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Appeal Petition No: P/207/2011
(Present T P Vivekanandan)

APPELLANT : Sri. Abraham Joseph
Andoor,Thampuranmukku,Vanchiyoor P O
Thiruvanathapuram.

RESPONDENT : The Assistant Executive Engineer
Electrical Sub division, KSEB, Puthanchanda,
Thiruvanathapuram.

ORDER.

Background of the case: -

The appellant is a builder & promoter of the building named 'Andoor buildings' under the jurisdiction of Electrical Section, Cantonment, Thiruvanathapuram. He has applied for a new Electric connection for energizing the said building. An indoor transformer and other electrical installations were erected by him, as per the scheme approved by the Electrical Inspector and the work was done through a licensed contractor. He has laid 350 Meters of 150 Sq.mm UG Cable from the General Hospital Structure to his premises, for evacuating electric supply complying with the standards fixed, under the supervision of the licensee, KSEB. He had remitted an amount of Rs.843287/= under OYEC scheme, as directed by the Assistant Engineer, for availing the new electric connection. He also gave an undertaking agreeing to remit any additional amount, if arise, after actual execution of work. The respondent then fitted an AB switch and HG fuse to give the electric supply on a temporary basis, as the Add on module was out of stock, as per the request of the appellant. The Appellant had been informed earlier that the quantum of amount collected from him include the cost of some ultra-modern device necessary for safe delivery of Power. Eventhough he had remitted the sum KSEB demanded, no special devices as stated were installed in the line of supply. Since the new device was not installed, the appellant had approached the AE with a request for refunding the excess amount collected from him. Since the response from KSEB was poor, the appellant filed a complaint before the CGRF. All the prayers of the complainant were allowed in principle. But it is alleged that some part of the order was unacceptable to him and some lacked clarity in the matter of execution of the order. It is also alleged that the licensee did not implement the order in letter and spirit within the time frame stipulated by the CGRF. A sum of Rs 4,61,652/- only was refunded plus interest @ 6% (Rs 99255/-) totaling to Rs.5,63,215/- vide cheque dated 5.4.2011. Aggrieved by the action of the respondent the appellant has filed this Appeal Petition.

Arguments of the Appellant:-

The arguments adduced by the appellant are the following.

1). A commission was deputed by the CGRF including two representatives of the licensee and one representative of the petitioner to find out the details of the works carried out and expenses incurred by the licensee for effecting the connection to the appellant. This Commission was uneven in its constitution itself since the other two members belonged to the employees of the licensee. The two members prepared a report without discussing and taking into confidence the member representing the petitioner. They did not allow his views in the report. Therefore the member representative of the petitioner submitted a separate report to the CGRF, expressing his written objection against the

report prepared by the other two. Both the reports were never discussed in the hearing. But the CGRF has quoted from the report submitted by the licensee's employees in its order, but never quoted anything from the report of the member. The appellant was not even allowed to examine the Assistant Executive Engineer who headed the team of Commission to adduce evidence. Hence, its acceptance and to rely it for delivering the judgment and quoting from it to derive and support the judgment by the adjudicator is against rule of law.

2). As part of implementing the orders of the CGRF, the petitioner was summoned to the chamber of the Executive Engineer, on 16.02.2011, and a copy of an estimate amounting to Rs.381635/= was shown to him and asked whether it was acceptable. On perusal of the items and amounts included in the revised estimate, it was felt that these items were not the 'reasonably incurred expenses' for the said work. The licensee failed to convince the estimate to the petitioner, as directed by the CGRF. The KSEB has prepared an arbitrary estimate and was not ready to make any changes in the estimate and was not ready to execute the orders of the CGRF.

