

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No:P/ 253/ 2011and P/264/2011.

(Present-T.P. Vivekanandan)

APPELLANT : M/s Trinity Arcade Pvt. Ltd.  
34/1759 A, Trinity House,  
Opp:Changampuzha Park, Kochi 24.

RESPONDENT : The Assistant Executive Engineer,  
Electrical Sub Division, KSEB, Palarivattom, Ernakulam.

ORDER.

Background of the case: -

M/s Trinity Arcade Pvt. Ltd is a HT consumer under Electrical Sub Division, Palarivattom with No. 32/4821. The appellant is a Company and KSEB accorded sanction to the work for, supply of Electric power to 270 Residential Apartments in four Blocks (A, B, C & D) of the Company, vide Board order dated 2.6.2009. Accordingly the appellant remitted the amount of Rs. 1, 47,10,000/- for availing power and the work consisted of, installing 2 Nos RMU, laying 3 km 3x300 sq.mm 11 KV UG (underground) cable, erecting 2 Nos 630 KVA Transformer, allied panels etc. It is argued by the appellant that they requires 2800 KVA additional power, for the proposed second stage expansion of the project, in the near future and they have remitted the amount hoping power for the 2<sup>nd</sup> stage as well.

While so, KSEB also accorded sanction to M/s Grand Cochin, Edappally (adjacent to the appellant), for drawing Electric power with items of work, construction of 1 No. RMU and laying 185 m of 3x300 sq.mm 11KV UG cable. The specific case is that the power for M/s Grand Cochin was proposed and then energized through the UG cable laid by the appellant. That is to say the electric power to the 2<sup>nd</sup> entrant (M/s Grand Cochin) was done as an extension of service, from the Cable laid for the 1<sup>st</sup> entrant (M/s Trinity Arcade) and for which the total cost was borne by the appellant. Being aggrieved at this action of KSEB, they approached the CGRF requesting interim order to restrain KSEB from granting power supply to M/s Grand Cochin, Edappally from the UG cable laid by the appellant. The CGRF dismissed the request as it felt is beyond the jurisdiction of the Forum, by Order dated 30.11.2011.

Meanwhile the appellant has preferred another petition dated 28/11/2011 before the CGRF with reliefs sought to accord sanction for additional load of 2800 KVA to the Company and to restrain the Board from energizing electric supply to M/s Grand Cochin from the UG cable laid by the company under OYEC scheme. The petitioner's complaint was dismissed by the Forum as it is found devoid of merit, vide order dated 28/1/2012. Aggrieved by this order, the Appellant has filed an Appeal Petition on 3.12.2011 before this Forum, and stands as No: P/253/2011. Aggrieved by the order of CGRF dated

28/1/2012, he has submitted another Appeal petition dated 6/2/2012 and it stands numbered as P/264/2011. It is also noted that the appellant has filed a Writ Petition W.P © No. 32210/2011 before Hon: High Court, which was dismissed treating as withdrawn, when it came up for hearing on 20-12-2011.

