

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition Nos:

P/288/2012, P/312/2012, P/319/2012,

P/332/2012, P/320/2012 & P/329/2012.

(Present: T. P. Vivekanandan)

(i) P/288/2012.

Appellant : Smt. BinduRiya Alex,
Vega ventures (Pvt) Ltd, Kuravankonam,
Thiruvananthapuram, Pin.695003.
Respondent : Assistant Executive Engineer,
Electrical Sub Division, (KSEB), Kesavadasapuram,
Pattom, Thiruvananthapuram. Pin. 695004.

(ii) P/312/2012, P/319/2012, & P/332/2012

Appellant : Smt. Jasmine Rajesh ,
T C No 16/136, Kumaramangalam,
Easwaravilasom Road, Vazhuthakadu,
Thiruvananthapuram, Pin.695014.
Respondent : Assistant Executive Engineer,
Electrical Sub Division, (KSEB), Beach, Chakka,
Petta, Thiruvananthapuram. Pin- 695024.

(iii) P/320/2012, & P/329/2012

Appellant : Sri K C Chandrahasan,
,
Managing Director, Kerala Travels Interserve Ltd,
Yathrika, Vellayambalam, Thiruvananthapuram, Pin.695003.
Respondent : Assistant Executive Engineer,
Electrical Sub Division, (KSEB), Vellayambalam,
Thiruvananthapuram. Pin. 695004.

(All the Appellant's Cases were Represented by)

Sri.K.Anandakuttan Nair, "Thusharam"
Kanakakunnu lane, Thiruvananthapuram.Pin-695033.

(The Respondent's Cases under (ii) and (iii) above were Represented by)

Sri B Sakthidharan Nair, Board's Advocate,
City Chambers, Vanchiyoor, Thiruvananthapuram-695035.
& the concerned Asst. Exe. Engineers of the Electrical Subdivisions.

ORDER.

Back ground of the Case: -

The appellants are the promoters and builders of the High rise building complexes, in the Thiruvananthapuram City limits under the jurisdiction of different Electrical Sections of KSEB. All the appellants have approached the KSEB (Respondents), requesting power supply to their building and accordingly, the KSEB extended 11 KV supply to the said building premises as the party was in need of Power requirement of more than 50 KVA load and after collecting the estimate amount required for the work. The complete Electrical works of 11 KV cable laying up to consumer premises from the nearby existing distribution system, erection of indoor Transformer and all the allied HT and LT side works and terminal arrangements including LT metering panel in the High rise building were all done by the appellant themselves, after incurring its material and labour costs and paying the Supervision charges to KSEB. The appellants insists that the material cost and some extraneous costs need not be taken for calculating the 10% Supervision charge by KSEB. The appellants also opposes the collection of cost of RMU as it is a part of the Licensee's distribution system and other sums such as road cutting charges, PTCC approval amount and miscellaneous costs included in the estimate prepared by KSEB. Hence the appellant prays to issue orders to refund such amounts collected by KSEB with interest, since as per their version, the collection of such sums and realizing Supervision charge as 10% of the capital costs were never authorized by any Act or Rules and Regulations created by the KSERC.

Arguments of the Appellants in general: -

The grievances of the appellants in the appeal Petitions and that raised during hearing were;

- 1). The appellants are the builders and promoters of Multi Storied Building complexes in and around Trivandrum City limits and are the consumers under different Electrical Sections of KSEB. The KSEB has collected unauthorised amount for providing electric connections to the Buildings. Being aggrieved by the actions of KSEB, the appellants have submitted complaints before the CGRF, Kottarakkara, praying for refund of unauthorized excess amounts collected by KSEB, on the applications for supply of electricity. The CGRF order on this complaint, were not settled the cases and again we filed review petitions and the CGRF has also delivered the judgment on the same. Still aggrieved by the order and on various grounds the Appeals were filed with Electricity Ombudsman.

- 2). The appellants have applied for above 100 KVA (250 kVA, 160 kVA & 315 kVA etc.) of electricity for their High rise buildings. The KSEB has collected excess amount by preparing

cost estimate for the work including unauthorised items. In the case of 'Mark Plaza' complex, after some days, a further sum of Rs.67,685/- was also collected under another estimate for providing the same electricity supply.

3).When the requirement of electricity was above 100kVA and below 3000kVA, KSEB should supply electricity at 11kV under Clause 4(5) (a) of Supply Code. Since, electricity supply is at 11kV the appellants claim that, they are HT consumers under Clause 1 (m) (ii) of KSEB T& C of Supply. Many individual units in the building enjoy electricity at LT supply with LT meters and each is given connection on different names and consumer Nos. and these are LT consumers.

4). The nearest point of commencement of supply is at a distance, hence 11kV line extension was necessary, hence, the estimate should have been prepared as per schedule of rates approved by the Commission under Clause 30(e) of Supply Code. Since no such estimate is approved yet, it was prepared arbitrarily evolving ingenious methods by KSEB. On this ground alone the estimates prepared were arbitrary.

5).The appellant elected to provide the required 11kV UG cable for extending electricity from the nearest "point of commencement of supply", which is decided under Clause 25 and 44(2) of KSEB T & C Supply, to the "point of supply", which is decided under Clause 13(2) (h). KSEB should have prepared an estimate for the said portion only, when the applicant elects to provide line and plants. But the estimate was not prepared accordingly and so it is arbitrary.

