the rates, quantum of work executed etc. shall be subject to review by the CGRF and Ombudsman. However, the consumer, instead of approaching the statutory authority, have approached the High Court of Kerala by preferring WPC No. 4600/2012 challenging the revised pro-rata development charges issued to the consumer. The High Court admitted the writ petition and the same was pending. In the meantime, this Hon'ble Authority, the Electricity Ombudsman had examined the legality of the aforementioned order of the Regulatory Commission in TP No. 87/2011 in Appeal Petition P-147/2015 and vide order dated 18.12.2015 this Hon'ble Forum have upheld the validity of the order of the Regulatory Commission. The writ petition filed by the appellant has been closed by the High Court on 20.02.2024 leaving open the consumer to have its challenge before the CGRF in a limited manner.

It is submitted that the issue with regard to the right of the licensee to collect transmission side development charge has been held favour of the licensee by the Hon'ble high court in its judgement in WA 900/2013. The true copy of the judgement in WA No. 900/2013 of the Hon'ble High Court of Kerala is produced herewith. To have an analysis of the provisions under which the licensee is enabled to collect transmission side development charges, it is submitted that Section 46 of Electricity act 2003 says (Power to recover expenditure): The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply

of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Section 42(1) of Electricity act 2003 says (Duties of distribution licensee and open access): --- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. Transmission side development charges represent the investment made by the KSE Board to develop infrastructure, such as capacity expansion in its sub stations, for the purpose of supplying electricity to the consumers, whose demand is for huge quantity of electricity. Section 43(1) casts a duty on the licensee to provide supply of electricity to such premises, in respect of which the owner or occupier thereof has made an application and ordinarily, such supply is to be made within one month after receipt of the application requiring such supply. Sub Section (2) provides that it shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub section (1). Sub Section (3) provides that if a distribution licensee fails to supply.

The KSEB have prepared standard estimate rates for works above 11 KV level. Which may require construction of substation/transmission lines or upgradation of existing transmission lines/ sub stations to cater to large capacity load requirements of a prospective consumer. Accordingly, the methodology for estimation was submitted by the Board and after conducting a public hearing, the Commission decided to approve the general guidelines and methodology in preparing and executing transmission works. The Commission have made it clear that a distribution licensee is entitled to charge expenses incurred for providing supply specifically to a consumer as approved by the Commission. Accordingly, in tune with the direction issued by the Regulatory Commission, the licensee has raised the demand against the appellant.

The idea behind imposing development charge is that if the appellant is held absolved from this liability of development charge, the ultimate financial burden to bear the development charges incurred by the Board for giving supply to such bulk consumers, the number of which is increasing steadily in this power starved State, will ultimately fall on the ordinary consumers of the Board, in as much as the cost incurred by the Board to develop infrastructure and to supply electricity to bulk consumers will also get loaded into the tariff. In such cases ordinary consumers need to bear the development charges incurred by the Board for giving supply to such business tycons. The licensee is bound to abide by the statutes and is bound to recover the amount and the same amounts to public money. The petitioner is capable of paying the amount demanded and is having sufficient means to satisfy the same. Considering the above facts, it is humbly submitted this forum may be pleased accept the contentions raised

through this statement of facts and direct the appellant to pay the demand issued by the KSEBL, along with statutory interest.

Analysis and findings

The hearing of the appeal petition was conducted on 07/10/2024 at 11:00 am in the O/O The State Electricity Ombudsman, D.H Road & Foreshore Road Jn. Ernakulam Dist. The hearing was attended by the appellant's Adv. Sri. Shiraz Bava and the respondent Sri. Titto William, NOL, Rejithkumar, AEE, Electrical Sub Division, Vyttila and Adv. B.Promod Standing Council KSEBL.

The appellant is a builder developing Residential complex in different places. They have executed an apartment project named 'Orchid Meadows' at Kakkanad. The appellant applied to the Thrikkakara Electrical Section for the power requirement with contract demand 630 KvA for their proposed project. The power supply for this requirement is to be provided from the Thrikkakara Substation of the licensee. The capacity of the 66 Kv substation of thrikkakara was 16 MvA having 2 number of 8 MVA transformer. As the capacity of this substation is almost in the verge full capacity, the licensee has decided to install one number of 10 MVA additional transformer along with 4 numbers of 11 Kv feeder. The licensee has incurred 233 lakh for the capacity augmentation of the substation and this work was completed on 03/2010. initially licensee has send a demand for Rs. 8,50,500/- considering at the rate of Rs.1350/- per KvA. On considering the actual cost incurred the rate is Rs.2350/- per KvA (contract demand) the transmission development charges worked out to Rs.14,67,900/-.The appellant has already remitted the amount as per the first demand which is Rs. 8,50,500/- and not paid the additional demand of Rs. 6,17,400/-. Their petition filed to Hon'ble High Court of Kerala Vide Wp (c)/4600/2012 have been disposed vide order dated 20-02-2024. The Hon'ble High Court have directed that if the petitioner want to approach the statutory authorities which are CGRF & State Electricity Ombudsman, they can do so. The statutory authorities are entrusted to check the quantification of amount only. An SLP is pending in the Hon'ble Supreme Court as the appeal of order of the division bench of Hon'ble High Court of Kerala is WA/900/2013. The legality of the transmission side developmental charges is subject to the decision of Supreme Court in the SLP.

The quantification could be checked in the following manner.(1).Whether the estimate prepared for the enhancement of the capacity of the substation with required items only. (2) Whether the estimate have been prepared as per the cost data approved by the KSERC(3) The diversity factor as required have been considered.(4).The correctness of the calculation.

In connection with the substation capacity augmentation, the detailed estimate have been examined and items included are the required items for this work. The estimate have been prepared as per the Cost data approved by the KSERC and hence this aspect also complied with.

The diversity factor is to be considered if the power requirement is projected based on the connected load. When the power requirement is requested based on the contract demand the diversity factor of the connected load has already been considered by the consumer. Then the diversity factor need not be considered if the connection is requested with contract demand. Here demand 630 KvA is the contract demand of the consumer. The copy of the application submitted by the appellant to the licensee for the service connection has been examined and noted that the request was with contract demand as 630 KvA. Then diversity factor is not be figure out in the calculation. The calculation is as follows:-

The cost incurred for the Capacity enhancement of Thrikkakara Sub station	-	2,33,00,000
The capacity of the transformer	-	10 MVA
	=	10,000 KvA
The charges applicable per KvA Of contract demand	=	$2,33,00,000 \div 10,000$
	=	2330/-
The contract demand of the appellant	=	630 KvA
The charges applicable to the appellant	=	630×2330
	=	<u>14,67,900/-</u>

Then the quantification done by the licensee is seems to be in order.

Decision

On verifying the documents submitted and hearing both the appellant and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. I here by agree with the order of CGRF.
2. No other Cost Ordered.

ELECTRICITY OMBUDSMAN

No. P/051/2024/ dated: 15-10-2024

Delivered to:

1. Sri. Joy Joseph, Managing Director, M/s.Manjooran Housing, Development Company (P) Ltd., J & R Complex, Mamangalam, Palarivattam, Ernakulam Dist.
2. The Deputy Chief Engineer, Transmission Circle, KSE Board Ltd, Kalamaserry, Ernakulam Dist.
3. The Deputy Chief Engineer, Electrical Circle, KSE Board Ltd, Palarivattam, Ernakulam Dist.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kalamasserry, Ernakulam Dist.