3). Also, the CGRF in its order has expressed that "the cost of Add-on module is Rs.2,50,000/- as per Board order BO.(FM) No.2693/2007 dated 29.11.2007. He has already paid Rs.8,43,287/- under work deposit to avail the new connection. He is therefore entitled to get refund of the balance amount deducting the expenditure incurred for giving supply using the add-on module. The observations of the CGRF were against the true facts. No add-on module was provided by the licensee for giving supply on 07.07.2007. The Board order dated 29.11.2007 was issued after the commencement of supply to the petitioner. The OYEC rate is not applicable to deposit work. The cost of add-on module was never been approved by the KSERC. The petitioner was receiving the electric supply satisfactory till date, without the use of add-on module, hence the same was not a necessity to provide the supply. The add-on module/ RMU are the equipment needed for improving the distribution infrastructure of the licensee under APDRP scheme, evolved by the Government of India. This was included in the ARR for 2006-2007 vide table 3.6 of ARR & ERC.

The licensee is prevented by law to pass on the expenditure incurred or to be incurred to the consumers for establishing, maintaining and improving the infrastructure. There were no Board orders to collect cost of RMU or Add-on modules while the estimate amount of Rs.843287/- was collected from the petitioner on 23.03.2007. Any subsequent order cannot justify an illegal action already taken place. Prior approval of the KSERC is mandatory for the licensee to collect such amounts as per section 46 of Electricity Act. While giving supply on 07-07.2007, the expenses actually incurred by the licensee was, cost of one set of AB switch, one set of HG fuse, cost of its fasteners, labour charges for the same, mounting charge of cable end etc. and 10% of labor charges as supervision charges including the expenses for laying the UG cable. This is the reasonable costs incurred by the licensee. These factors were not considered by the CGRF. Hence the observation of the CGRF is against rules and not acceptable to the petitioner. The petitioner has every right to get the balance amount after deducting the reasonably incurred expenses for the work as stated above.

4). The KSERC has only approved the proposal of the licensee for adding 10% of entire cost also for arriving at the OYEC charges while approving the estimates for various distribution works. It has also reiterated that, for works not covered under the estimate, prior approval of the KSERC has to be obtained for levying charges as per section 46 of the Act. It is also made clear that expenditure required for giving power to a consumer can be levied from him/her. The development expenditure of infrastructure under Distribution has to be met from capital expenditure provided in the ARR. The petitioner is disputing the action of the licensee in collecting 10% of the cost of the UG cable laid by the petitioner for evacuating supply and 10% of the cost of the unitized indoor transformer etc. installed by the petitioner. Here the expenses incurred by the licensee are only the supervision charges for the cable laying work. The rate fixed by the KSERC is 10% of the labour charges as per Code 8 (9) of the Electricity Supply Code, 2005. The licensee is misconstruing the above Code for

arriving at the rates for works and is collecting 10% of entire cost of cable laid by the petitioner. The licensee has no moral or legal right to realize 10% of entire cost of those utilities installed by the applicant for evacuating, receiving, transforming and distributing supply at the premises.

5). The labor charges fixed by the licensee for the work and executed by the applicant are a classic example for its arbitrariness. It is expressed in lump-sum.

6). Part 'B' of the estimate includes the actual expenditure i.e. the reasonable incurred expenses by the licensee for effecting supply on 07.07.2007. In Part-C, devices, equipment & materials installed by the applicant and its installation charges are included. Their cost and its installation charges are fixed arbitrarily by the licensee. The licensee has nothing to do with these works and the licensee has not in any way involved in this work. Licensee is not authorized to collect sums not incurred by it for effecting supply. The petitioner is not expected to pay such "NokkuKooli" to the licensee. No principle of approximation is needed for arriving at the actual cost incurred. Therefore the estimate shown to the petitioner by the licensee is not the expenses reasonably incurred by the licensee to affect supply to him on 07.07.2007. So the order of the CGRF could not be implemented. Thereby the licensee has an alibi for not implementing the CGRF order.

7). The CGRF has upheld the argument of the petitioner that the sum of Rs.8, 43,287/- demanded and collected by the licensee is arbitrary. But the CGRF has also accepted the argument of the licensee that add-on module is required for supply of electricity. It was abundantly proved beyond doubt before the CGRF that supply was effected without employing add-on module. The amount of Rs.8, 43,287/- was collected on 23.03.2007 and supply was effected on 07.07.2007. The agreement for remittance of amount was on 21.03.2007. Therefore the petitioner is eligible for interest on excess amount retained by the licensee with effect from 08.07.2007.