6).The appellant has to provide a transformer of adequate capacity under Clause 8(5) of Supply Code and also the equipment, plants, accessories, energy meter and all electrical installation from HT panel and beyond, in this High-rise building to accept the supplied 11kV electricity, transform to LT, distribute to LT consumers in the building and shall appoint a person to do maintenance work under Clause 13 of KSEB T& C of Supply. The appellant has carried out the work through a licensed contractor under the direct supervision of an electrical supervisor as provide under Rule 45 (1) of Indian Electricity Rule 1956. Therefore, the essentials as above should not be included in the estimate for electricity supply, since the KSEB is not incurring any expenses on it. However, the KSEB included all the above items in the estimate and collected 10% supervision charges on the cost of such entire works from the appellant and therefore the estimate is arbitrary.

7). The appellants have provided the required HT UG cable for extending 11kV supply from the "point of commencement of supply" to the "point of supply" under Clause 8(9) of supply Code. This shall be laid down under the supervision of the KSEB. Therefore, the only expense incurred by the KSEB is the expense for supervision of this work. However, KSEB has included extraneous items in the estimate and collected 10% of the whole as supervision charges, i.e. on the cost of HT UG cable and accessories. Hence the estimate is arbitrary.

8).The KSEB has collected the cost of an extensible RMU, which is part of its distribution system. RMU is the switchgear, which controls the flow of electricity in a Ring Main System. Under Sec. 2(22) of Electricity Act, Clause 25 & 44(2) of KSEB T & C of supply, RMU is an equipment of the licensee and part of the distribution system of the licensee, which is defined under Sec. 1(19) of IE Act. It is the universal obligation of the distribution license to establish and maintain a distribution system in its area of supply under Sec. 42(1) and Sec. 43(2) of

IE Act; therefore, it is the duty of KSEB to provide this electrical plant, "Extensible RMU". Hence pleads that, collection of Rs.6,60,000/- towards cost of RMU is illegal. The Appellate Tribunal of Electricity and KSERC has discussed the matter and ordered as extracted below.

(a) Extracts of the order of the Hon: Appellate Tribunal for Electricity in Appeal No. 22 of 2007 Dated: 14th May, 2007:-*14. In order to discharge its universal obligation to supply electricity on request to the consumers' premises as envisaged in section 43 of the EA-2003, the distribution licensee has a binding duty imposed by the Section 42(1) of the EA-2003 to develop and maintain an efficient coordinated and economical distribution system in his area of supply. The perimeter of the network of the 'distribution system' is determined by the numerous 'distributing mains' geographically dispersed and catering to various pockets of consumers in all directions within the area of supply and implemented in pursuance to the utility's plan, to meet the projected growth in load and demand to facilitate making prompt supply line connections to the consumers' premises from the nearest 'distributing mains' in an efficient and economical manner as envisaged in Section 42(1) and 43(1) of the EA-2003.*

(b) Extracts of order of the Hon: State Electricity Regulatory Commission in OP No.13/2009 on 16-11-2009:-*"As found above, Section 46 of the Act which provides that the State Electricity Regulatory Commission may by regulations authorize a distribution licensee to charge from a person requiring supply of electricity in pursuance of section 43 any expenses, reasonably incurred on providing electric line or electrical plant used for the purpose of giving that supply. As per Sec 43 (2) 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). From the above it is clear that the Distribution licensee is entitled to charge only expenses incurred for providing supply specifically to that consumer as approved by the Commission. In the case of any consumer, KSEB is entitled to collect expenses approved by the Commission for giving electric connection to that consumer. This was approved for 2009-10 as per letter No. KSERC/IV/Supply Code 2009/746 dated 28/08/2009 of the Commission. 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".*

Under the settled positions as above, the appellants wish to state that, RMU of any type is the equipment/switchgear of the licensee and part of the 11kV distribution Ring Main System of KSEB, and hence part of its distribution system, which shall be developed and maintained by it at its cost, as per Sec. 42(1) of IE Act. It is not an "electrical plant" as referred under Sec.46 of the Act, to cause the collection of its cost from the applicant for supply of electricity.

9). The KSEB has also collected 10% supervision charges on the expenses incurred on road restoration works, while the KSEB is not the road repairing authority and hence it has not incurred any expenses for road restoration works. Therefore, it shall not collect 10% supervision charges on road cutting. The KSEB has collected 10% supervision charges on PTCC approval. No expenses are incurred by KSEB for issuing notice to telegraph authority. KSEB is not the authority to shift telegraph utilities. Therefore, no expenses are incurred to KSEB as supervision charges. Hence, collection of 10% supervision charges on PTCC approval is illegal.

On other unspecified items in the estimate also, 10% supervision charges were collected. The appellant claims that all these collections were illegal.

10). The KSEB has collected unauthorized amounts, which were never incurred by it, collected amounts for development of its 11kV distribution system and hence violated Section 46, 43(2) and 42 (1) and never evaluated the works after energisation of works and never returned the excess amounts collected, despite requesting for that. The appellants also allege that, despite the CGRF orders issued in favour, finding irregularities on the part of KSEB, the KSEB vitiated the order to deny the relief ordered by the CGRF.

11). KSEB has tried to implement the order of the CGRF (South) in RP.No.1/671/2011 dated 15.05.2012 and brought out another arbitrary estimate to hoodwink the appellant and to jeopardize the legitimate claim of the appellant misinterpreting the order of the CGRF (South).

12). Even after collecting the OYEC sum of Rs.6,60,000/- towards the cost for providing RMU, KSEB is yet to provide it and is supplied with electricity otherwise and the appellants are enjoying electricity satisfactorily. KSEB has agreed that the RMU is not provided due to non-availability of it. The electricity supply was commenced and years have passed and even now the accounts of these consumers were not settled, despite KSEB is bound to evaluate the works within 3 months of energisation of the Line, on the plea that the work is not complete. In this, the order of the Commission is specific i.e. the evaluation shall be done within 3 months, either on completion of work or energisation of works.