Arguments of the Appellant: -

- 1). The appellant has adduced the following arguments in his appeal petition dated 3.12.2011. He submits that the Board cannot factually and legally accord sanction to energize or supply power from the UG cable laid by the Company to another applicant. The sanction accorded to M/s Grand Cochin, Edappally, is without notice to the complainant and was not appraised of the decision, if any, by the Board to energize M/s Grand Cochin, Edappally from the UG cable of the company. Apart from the fact that the said act is detrimental to the interest of the company, both pecuniary and proprietary; it is a clear violation of the principles of natural justice, particularly when the Company has invested Rs.1, 47, 10, 000/- under OYEC scheme for drawing the UG cable.
- 2). The appellant argues that, KSEB has never considered the question, whether OYEC scheme on the basis of which the complainant has drawn the line for its purpose, is the exclusive property of the complainant, going by the expansion of OYEC as “ Own your Electric Connection”.
- 3). The Forum has not considered the question as to the effect of payment of Rs.1, 48, 32, 600/- (one crore forty eight lakhs thirty thousand six hundred only) under OYEC scheme and therefore he is the absolute proprietary holder of the said installation. The nature and purport of OYEC scheme has not been considered by the Forum in spite of the complainant has specifically contended that the line drawn as per OYEC scheme cannot be availed of by any person other than the complainant.
- 4). The question whether the installation work under the OYEC scheme as demanded by KSEB and having drawn 3x300sq.mm U/G cable originally, has to enable the complainant to obtain power is not disputed by them, in spite of the contention raised by the Board that absolute ownership of such installation lies with the Board. This is not specifically answered by the Forum.
- 5). The question whether the Board is entitled to accord sanction to M/s Grand Cochin from the line drawn to the complainant depend up on answer to the question whether the installation belongs to the complainant who remitted the amount under OYEC scheme. At any rate before giving sanction to M/S. Grant Cochin for energizing power through the line drawn to the complainant, the appellant ought to have issued notice and heard. This is clear violation of principles of Natural Justice.
- 6). There is malafide in directing the petitioner to pay a sum of Rs.1, 48,32,600/- for lying 3 x 300 Sq.mm U/G cable. Going by any standard it is sufficient, if 3x185 sq. mm UG cable is laid to energize the power to the complainant. Thus the complainant was made to pay an excess amount to at least 75 lakhs. The respondent had in their mind to allocate power in favour of other applicants, if 3x 300 sq.mm UG cable is laid.
- 7). The Forum has not applied its mind on the real issue and controversy in the complaint. The order passed by the Forum is a lacuna and no reason stated for dismissal of the complaint.

It is therefore submitted that the Hon: Statutory Authority, be pleased to allow the appeal and grant reliefs prayed for in the complaint No.53 of 2011-12.

Reliefs sought: -

Cancellation of the order No. CGRF-CR/ Comp.53/2011-12 dated 28.1.2012 passed by the CGRF, approving sanction of the power allocation energizing through the Cable drawn by the complainant under OYEC scheme.

Arguments of Respondent: -

The respondent has furnished the statement of facts against the averments raised in the Appeal petition. The main contentions of the respondent are the following;

- 1). The sanction was accorded vide board order dated 02.06.2009 of the Chief Engineer, for supply of power to M/s Trinity Arcade and KSEB was not aware of the expansion of the project. The company has not intimated about any proposal at the time of availing supply or any time in between. KSEBoard is not able to reserve power without specific request from the consumer, but is bound by law to give power for those who make genuine request. Even now also, the company has not requested for additional power allocation, in proper form.
- 2). The cable is not the property of person who avail power. It is submitted that only the distribution licensee at the area of supply is the true owners of the distribution system. Distribution licensee is authorized and bound by law to collect the expenditure incurred for providing supply. According to Electricity Act 2003, distribution licensee is the one authorized to construct and maintain the Electric distribution system in its area of licensee and it can recover the cost of supply.
- 3). The payment made by the company does not mean that they are the absolute owner of Electric Supply line property. Only the actual cost of supply is realized from the appellant M/s Trinity Arcade.
- 4). The Hon CGRF has observed that the cost realized by the respondent is in accordance with law. The argument of the complainant is backed by no rule and hence the Forum cannot accept that and the action done by the respondent is well in accordance with law.
- 5). It is submitted that the Board has realized the estimated cost of providing the Electric supply to the company and it is not disputed. At the same time Board is duty bound to provide supply to others also in the most feasible way.
- 6). The Electric distribution Line installations belong to the distribution licensee, the KSE Board. Hence the Board is empowered to provide power to those apply for power. Further, Board has no powers to withhold or deny a request for an electric supply. It has to supply power based on the priority of applications received.
- 7). M/s Trinity has already availed power through the feeder constructed as part of availing power to their project. There is no possibility of issuing notice to those availed supply by remitting cost of supply. The feeders once constructed become part of the distribution system of KSE Board and any rearrangement can be done by KSE Board. This is essential for the stability and security of the system too. Further, KSE Board continuously carries out system improvement works by interlinking different feeders so that sufficient back feedings facility is maintained. The cost of providing supply is realized from the consumers, as per Law authorized, at the time of availing supply.
- 8). KSE Board has adopted 3x300 sq. mm cable as a standard practice. The Board has adopted this considering the future developments and also since each 11 KV cubicle in the Substation has to be utilized to its full capacity.
- 9). The transmission/Distribution system of KSEBoard is developed in a systematic way and hence adopted a standard and uniform size of Cable to supply power. The cable size for evacuating power from a Substation is determined primarily by the Short Circuit capacity it has to bear in case of Fault occurring near the station and as per the present 'fault level' of Edappally station, the minimum size of Cable required is of 3x300 Sq mm. The statement that consumer has paid excess amount of Rs.75 lacs is just to mislead the facts. It is not clear how they have arrived at such an exorbitant amount.