8). The order of the CGRF that interest at the rate of interest on security deposit shall be payable is not reasonable and unacceptable to the petitioner. The excess amount collected was not returned to the petitioner, despite making specific request for that. Collecting unnecessary sums and retaining it indefinitely is an act of cheating. Therefore 12% of interest on the excess amount collected and retained by the licensee is a legitimate rate of interest demanded by the petitioner. Definitely it should be met from the erred officials.

9). Next argument is that no finality has been dictated by the CGRF on the mode of return of amount which has been collected in excess and retained. The licensee is given discretion in that. The petitioner is not the occupant of the independent premises at which service connections are given. Independent consumers occupy the premises according to their right of occupancy and they make payment for their use of electricity to the licensee. Therefore, if the amount is adjusted against the future electricity charges on the consumer of the building, the petitioner will be at loss. The licensee is to be treated as a debtor to the petitioner and the amount with interest shall be released to the petitioner as onetime payment through cheque or DD for the redressal of grievances. Therefore the reasonably incurred expenses that shall be collected and amount to be returned by the licensee is as follows;

1). The Add on Module cost	= Rs 2,50,000/-
2). Supervision charges for cable laying	= Rs4,630/-
3). Supervision charges for end terminations	= Rs 80/-
Total	=Rs 2,54,710/-

The balance amount to be recouped Rs(843287 – 254710) = Rs 5,88,577.00. The Appellant is eligible for the said amount refunded at 12% interest p.a. from 23.3.2007.

Nature of relief sought by the appellant are:

1. *To issue directions to the licensee to return the excess amount collected on 23.06.2007 than*

- the actual expenditure incurred to provide supply to the petitioner on 07.07.2007.*
2. *To issue directions to the licensee to pay interest at the rate 12% per annum for the amount retained by the licensee illegally.*
 3. *To issue directions to the licensee to release the retained amount with interest at the rate of 12% per annum as onetime payment through demand draft or cheque to the petitioner within one month of the order.*
 4. *Issue direction to the licensee to take actions against the erred officials who have caused this litigation causing inconvenience to the licensee as well as to the petitioner as a deterrent to others officials of the licensee for not repeating this.*
 5. Such other relieves the compalaint prays for, during the course of appeal.

ARGUMENTS OF RESPONDENT:-

The Respondent denies all the averments and allegations contained in the petition except to the extent he is specifically admitted in his written statement, and is as follows;

- 1). Sri Abraham Joseph had applied for HT/LT supply to his premises at Andoor building, General Hospital Junction, under Electrical Section, Cantonment on 12.07.2006. The Officials visited the site and prepared an estimate for providing supply of power. The Power allocation was issued by the Executive Engineer, to an extent of 160 KVA connected load, on 28.08.2006. The applicant had produced sanction from Electrical Inspectorate for installation of one No. 250 kva transformer at his premise. All the works except doing modification in the existing transformer structure and installation of RMU were proposed to be executed by the party under the supervision of KSEB. The Executive Engineer, sanctioned an estimate of Rs.8,43,287/- for providing supply of power to the applicant and he remitted Rs.8, 43,287/- on 23.03.2007 at Electrical Section, Cantonment.
- 2). The Board has formulated a scheme for replacing all the 11 KV OH lines and structures with in T'vpm City area with UG cable and Ring Main Units (RMU) as switching devices. Such a scheme was adopted for improving the reliability of supply. With this in mind, the Board had launched the APDRP scheme spending an amount of Rs.120.17 Crore. If the old practice of cutting the cable and forming the rising mains for giving supply to consumers was allowed to continue, it would have diluted the scheme, thereby defeating the very purpose of the system. So Board had decided that all prospective consumers requiring installation of transformers for availing the supply with in the City scheme area shall be allowed to tap supply only through RMU. It was in this context RMU/Add on unit was necessitated for providing supply of power to the appellatant. In other words, the RMU was inevitable for providing supply to the appellatant and the estimate was prepared accordingly.
- 3). Further it is argued that in the instant case, KSEB has carried out the work in its scope, except the RMU which could not be installed, since the same was not readily available. The applicant then requested to provide alternate arrangements for the supply. Hence the Board agreed to provide the supply by tapping from the transformer structure directly, as an interim measure. Necessary works were done on the 11 KV structure and supply was effected. The add- on- module instead of RMU was installed on 13.08.2010, since as per the present site conditions add on module is needed.
- 4). The Board had authorized field officers to refund amount collected in excess, if any, towards cost for providing lines and plants, but in the instant case the work was not completed due to non-availability of an item, viz. RMU/ Add on module. Hence the delay for refund of the amount.
- 5). The appellatant had approached Hon: CGRF with the plea that the amount collected in excess may be refunded with 12% interest. The Hon: CGRF, after hearing passed orders to revise the estimate as per the actual expenditure with Add on module in place RMU and also ordered to refund balance amount with 6% interest. It was also directed to convince the appellatant with the