General Nature of relief sought in the Petitions: -

1. To declare that the orders of KSEB specifying the cables to be purchased and cost estimates prepared for collecting the amount from the appellants (produced as documents), so as to provide electric supply, are illegal.
2. To issue orders to the licensee to return the excess amount collected, by way of cost estimate for supply of electricity and the 10% Supervision charges collected on the extraneous items which require no supervision of KSEB, as detailed in the petition, along with interest at double the bank rate as one time payment.
3. To issue orders to pay cost of the petition.
4. Such other relief, the complainant prays for during the course of appeal.

Arguments of the respondents in general: -

1). The appellants have applied for above 100 kVA electricity to their High Rise Buildings and the works involved were, tapping of 11kV supply through CTC RMU and laying XLPE cable to the transformer at the consumer's premises. The consumer has offered to carry out all works except tapping arrangements from the existing 11kV structure. The cost estimate amounts were collected from the applicants for providing the power supply. The Sec.46 of IE Act, 2003, and Sec.7(1) of the Supply Code, 2005, authorizes KSEB to recover in advance from the owner of any premises requiring supply, the expenses reasonably incurred for providing the electric line or electric plant required specifically for the purpose of giving such supply. In KSEB, the term OYEC is used as a synonym to the 'cost estimate' for providing electric supply. KSE Board

continued to use this popular term 'OYEC' which was coined for referring to the cost for providing supply.

2). The Board has formulated schemes for replacing all the 11 KV OH lines and structures with in the T'vm City area with UG cables and Ring Main Units (RMUs) as switching devices. Such a scheme was adopted for improving the reliability of electric supply. So, all prospective HT consumers or LT consumers requiring installation of transformers, for availing the power supply within the City scheme area, were to tap the HT supply only through a RMU. This is the case with the appellants also. The cost of RMU was Rs. 6,60, 000/- and was approved by the Board that was collected. But due to non-availability of RMU in the store for giving the supply, steps were taken to provide alternate arrangement of feeding electric supply, for which an additional amount was collected from 'Mark Plaza', on a latter date and it will be refunded by way of adjustment against future bills and the appellant has refused for such adjustments on the plea that the money has to be refunded as one-time payment.

3). Since the cost estimate rates approved by the Commission for various distribution works were inconclusive, the Commission has issued order describing a methodology, No. KSERC/ Supply Code/2/140/2005/ dated 26.10.2005, to prepare the estimate for providing electricity supply for which there is no 'approved rates'. The estimate was prepared based on that order.

4). For reliability of supply, Board has decided in T'vm city area, to install a Ring Main of 11kV system involving 300 sq mm cables and RMU as switching devices. Thereby the consumers requiring installation of transformer shall be given supply only through RMU and KSEB issued orders accordingly, to collect cost of RMU from applicants having more than 50 KVA load and also from those consumers who require electricity at 11kV.

5). The appellants are LT consumers. The installation of a transformer at the premises by the appellant cannot claim that, the appellant is a HT consumer.

6). Some of the existing consumers as on date, after establishing the Ring Main System were accommodated with the system wherever RMU is readily available. The appellants were not a consumer then, while launching the Ring Main System, therefore, cost of providing a new RMU was collected from them. Under Sec. 46 of IE Act, the Distribution licensees are authorized to charge from any person requiring supply of electricity any expenses reasonably incurred in providing any electric line or electric plant used for giving that supply. Hence this collection of amount is legitimate.

7). When the appellants happen to be the first applicant for 11 kV supply from a certain location, the cost of CTC RMU was collected from the appellants and only cost of Add-on RMU was collected from the latter consumers who applied for electricity from the same location.

8). The supervision charges are collected as clarified by the State Regulatory Commission and is calculated on the total expenses, which include cost of materials, centage charges @ 16%, transportation charges, labour charges and has not violated orders of the Hon Commission.

9). All the appellants have availed electricity in the High rise buildings under Clause 4(2)(a) of Supply code, hence supervision charges are collected for works up to point of commencement of supply which is the incoming terminal of the cut out of the consumer. The appellants are LT consumers and the fact that a transformer was installed in their premises does not give them

a claim that they are availing HT supply and have HT Consumer status. The point of supply to a LT consumer is the outgoing terminal of the Cut-out at the consumer end. The contention of the appellant that the premises is supplied with HT supply and is obliged to provide supply up to the incoming terminals of HT SFU is false. The metering installations come after that and due to this also, supervision charge can be collected. The collection of supervision charge is already a settled matter and the amount collected in excess has already been refunded, up on the orders of the CGRF(South), Kottarakkara, in the case filed by the 1st appellant.

10). KSEB claims that, all actions taken in these disputes are in obedience with Board Orders issued to that effect and hence costs collected from the consumers were only the eligible amounts and accordingly the Petitions may be dismissed.

Analysis and Findings: -

A group of Appeal Petitions filed, were seen as containing identical issues and hence decided to deliver a common judgement, applicable to all.

The hearing of the cases referred above were conducted on various days, i.e. 1st appellant on 25.3.2013, 2nd appellant on 10.5.2013 and the 3rd on 14.5.2013, in my Chamber at Edappally, Kochi and for the appellant's side in all cases, Sri. K. Anandakuttan Nair has represented and for the opposite side by the respective Asst. Exe. Engineers of Electrical Subdivisions. Also the learned Board' Advocate, Sri B Sakthidharan Nair has appeared representing the respondents for all cases, except for P/288/2012 and they have argued the case on the lines stated above. On examining the Petitions, the statements of the Respondents, copies of documents attached, the argument notes filed by both parties and considering all the facts and circumstances of the case, this Authority comes to the following Findings and Conclusions leading to the decisions.