10).The KSEB is duty bound to provide supply as per the requests made to it by any applicant. It can not preplan to give supply to anybody as it is not possible to deny or delay requests for power. M/s Grant Cochin was allotted power by KSEB considering feasibility of supply of power to them. The allocation was given as per the Terms and Conditions of supply, 2005, approved by the Commission. The CGRF has issued orders after analyzing the facts. It cannot take decision on arguments without supported by any law or rules in force.

Analysis and Findings: -

Both the Appeal petitions Nos. P/253/2011 and P/264/2011, deal with the same issue and hence are clubbed together and decided to hear as a single one. The Hearing of the case was conducted on 29.6.2012, in my chamber at Edappally, and Mr. P.B. Pradeep, Advocate, represented for the appellant and Smt. Savitha K S, Assistant Executive Engineer, Electrical Sub Division, Palarivattom, for the opposite side. On perusing the Petition, the counter statement of the Respondent, the documents submitted and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The appellant was in need of large quantum of Electric power, about 3750 KVA, to his newly built, High Rise Building (4 Block) Complex, accommodating 270 residential apartments, constructed by the Company. The appellant has invested a sum of Rs. 1, 48, 32,600/- for getting the Power connection, by constructing a new 11 KV feeder from 110 KV Sub station, Edappally. The work include, constructing 2 Nos.RMU, laying 3 Km length of 3x300 sq.mm XLPE 11 KV UG cable, installing 2 Nos.630 KVA transformers, allied panels etc. After completion of the work, the Board provided the power connection through this Cable on 29.9.2010, to the appellant.

The dispute arose when the Board accorded sanction to another consumer viz. M/s Grand Cochin, for laying 185 meters of 3x300 sq.mm XLPE 11KV UG cable and erecting a RMU, under OYEC scheme, in 12/2010, from the same line energized for giving supply to the appellant. That is to say the second entrant, M/s Grant Cochin was benefitted by the installation of the Cable of 3x300 sq.mm size, having surplus capacity. The contention of the appellant is that it is impermissible under OYEC scheme and is therefore illegal. He submits that the Board cannot factually and legally accord sanction to energize or supply power from the UG cable laid by his Company.

Firstly, it is proper to refer the relevant provisions under Regulation 22 of KSEB Terms & Conditions of Supply, 2005, which reads as follows;

*“22. Service lines: - (1The ownership of the service line, even if the cost is borne by the consumer, rests with the Board. This will be applicable for lines constructed by the consumer paying super-vision charges to the Board. The Board will be responsible for the maintenance of the service line as well as for giving new service connection. The Board is at liberty to take service lines from the Meter or cutout*

*or any service post of any consumer to give connection to another consumer even by crossing the property of the consumer with the consent of owner and making the least damage possible to the consumer. Where a service line, meter or cut out etc. is utilized for giving service to another consumer, no refund or reduction in charges will be allowed to the original consumer even if he has paid the cost of the service line".* The rule is very clear, that the ownership of the line whether constructed under OYEC scheme or not, rests with the Distribution Licensee, (KSEB), only.

Secondly, for new applicants with a power demand in excess of 100 KVA to 3000 KVA, the supply will be provided at 11 KV voltage level only. Hence the decision of KSEB to draw a separate line for a power demand of around 3000 KVA of the appellant is found to be correct.