revised estimate within 15 days from the date of receipt of the order. Likewise a revised estimate was prepared, but the appellant was not convinced with the estimate and in order to comply with the orders, within the stipulated time, the Executive Engineer ordered to refund the excess amount.

6). As per Reg 4(1) of KSEB Terms and Conditions of Supply, read with Sec 46 of Electricity Act, it authorizes the Board to recover in advance from the owner or occupier of any premises requiring supply, the expenses reasonably incurred by the Board, for providing any electric line or electrical plant required specifically for the purpose of giving such supply.

7). The rates prevailed at the time of sanctioning the estimate for providing supply of power to M/s Andoor Building were approved by KSERC on 26.07.2005, prior to the launching of APDRP city scheme. It does not provide rates for works of special nature like construction of lines using special type poles or installation of RMU's etc. But KSERC's letter No. KSERC/Supply Code/2/140/2005/1238 dated 26.10.2005, has issued directions for arriving at the cost of works in distribution sector for which specific rates are not given, for removing this difficulty. It stipulates the methodology for calculating the cost of works in distribution sector and is as follows;

- I (a). Cost of materials
- (b). Centage charges @ 16% of (a)
- (c). Transportation charges, if any
- (d). Labor charges
- Sub Total= (a) + (b) + (c) + (d)
- II Supervision charges 10% of I
- Grand Total= I+II

Hence the argument of the Appellant that KSERC has not approved the rates of special items and that KSEB's decision is arbitrary is null and void. According to the respondent, the orders of the Honb'le CGRF were speaking in all respects.

8). The Sec. 8(9) of Kerala Supply Code 2005, stipulates that where the applicant does not require the licensee to provide electric line or electric plant, but choose to provide them himself, he shall pay 10% of the expenses as supervision charges to the licensee for providing such services. The Commission vide letter dated 26.10.2005 had clarified that the supervision charges are to be based on total expenses. In KSEB, the term 'OYEC' is used as a synonym to the term 'estimate cost' for providing supply. Board has not claimed any amount arbitrarily. It is true that certain lump-sum provisions were made in the estimate for labor which was carried out by the party, only because of the fact that the appellant did not produce proof of the expenses incurred for the same. According to the respondent, the argument that licensee has not acted upon the directions of CGRF is not true.

ANALYSIS AND FINDINGS: -

The Hearing of the case was conducted on 10.5.2011 at T'vpm. Sri. K Anandakuttan Nair and Mr Abraham Joseph represented the Appellant's side and the opposite by the Assistant Executive Engineer, Smt. R S Sujatha and the Board's Counsel, Sri B Sakthidharan Nair and they argued the case on the lines detailed above. On perusal of the Petition, its counter, the averments raised in the Hearing and in the argument notes filed and considering the facts and circumstances of the case, I come to the following findings and conclusions, after doing the analysis which is detailed below.

The Appellant has raised mainly three contentions.

1). The RMU and the Add-on-module are not at all necessary for providing the electric supply, as it is a part of the infrastructure development plan of the licensee and any expenditure on such devices shall not be passed on to the consumers.