The Clause 7(3) of The Electricity Rules, 2005, reads as; "*The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the Rules and Regulations made hereunder or general orders or directions given by the Appropriate Govt. or the Appropriate Commission in this regard before settling their grievances*".

Being so, the KSEB never make one among the above and therefore the pleadings and averments of the respondent on the basis of KSE Board orders only, without the backing of the Hon Commission's explicit orders, cannot be considered as binding as per Law.

Now the main issues are dealt and analysed as follows;

Point (1): - Whether the appellant belongs to HT consumer or LT consumer status?-

In all the disputes, the appellant's demand for electricity was in the range of 160 to 315 kVA, which is above 100kVA (the upper limit for an LT connection) and hence the appellant

argues that, since the licensee has to provide electricity at 11 kV, under Clause 4(5) (a) of the Electricity Supply Code, 2005, the appellants become HT consumers under Clause 1(m) (ii) of KSEB T& C of Supply, 2005.

Analysis: -

1-(i). The fact is that, there is no single consumer in the said High rise Buildings, registered with above 100 KVA connected load. In the present case, the total electricity demand of the whole building is estimated as 160/250 KVA/315 KVA, as the case may be, which is the total connected load of a number of residential Apartments and other commercial consumers, accommodated in the same building and whose individual connected load is below 50 KVA, which necessitates only LT connections, thereby qualifying for LT consumer classification.

1-(ii). It is to be noted that there exists specific provision under Clause 13 of KSEB T& C of supply, 2005, for providing electric connections to Multi storied buildings (High rise buildings). Here, it is made clear that, if the 'connected load' requirements for the whole building or individual load exceeds 50 KVA, the owner or the occupier of the high rise buildings has to provide a separate Transformer (T'rfr) of sufficient capacity in the premises, so as to give electric supply to the various LT consumers accommodated in the building. Moreover, in Clause 13 (j), it is stated that the applicant shall provide all essentials in a high rise building such as, HT load break switch, 11kV indoor substation, rising mains, switch boards, Circuit breakers, LT panel including metering panel, MCCB/Fuse protection to energy meters, energy meters and a competent person for the maintenance (with concurrence of AE) of the electrical installations in the building. My considered opinion is that, the Regulatory Commission has specifically created a special clause in the KSEB T& C of supply, 2005, to deal the cases of LT consumers occupying the High rise Buildings and this provision is intended for giving the LT connections in such buildings. Hence the appellants cannot claim a HT consumer status in such buildings on the simple reason that the total load demand of the High rise building is above 100 KVA.

1-(iii). In normal case, the Licensee is supposed to install and maintain Distribution Lines and transformers in major load centres or locations/areas under its jurisdiction, by bringing 11 KV Supply and giving LT connections up to 50kVA load, as per request from the applicants of power supply of that area/locality, after collecting the estimate cost for providing that supply. The case is similar to that in a High rise building, where a number of LT consumers

have concentrated in one building, instead of the consumers spread over an area/locality, as stated above. In the case of High rise buildings, the Regulatory Commission has created a Regulation such that, instead of the Licensee providing the T'rfr, the owner/occupier himself has to provide the T'rfr, meant for the whole consumers in that building and has to carry out all other electrical infrastructure works in the Building at his cost and is the basic difference for the consumers in a High rise building with that of outside consumers.

In the case of High rise buildings also, had the individual load demand been more than 100 KVA, surely that consumer will fall under HT category. But in our case, no individual consumer has a power demand of more than 50 kVA and hence the obligation of the Licensee is to provide only LT electric connections, if the individual load is below 100 kVA. Hence the contention of the appellant that the connection of the disputed High rise buildings has an HT Consumer status, since the total power demand is more than 100 kVA and 11 kV supply is extended to the premises, does not hold good. It is concluded that the appellant, at present, falls under LT consumer category, since none of the consumer's individual connected load has exceeded the limit of 100 KVA.

1-(iv). Further in the Schedule of Tariff and T & C for Retail supply by KSEB, 2010, under HT-II, Note, reads as follows;

Note: - The HT domestic connections shall be effected subject to the following conditions.

(1). The connections provided shall be for the own domestic use of the consumer. He shall not install separate meters for different flats/rooms in his building /complex.

In all the cases under dispute referred above, domestic consumers are residing in the Flats/Apartments of the High rise buildings, with LT metered supply and LT consumer status. The said note (1) of the Tariff order declares that with separate LT metering arrangements to Flats, the HT domestic services cannot be given in a High rise building. It means that, if HT electric connections were to be given, then that electricity supply has to be extended to all Flats/apartments etc with a common HT metering and no independent LT connections or LT metering will be allowed.

The above clause corroborates the findings that the appellants belong to LT category itself, as there are a number of residential apartments exist, in all the disputed Buildings.

Point (2): - Relevance of the argument on the point of commencement of supply: -

The appellant argues that under Clause 25 & 44(2) of KSEB T& C of Supply, the outgoing terminal of the Board's control switch gear is the "point of commencement of supply" and under Clause 13 (2) (h) of KSEB Terms and Conditions of Supply, incoming terminal of the HT panel at appellant's premises is the "point of supply". Therefore, the essentials for electricity supply to a high rise building include only the line/cable, required for transporting electricity from the 'point of commencement of supply' to the 'point of supply' and the estimate shall include only cost of line/cable, its accessories and the labour for providing that much portion only, the appellant argues.

Analysis: -

The issue raised by the appellant on the question of 'point of commencement of supply for 11 KV' as above, is not discussed as it is not relevant here, because if we take the case of LT supply, the commencement of supply (incoming terminal of the Cut out at his premises) and point of supply are almost one and the same, making the point absurd in LT supply. The terms used in LT and HT may be meant for dealing with other situations.