Another contention of the appellant is that the appellant has, by letter dated 15.11.2011, intimated its requirement for additional power of 2800 KVA, for its 2<sup>nd</sup> stage expansion work of construction of additional apartments over the existing Flats, major expansion of club house and up gradation of other facilities. This averment of the appellant has been rejected by the respondent and instead point out that, KSEB is not aware of any expansion of the Project and the Company has not intimated any proposal at the time of availing the electric supply nor any time there after. It is true that KSEB is not supposed to reserve power on a Line, but is bound by law to give power to those who approaches first and make applications. The respondent submits that the company has not requested for 'Power Allocation' in proper form till date. Though the appellant has produced a copy of the letter addressed to the Deputy Chief Engineer, Ernakulam, (dated 15.11.2011) requesting additional power allocation of 2800 KVA, I doubt its existence, since normally the applications for PA is accepted with an AF(application fee) for processing and no such fees are seen paid by the appellant nor produced as document.

The Hon: KSERC is vested with powers to frame Regulations for the distribution of Electric power by the Licensees, with in the State. Accordingly, the Electricity Supply code, 2005, and the KSEB Terms & Conditions of Supply, 2005, were notified which stipulate the Regulations, guide lines, norms and procedures for giving Electric supply to consumers and its recovery of costs and the collection of Electricity charges etc. Hence as per the existing provisions, the action of KSEB to accord sanction to another applicant to energize through the UG cable laid for giving power to the appellant, even if the cost is borne by him, is within Licensee's (KSEB's) delegation of powers.

The Own Your Electric Connection (OYEC) was a scheme prevailing in KSEB earlier, in which the Electric connections were provided by collecting 'cost estimate' in advance, for those who require the supply earlier, over riding the normal priority. Otherwise the applicant has to wait for months together, to get the connection free. This OYEC scheme also does not provide any ownership of the Line or any

privileges to the consumer. After the enactment of the IE Act, 2003, as per Section 46, a Distribution licensee can realize from the applicants requiring supply of electricity, any expenditure reasonably incurred to erect the electric line or electric plant, used for the purpose of giving that supply. The Hon: Commission, has dispensed with OYEC scheme and in its place has introduced, the cost estimate for the specified work needed for effecting the service connection. The cost estimate rates so approved by the Commission are applicable to all prospective and willing consumers in lieu of the existing OYEC charges. The collection of estimate cost of work, for giving the electric connection to prospective consumers, still continues to be labeled as 'OYEC' charges in KSEB.

Another argument of the appellant is that the complainant was made to pay an excess amount of at least 75 lakhs by laying 3x300 sq.mm UG cable. He submits that 3x185 sq.mm cable is sufficient to energize the power to his Company without any material proof. But according to the respondent, the KSEB has adopted 3x300 sq. mm cable as standard and uniform size to supply power, and above all considering the fault level of the Edappally Substation. It is technically correct to design the line or select the Cable size, that can with stand the earth fault or short circuit current, till the fault is cleared by a Protective device. Such design requires a minimum cable size of 3x300sq.mm, if the power is drawn from a Substation like Edappally, that has a high 'fault level'. Hence considering the above facts, the argument of the appellant that he was compelled to be paid excess amount, by providing a higher rated Cable is not found acceptable.

Regarding contention of the appellant that the complainant was not apprised of the decision, if any, by the Board to energize M/s Grand Cochin, Edappally from the UG cable of the Company, it poses no weightage, since the Cables or Lines once constructed become part of the distribution system of KSEB and any rearrangement can be done by KSEB. It is not feasible to issue notice to consumers whenever a 'distribution line', is utilized for giving service to another consumer, as the existing rules allows the Licensee, to utilize the Power Lines completely, and to add subsequent installations to it for giving power to others. That is how, the so called 'Power Grid or 'Network', comprising the Electric Transmission and Distribution System, was created throughout the State or the whole Country.

As per the request of the appellant, notices were sent to M/s Grant Cochin and M/s Emmanuel Silks, (owner and lease holder), since they are 'indirect parties' in the dispute but both parties did not respond to the notice and it is presumed that they are not interested in this case or do not wish to offer remarks.