The Clause (7) of the Electricity Supply Code, 2005, relates to 'Power to recover expenditure'. The above provisions is an elaboration of Sec. 46 of the Electricity Act 2003, which states that “the State Commission may by regulation authorize a distribution Licensee to charge from a person requiring Supply of electricity, as per Section 43, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply”. Hence from the above and other regulations notified by the Hon: Commission it is clear that;

(a) The expenditure charged by the Licensee shall be based on the schedule of rates approved by the Commission.

(b) The Licensee shall not be entitled to recover any such expenditure included under the scheme approved by Commission as infrastructure developmental plan or booked in the Annual Revenue Requirements of the Licensee and

(c) The applicant has to remit the reasonable expenses for providing electric supply in advance to the Licensee.

The Respondent had contended that the device, Add-on-Module, is required to provide the supply to the applicant, but the same could not be installed in time as the same was out of stock. So they gave the supply, at the request of the applicant, by tapping supply from the 11KV structure directly as an interim measure, with an intention to avoid hardship to the applicant.

The Respondent's claim that the estimate rates prevailed at the time of sanctioning the estimate for providing supply of power to “Andoor Buildings” were the rates approved by KSERC (except for RMU), appears to be correct. The scheme for providing RMU as switching device for tapping 11KV Supply is being implemented only within the City scheme area. Originally, a RMU was proposed by KSEB for providing the electric supply to the Appellant at a total estimated cost of Rs.843287 /=. As per the order of the CGRF, the KSEB has revised the estimate, considering that an Add-on-Module will be sufficient to provide supply of power to the Appellant. It is noted that the expenses incurred were for providing supply to the consumer alone and not for infra-structure development as alleged by the consumer. The Appellant is required to bear only the cost of Add on unit and other allied installation and supervision charges specifically required for giving supply to him. Accordingly, the revised estimate comes to Rs 3,81,635/-, out of which the Part A is the rate for the device, Add on Module, costing Rs 2,50,000/-, which is acceptable to the Appellant also.

The Part-B of the estimate, accounts for the work done for giving supply on a temporary basis (as an interim measure as per the request of the Appellant), amounting to Rs 17191/-. The AEE has admitted in the Hearing that Part-B sum will be reimbursed. This assurance was not seen complied with by the respondent. The KSEB is bound to give supply within the time frame fixed by KSERC. The non-availability of the materials in stock in KSEB Store is not a fault of the consumer and the expenses incurred for alternate arrangements made, cannot be imposed on the consumer. So the Part- B of the revised estimate, amounting to Rs 17191/-, needs to be refunded.

The Part-C of the revised estimate comprises mainly, the installation of 11KV Cable and the 250 KVA Transformer (T'rfr). The argument of the Appellant that KSEB has taken the rate of a unitized T'rfr, instead of the rate for an ordinary 250 kvaT'rfr, does not deserve merit. This is because, the appellant has purchased and installed a unitized T'rfr, the rate of which (from the invoice) is noted as Rs 6,11,620/-, and is absolutely required as per the scheme approved by the Electrical Inspector. Installing a unitized T'rfr and then pleading to charge the rate of an outdoor T'rfr in the Estimate, for computing the reasonable cost for providing the electric supply, is not fair. Hence the averment of the Appellant is not maintainable.

The second contention is against the action of the licensee in collecting 10% of the entire cost

of the cable laid by the appellant and 10% of the entire cost of indoor transformer and its erection charges, which was executed by the Appellant himself. The Hon Commission has issued direction how to calculate the Supervision Charges payable, which is reproduced above. By adopting the said method, the Supervision charges @ 10% of the entire cost of work carried out by the consumer, is payable. From the above, it is clear that the contention of the Appellant that the Supervision charges payable is 10% of the labour charge only is not correct. Hence the calculation of 10% of the entire value of work including cost of materials supplied and work executed by the consumer, as the sum payable to KSEB as Supervision charges is found to be justifiable. Moreover, in an identical case before the Hon: Supreme court in Civil Appeal No 4209 of 2007, decided on 18.10.2011, it is held that the levying of Supervision charges for the 'total estimated cost of electrification works' is correct, vindicating the stand of KSERC and the KSEB.