Actually, for providing HT or LT supply, the estimate need to be consisted of, starting from the nearest existing distribution line to the consumer premises, as per section 46 of IE Act, 2003, i.e. *any expenses reasonably incurred in providing any eclectic line or electrical plant used for the purpose of giving that supply.* Moreover, the argument raised is not found having any significance in the cases under dispute.

Point (3): - Decision on the allegation of excess supervision charges collected by KSEB: -

The appellants alleges that, the cost estimates prepared by KSEB to collect the 'cost of works required to provide the electric Supply' to the appellant is against the rules and is arbitrary. The appellant contends that the licensee has collected unauthorized amounts as supervision charges upon the cost of materials, plants, accessories, labour charges and other items, which were actually incurred by the appellant himself and upon which no supervision of the license is required or necessary. But the opponent claims that, since the schedule of rates for the Distribution works were approved by the Commission, was not comprehensive and hence order No. KSERC/Supply Code/2/140/2005/dated 26.10.2005, of the Commission approving a methodology for arriving at the estimate amount was followed. As such the cost estimate of

the works of the appellant which was prepared based on such methodology was correct and in order, says the respondent.

The scheme of electrical works in any High rise building has to be approved by the Electrical Inspector is the rule. As per Regulation 29 (1) & (2) of Central Electricity Authority (measures relating to safety and electric supply) Regulation, 2010, the works shall be executed through a "licensed contractor" under the direct supervision of a person holding a certificate of competency (and by a person holding a permit) issued or recognized by the State Government" and under Sub Clause (2), it reads that, "no electrical Installation work which has been carried out in contravention of sub-rule (1) shall be connected with the work of the supplier". The appellant argues that the distribution licensee KSEB, who is also the supplier, shall not supervise the works of electrical installation in any building. The party insists that, KSEB is not authorized or qualified or mandated to supervise such works or is the duty of it and hence KSEB is not at all entitled to collect 10% as supervision charges on the cost of electrical works in a high rise building.

Analysis: -

3-(i). Under Section 46 of Electricity Act, 2003, the licensee shall collect only reasonably incurred expenses for the electricity applied for and at the rate of cost of works, as authorized by the Regulatory Commission for giving that supply. The methodology approved by the Commission for distribution works, for the preparation of estimate and collection of supervision charges as stated above is applicable when the work is executed by the KSEB using its materials. In other cases, where the applicant chooses to provide the electric line and electrical plant required for the work by himself, whether this methodology (the Supervision charges as 10% of the whole cost of the work) could be adopted, is the crucial question.

Hence the matter to be decided is, whether the licensee is entitled to collect supervision charges @10% on the whole cost of works of electrical installations of the High rise building, when the material and labour was supplied by the consumer?

3-(ii). Referring, Reg. 8(9) Supply code, 2005, -Supply where electric line/substation is provided by the appellant- "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 expense as supervision charges to the licensee for providing such services and get the work executed by a

licensed wiring contractor. The licensee shall supervise the works of the applicant and provide guidance in technical matters and matters relating to safety”.

The said Regulation specifically entrust the licensee to supervise the work of the appellant (electrical line/sub-station and electric plant) and also to provide the guidance in technical matters in this regard. It reads as; The licensee shall supervise the works of the applicant and provide guidance in technical matters and matters relating to safety.

As such, the licensee is supposed to provide the details like, the specification of the 11 kV cable to be purchased viz; their size, capacity rating, type (XLPE or PVC), the specifications of the energy meter, the circuit breaker specifications and its settings, which should be graded so that, it operates before the protective devices in the Board’s supplying station operate etc. The Electrical inspector will verify the suitability of the electrical design with regard to load, safety and specifications of the work. But the licensee can give information based on the fault level of the feedings substation and the minimum size of cables to be provided, the Circuit Breaker Rupturing capacity level requirement etc. As such, it is bounded under Reg. 8(9) of the Supply Code, to supervise the whole electrical works by the Licensee and issue the guidance needed.

3-(iii). Also, it is better to refer Reg. 11 of KSEB T & C of Supply; 11- Apparatus of HT/EHT consumers & LT Power consumers- (2). HT consumers requiring supply of 750kVA and above as well as all indoor substations must provide suitable circuit breakers/fuse switches on the supply side fitted with automatic overload protective devices so adjusted that they operate before the protective devices in the Boards Supplying station operate. The circuit breakers/ switches for units must be of sufficient rupturing capacity to be specified by the Board and the Inspectorate to protect the consumers’ installation under short circuit conditions. (4) HT/EHT consumers and LT (Power) consumer shall consult the Board, in their own interest before ordering HT switch gear or apparatus and deciding the layout thereof. Here it is specifically directed to collect technical details stated as above from the Licensee, KSEB, to ensure a safe Electrical Supply system.

3-(iv). In the case of High rise buildings, the appellants claim that, the work is executed by the party himself through a licensed Wiring contractor and under the supervision of a wiring supervisor and hence KSEB has not any right to supervise and therefore cannot demand any supervision charges thereof.

The wiring supervisor is authorised to supervise the wiring for ‘Light and Power’ circuits only of the building. The Cable laying and the installation works of Indoor T’rfr are to be done

under the supervision of KSEB. Further, the wiring Supervisor is the lowest qualified person, to supervise the electrical wiring works done by an Electrical contractor. A higher qualified person, approved by the Govt. and who have acquired Degree/Diploma in Electrical Engg. and had undergone training, are also authorised persons to perform in their area of jurisdiction, as per Central Electricity Authority (measures relating to safety and electric supply) Regulations, 2010, vide Chapter II- Clauses (3), (7) and (29).