It appears that the real cause of this petition, is the fear of the appellant that he may not be getting the additional power required from this Line, as another applicant has availed the balance power, from the Cable laid for his purpose and at his cost and will make him bear additional expenses again, in

future, for more power. Also it is true that the second applicant (M/s Grant Cochin) got benefit, at the cost of the 1<sup>st</sup> applicant (appellant), in remitting the cost of work to bring power from nearest power line. The 2<sup>nd</sup> was required to pay less expense to bring power, (Contract demand of 1600 KVA) to his premises, since there existed already a power line with spare capacity, constructed for the appellant's use. But it is the Law, if the line has spare capacity, it can be utilized for the next applicant for power and there is no case for 'infringement of natural Justice' in this matter.

DECISION: -

From the analysis done as above and the findings and conclusions arrived at, I take the following decisions.

The KSEB is empowered to collect the reasonable estimate cost of the work needed to provide new electric service connections from the prospective consumers. This work may include the strengthening of the existing Electric Lines or may consist of constructing new overhead line or laying Cables etc. and other accessories for drawing power from the nearest distribution line or Substation, as the case may be. In practice, normally the fresh work is a continuation of the existing network of KSEB and it is not intended to draw separate lines for all consumers, independently, from the nearest Substation except for the case of demand for Bulk power, say for 1000 KW or more, if the existing line has no spare capacity. The amount remitted by the consumer is the reasonable expenses for providing the connection. The new lines constructed become the absolute property of the Licensee and not belong to the consumer, though he may have remitted the cost of line work. This is clearly stated in the rules (under Regulation 22 of KSEB T & C of Supply 2005.).

The next question to be answered is whether the respondent has caused the consumer to pay more by way of collecting cost for, 3x300 sq.mm size Cable, instead of a lower size cable. The cable to be drawn from a substation to a load centre is designed based on the quantum of load to be carried by it and its capacity to withstand the fault power in case of earth fault or short circuit. The cable selected should withstand, the rupturing power coupled with intense heat, generated during the time of faults in the Line till the Circuit Breaker opens and clears the fault. Hence the minimum size of Cables, starting from a Substation has a close relation with the Fault level of that Station. Here, the minimum size of power Cable required from Edappally substation, noted as 3x300 Sq.mm size is found to be in order. Technically speaking, the cable size required, after a certain distance from the sub station may get reduce and the actual size depend upon the value of 'Electrical impedance' offered by the path, to the fault current flowing. From the above, it is clear that there is nothing wrong in estimating with a 3x300 size Cable for giving the electric Supply to the appellant and it is found technically correct.

The third point is that the consumer needs additional power for his second stage project which he has not started so far. The argument of the appellant that the whole power capacity of the Cable should be reserved, for his future use, is inconsistent with the present rules. The consumer has to request to the respondent to provide the extra Power needed as and when he needs the additional power, remitting the applicable costs, according to the work needed at that time, to provide that much Electric power.

Further, no notice need be sent to the appellant for providing electric connection from the KSEB system to other applicants for electric power, though the line may be built as a part for providing supply, after collecting the reasonable estimate cost of work from the appellant. Hence the plea that notice should have been issued to the appellant is not sustainable.

The Appeal Petition filed by the consumer is found having no merits and hence stands dismissed. Having decided as above it is ordered accordingly. No order on costs.

Dated the 20<sup>th</sup> of November, 2012.

Electricity Ombudsman.

Ref No. P/253/2011 and P/ 264/ 2011/ 1456/ Dated 20.11.2012.

Forwarded to: 1). M/s Trinity Arcade Pvt. Ltd.

34/1759 A, Trinity House,  
Opp: Changampuzha Park, Kochi 24.

2).The Assistant Executive Engineer,  
Electrical Sub Division,KSEB,Palarivattom,Ernakulam.

Copy to: - 1).The Secretary, Kerala State Electricity Regulatory Commission,  
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.

2).The Secretary, KSEB, Vydhyuthibhavanam,  
Pattom,Thiruvananthapuram-4.

3).The Chairperson, Consumer Grievance Redressal Forum, KESB,  
Power House Building, Ernakulam- 682018.