3). The third contention is regarding the claim of 12 % of interest on the excess amount collected by the Licensee. The KSERC has authorized the Licensee to collect costs, which is the reasonable estimate cost of the work needed for providing the Electric supply to the consumer and is termed as Work Deposit, just like a Security Deposit kept with KSEB, for an Electric service connection. The CGRF has ordered to refund the excess amount with 6% interest as applicable for Security deposit, and I feel the above decision of 6% as interest is reasonable except the period of interest which has to be reckoned from the date of collection to the day of refund.

Decision: -

From the analysis done as above and the findings and conclusions arrived at, I come to the following decisions on the Reliefs sought from this Authority;

Issue No 1, 2 &3 :- The allegation of collecting excess amount for providing Electric Supply to the Appellant was found as having merit by the CGRF and KSEB was ordered to reimburse the amount collected for the RMU module. The cost of Add on module (Rs 2,50,000/-) to tap the 11KV supply and 10% of the cost for cable laying work is only admitted by the Appellant as the legitimate claim of KSEB. But it is needless to say that, as and when new technologies emerge under Research and Development Program and modern devices are put into practice worldwide, for better efficiency or performance, it has to be adopted in our System as well. The 11kv supply is proposed to be tapped by the new Add on modules devices in Cities and the applicants for power have to accept the new trend. The power can be delivered using the old methods as well, but the applicants for power cannot insist the Licensee, to adopt the old method itself, when they have moved over to new systems to tap the 11 KV Supply. Hence I conclude that, in the revised estimate prepared, the Part –A, the cost of Add on module of Rs 2,50,000/- and Part-C amount, which is discussed under the 'Heading-Analysis and Findings' as reasonable and justifiable.

The refund amount shall carry an interest of 6%, as the estimate amount was collected as work deposit for executing the work required for providing the electric supply. It is equivalent to a deposit like Security deposit, and as per the Electricity Supply code, the Cash deposits will carry the bank rate of interest, from the date of remittance to the day of refund. It is noted that, the excess amount with interest @ 6% has already been issued by the KSEB. I decide that in addition to it, the Part-B amount, (Rs 17191/-) of the revised estimate shall also be refunded with 6% interest. It is made clear that the interest payable to the Appellant is for the period starting from the date of collection of excess estimate amount by KSEB, to the day of issue of Refund, and shall be released to the appellant within 60 days of this order, by DD or Cheque.

The Hon: Commission has issued order clarifying the method to be adopted in case there exists no rates for the items required for giving power to prospective consumers. The order

specifies that the total cost includes the material cost, its transportation charges, storage cost and labor cost. It has been clarified that the Supervision charge will be 10% of the entire cost arrived at, as above. The Hon: Supreme Court has endorsed the method of collecting Supervision charge for the entire cost of electrical works, in the judgment pronounced on 18.10.2011, in an identical case, vide the UP Avas EvamVikas Parishad Vs UP Power Corporation Ltd. Hence the levy of 10% on the entire cost of estimate as the Supervision charge payable by the appellant is found as justifiable.

Issue No 4: -No intentional delay tactics in registering the application for power or effecting the new Service connection or any deliberate attempt to collect excess money from the appellant, is proved, hence the plea to take action on the concerned officials is devoid of merit and found not maintainable.

Having concluded and decided as above, it is ordered as such and the Appeal Petition filed by the Appellant Mr. Abraham Joseph, stands allowed to the extent ordered above and the same is disposed of accordingly. No order on costs.

Dated the 23rd of April, 2012,

Electricity Ombudsman.

Ref No. P/ 207/ 2011/ _____ dated 23.04.2012.

Forwarded to: -

1. Sri. Abraham Joseph
Andoor, Thampuranmukku, Vanchiyoor P O
Thiruvananthapuram.
2. The Assistant Executive Engineer
Electrical Sub division, KSEB, Puthanchanda,
Thiruvananthapuram.

Copy to: -

(1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam Thiruvananthapuram-10.

(2). The Secretary, KSEBoard, Vidyuthibhavanam,
Pattom, Thiruvananthapuram-4.

(3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Vidyuthibhavanam, Kottarakkara.