The above referred rules make it clear that the wiring installation work can be supervised by either a person holding a certificate of competency like a Degree or Diploma in Electrical Engineering or person holding a permit (like wiring supervisor) issued by the Govt. The Rules make the stress on the point that, all the electrical wiring works should be supervised at least by an approved wiring supervisor and not by 'wiring supervisor alone'. Other competent and qualified persons under clause (7) referred above are also eligible. Hence in such a case, the KSEB can also supervise the electrical works of a High rise building. Moreover, Regulation 8(9) of Electricity Supply Code, 2005, specifically authorize and directs the licensee, that it should inspect the works of the applicant and provide guidance in technical matters and matters relating to safely, when the applicant himself provides the electric Line/sub station.

However, in case, the wiring of Light and Power circuits were claimed as being done under a wiring supervisor and if KSEB does not oppose it, it can be deleted from the cost estimates.

3-(v). The Commission vide its order dated 3rd Jan: 2013 in OP 32/2012, has approved the cost estimate for the installation of RMU's. In it, for arriving at the cost of RMU's, 16% charges (including 10% centage charge) on the material cost, the transportation and labour costs were added to determine the cost of the electric plant, RMU. The Commission has levied 10% on the whole amount thus arrived at, as the supervision charge, to calculate the estimated cost of the RMU equipment, to be recovered from the prospective consumers, wherever it is required.

3-(vi). Further, the Regulation for Street Light installation is as follows;

Reg. 8 (8)- Supply for street lights- Licensee shall provide electric supply for street lights on request from local bodies on realization of cost of installation.....Local bodies shall have the option to provide their own street lighting installation and avail power though metered supply in which case capital and maintenance works will be carried out by the local body under the supervision of the licensee. A supervision charge not exceeding 10% of capital cost shall be levied by the licensee in such cases.

This clause states that, even in the case of local Bodies which provide their own street lights and where the capital and maintenance works are carried out by the local bodies itself, the licensee is authorized to collect 10% of the capital cost, on both material and the labour, as supervision charges. This Regulation corroborates the findings that the Licensee can levy the supervision charges on the capital cost including materials, even if it is supplied by the party.

For the above reasons, I am of the view that the 'supervision charges' that can be levied in a High rise building, is on the total cost of the electrical installation work executed by the consumer, including the material and a labour (both supplied by the party) and not on the labour charges of cable lying alone, as contented by the appellant.

However, since the wiring works of 'Light and Power' circuits of the building was reported as supervised by the Wiring supervisor only, which is not contested by KSEB, the works related to Sub Distribution Boards may be exempted from collecting the supervision charges.

Point (4): - Decision on the Collection of 10% Supervision charges on other items-

Analysis: - 4-(i). In this case, the High Tension (HT) Cable has to be laid under public Road. Since the licensee is not the road repairing authority, it never supervises the road restoration works. Therefore, the KSEB is not entitled to collect 10% supervision charges on road restoration charges, which are included as road cutting charges. The collection of 10% supervision charges on the road cutting charges is found as not justifiable.

4-(ii). Under Section 69 of Electricity Act, if any electrical line is to be placed within close proximity to any telecom line, the license shall inform the telecom authority so as to protect the telegraphic line from the induction of currents from the Licensee's supply. The KSEB may be required to deposit amount with Telecom for this purpose in certain cases and is a statutory obligation to get the PTCC approval. No supervision of KSEB is taking place in this matter. If any shifting of Telecom line takes place or protective devices are installed, the expenses for that has to be remitted to them, which shall only be collected from the applicant. In such cases, KSEB is not supervising the work. Hence, collection 10% supervision charge on PTCC approval cost is not legitimate.

4-(iii). It is improper to include an item such as "other miscellaneous charges" in estimate and KSEB is not authorized to collect such an unspecified amount or 10% supervision charges thereof. Hence, collection of amount on the item "other miscellaneous charges" is not in order.

However, if any amount is paid by KSEB towards other agencies to get their approval or permission to complete the work of the appellants, it has to be reimbursed by the consumers.

Point (5): Whether the Collection of the Cost of RMU from the consumers is legitimate?-

The appellants vehemently argue and oppose the collection of cost of RMU, quoting various provisions under the Act, Rules and Regulations. It is claimed that, RMU is an equipment of the licensee and part of its distribution system. Developing and maintaining a distribution system is the mandated obligation of the licensee under law, hence KSEB shall not collect cost of it from the appellant, the appellants argue. On the other hand, KSEB opposed it relying upon Section 46 of the Act and states that it is essential for the supply of electricity to the appellant.

Analysis: -

5-(i). It is reported that the appellants were the first applicants who required more than 100 kVA load demand, from their respective locations, after the completion of laying 11KV Cables under APDRP Scheme in the T'vm City area. Hence, for providing electricity supply to the appellants, installation of an Extensible type RMU became essential. Otherwise the supply could have been tapped from the existing spare RMU's (developed by KSEB) by use of an Add on Module. The RMU is an electrical plant required specifically for giving electric supply to the appellants in the City area only. KSEB states that, from subsequent applicants for electricity from the same area, cost of an 'Add-on Module' was collected. The appellant's allegation that differential treatment has occurred in this matter in between the appellant and other applicants of the same area, by collecting higher amount from the appellants for the electricity, is not found having merits, since the distribution line goes on expanding, by adding lines constructed for the earlier consumers. Hence the latter applicants of power supply need to bear the cost of taking supply from the present set up of Electric Lines and hence may be advantageous to them. These cannot be termed or argued as arbitrariness of KSEB. It is the natural course of action and no discrimination can be alleged over the same matter.

5-(ii). The relevant rules and regulations in this matter for deciding, whether the cost of RMU can be collected or not from the consumers, are reproduced below.

Section 42(1) of Electricity Act: *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.*

Section 46 of Electricity Act, 2003:- “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 electric plant used for the purpose of giving that supply.*

As per Sec. 42 of Electricity Act, 2003, it is the duty of the Distribution Licensee to develop and maintain an efficient and economical ‘distribution system’ in his area of Supply and to supply electricity to the consumers as per the provisions of the Act. The definition given in the Act, Section 1(19), for ‘Distribution system’ is: - “means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers”.

This definition clearly tell us that the ‘distribution system’ includes every electric line and/or electric plant from the tapping point of a Transmission line, up to the consumer premises, i.e. distribution lines, apparatus for tapping supply at the start and the service lines up to the consumer’s installation. Hence in effect, if the claim of the appellant (to develop a distribution system is duty bound at Licensee’s cost) is accepted, then it would mean that the consumer need not incur any expenses to bring supply up to his premises, since everything is to be developed and maintained up to the consumer spot by the Licensee itself, if we go by the word meaning of the definition given for the ‘distribution system’. Hence it has to be read along with other provisions given in the Act.

5-(iii). The term ‘to develop’, in Sec.42 of Electricity Act, does not imply that all the cost for the development of distribution line should be borne by the Licensee only. The Licensee has to develop gradually the distribution system, by incurring costs included in its annual plan of Capital works (ARR of the Licensee) or by collecting the amount required as per Sec.46 of the Act, which states the Licensee can collect from an applicant for electricity, “*any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply*”. The RMU is an electrical plant (but not under the control of the consumer) and therefore the KSEB’s action in including the cost of RMU for tapping the 11 kV distribution supply, so as to provide electric connection to the consumer, cannot be argued as arbitrary.

5-(iv). Further, under Sec.43 of the Electricity Act, Duty to supply on request states that, “*...provided that where such supply requires extension of distribution main or commissioning of new sub station, the distribution licensee shall supply the electricity to such premises*

immediately after such extension or commissioning within such period as may be specified by the Appropriate Commission". Here, the licensee is bound to supply the electricity only after completing such works (extension of distribution main or commissioning of a new substation etc.), within such periods as specified by the Commission, if the distribution line is not readily available. The Sec. 43 of the Act, surely imply that, there are cases where extension of distribution main is required and accordingly, Commission has also specified the time frame to complete such works (extension of distribution main or commissioning of new substation), after collecting the estimate costs required for such works, by creating the Regulations under Electricity Supply Code, namely, Reg. 8(2),(3) and (4) and the same applies to Multi-storied buildings under Reg. 8 (5). Thus KSEB can demand cost of all items, including RMU, needed to provide that electric supply.

5-(v). The argument of the appellant that, as per Reg. 8(1)(d), the RMU cannot be included in the cost estimate for providing the electric supply is not correct, since the appellant will not come under the said clause, which is ear marked only for 'Supply where no extension of distribution main' is required. But in the case under dispute, the appellant requires extension of distribution main, to bring supply to his premises and the relevant clause applicable shall be Reg. 8(4), where both extension of distribution main as well as commissioning of a sub station (11/0.4 KV T'rfr) is required to provide the electric connections. This means that, sometimes it may require extension of distribution mains to give electric supply to the Party.

5-(vi). It is neither practical nor prudent to develop and maintain a vast distribution system in every nook and corner of its jurisdictional area, at the very start of its operation by Licensee in anticipation of consumers. The investment required for such an infrastructure development will be enormous. This is not envisaged in the Law that is why, Sec. 46-Power to recover the reasonable expenses to provide the electric line or electric plant required for giving supply is created in the Electricity Act and the corresponding Regulations made by the KSERC.

In normal case, the Licensee is supposed to provide the basic infrastructure development in the main Load Centres and upcoming regions where the investment made will make the revenue anticipated. Also, according to the Annual Plan, the Licensee is supposed to create, develop and maintain a distribution system that is gradually expanding throughout its area of jurisdiction, over a period of time. Hence, if an applicant for electricity necessitates extension of distribution main, to be brought to his premise (where the existing distribution main is at a

distance), then the reasonable expenses to extend the distribution main has to be borne by the consumer himself. Otherwise, the applicant has to wait till the work (extension of distribution main) is included in the Annual Plan of capital works of the Licensee and is completed by it. To avoid such delays and in line with the provisions of the Electricity Act to deal such cases, the KSERC (Regulatory Commission) has formulated specific provision in the Electricity Supply Code, 2005-namely Reg. 8 (2), (3) and (4). Similarly is the Regulations (5) made under KSEB Terms & Conditions of Supply, 2005.

For the above reasons stated, it is found reasonable and hence justifiable, the collection of the cost of RMU by KSEB from the applicants for electricity, wherever it is found essential.

Point (6): - Issue of Collection of additional sum for tapping 11 KV supply at a later date:

Analysis: - The 1stappellant has stated that, two estimates were prepared for the same work in tandem, and collected Rs. Rs.7,91,587/- and Rs.67,685/- for giving the supply. The licensee shall not demand amounts from applicants more than once for providing the same electric supply. Therefore, the collection of the second amount of Rs.67,685/- is found unauthorized. Here it is noted that the KSEB has already taken a decision to refund the said amount.

Decisions: -

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

(1). The appellant's requirement of electricity is well above 100kVA, and is intended for the whole High rise building and there is no single consumer having load demand of above 100 kVA in that Buildings. That is to say, all the Individual consumers in the building require less than 100 kVA load and hence are to be LT consumers. The consumed energy is metered at LT and billed under appropriate LT tariff. Therefore, it is more proper to say that, this electricity supply to the High rise buildings under dispute, at present is having a LT consumer status.

(2). In the case of the 1st appellant, the respondent has collected Rs.67, 685/- again under a separate estimate, for giving the same electricity supply. The KSEB is not authorized to collect a second amount for the same work, under Clause 8 of supply Code. KSEB has already agreed to release the amount and the same with applicable interest shall be refunded.

(3).The estimate for giving electric supply to the appellants was seen prepared by KSEB taking the cost of Extensible type RMU as Rs. 6,60, 000/-. As per the schedule of rates approved by the State Regulatory Commission recently (order in OP 32/2012 dated 03.01.2013), it is noted

that the cost for the required RMU is Rs 4,33,200/-, instead of Rs.6,60,000/-. Hence the cost of RMU may be revised in the respective estimates accordingly.

(4).The distribution system can be extended, if required, at the cost of the consumer wherever it is absolutely needed. It is authorised by the Sec. 43 and 46 of the Electricity Act and there is clear provisions in the Regulations created by the Regulatory Commission under Electricity Supply Code 8(2) to (5) to realize the cost for distribution extension to provide the electric supply. So the cost estimates collected by KSEB including RMU, to provide the supply except the items which are specifically directed to omit by this Forum, are found to be in order.

(5) It is noted that the Licensee has not fitted the RMU's so far in the Distribution Line, due to out of stock in their Store and has arranged alternate feeding arrangements. The Respondents shall install the extensible type RMU's in the specified locations (as stated in the estimate report) for the tapping the 11KV supply to the appellants premises, without any further delay and at the most within a year of this order.

(6) The final accounts of each works, for which amounts has been collected by KSEB to provide the electric supply to the appellants, may be prepared assuming as if the proposed RMU has been installed and the actual cost estimate be arrived at, incorporating the revisions ordered by this Forum, within three months of this order and the same shall be communicated to the respective appellants. The excess amount if any shall be refunded with interest.

(7) The respondents are eligible to demand the cost of an extensible type RMU and 10% supervision charges as detailed above and has to refund the excess amount collected, by way of the 10% Supervision charges, excess cost of RMU, additional amount collected for providing alternate feeding arrangements etc., if any, with applicable interest for the period, from the date of collection of the said excess amount to the day of refund, within 90 days of this order.

(8). Any amount that has been paid by KSEB to outside agencies to get their approval or permission, so as to provide the electric supply to the consumer has to be reimbursed by the respective consumer. If the amount is paid by the consumer to outside agency directly, the same amount need not be included in the cost estimate, to be collected by the Licensee.

Specific points on the Appeal Petitions analysed and decided: -

Case (1): P/288/2012- filed by Smt. Bindu Ria Alex:-

Referring the cost estimate for Rs.7,91,587/- (filed as document), it may be revised as follows;

Part A- Cost of RMU may be taken as Rs. 4,33,200/-

Part B- Delete the amounts earmarked for the items of, PTCC approval, other misc. charges, tar cutting, Sub switch board, Metering panel and the Al cable and materials (the items numbered as 9, 10, 11, 14,15 and 16 in the estimate) for calculating the cost estimate for the works and the supervision charges. The cost estimate of Rs. 7,91,587/- including the Supervision charges of Rs. 1, 31, 587/- collected from the consumer has to be revised accordingly as stated above.

The CGRF order in OP No.671/2011 dated 12.12.2011 and its review petition order dated 17.04. 2012 of CGRF, Kottarakkara, are set aside.

Case (2): P/312/2012- filed by Jasmine Rajesh:-

Referring the cost estimate for Rs.9,39,994/- (filed as document), it may be revised as follows;

Part A- Cost of RMU may be taken as Rs. 4,33,200/-

Part B- delete the whole items, as it is a duplication on the cost for providing supply.

Part-C- Delete the amounts earmarked for the items of, Tar and Berm cutting, Main panel and in and out switches, metering panel and LT cables.

The cost estimate of Rs. 9, 39, 994/- including the Supervision charges of Rs. 1, 88, 737/- collected from the consumer has to be revised accordingly as stated above.

The CGRF order in OP No.765/2012 dated 18.08. 2012 of CGRF, Kottarakkara, is set aside.

Case (3): P/319/2012 & Case (4): P/332/2012. – Both filed by Jasmine Rajesh:-

Referring the cost estimate for Rs.8,77,026/- (filed as document), it may be revised as follows;

Part A- Cost of RMU may be taken as Rs. 4,33,200/-

Delete the amounts earmarked for the items of, (1) to (7) i.e. from AB switch to Provision for earthing, (item:16) labour for structural works, (item:27) Fabrication of Panels, (item:30) Restoration charge for tar and berm cutting.

The cost estimate of Rs. 8, 77, 026/- including the Supervision charges of Rs. 1, 05, 567/- collected from the consumer has to be revised accordingly as stated above.

The CGRF order in OP No.790/2012 dated 29.10.2012 and the CGRF order in OP No. 791/2012 dated 30.12.2012 of CGRF, Kottarakkara, are set aside.

Case (5): P/329/2012- & Case (6): P/320/2012- Both filed by K C Chandrahasan:-

It is reported by KSEB that the Bishop's Structure (of KSEB System) is a radial line from the Ajantha structure and the cable is of lower capacity rating and of size 3 x 120 sq: mm only

and hence not reliable for taking additional loads and further it necessitates road cutting in a very prime location (main road to Raj Bhavan) which is difficult to get sanction and is also more costly. Considering the above facts and also noting down the point that the nearest Ring main feeder is at 'Cordial Structure' and the proposed route is having the 'cable ducts' for laying the new cables easily, the present proposal to tap supply from the Cordial structure seem to me as justifiable. But, only the cost of an extensible type RMU is allowed and further inclusion of an ADD on Module to tap the supply is not acceptable. The installation charges levied for the RMU has to be dispensed with, as it is covered in the cost estimate of RMU approved by the Commission.

Referring the cost estimate for Rs.12,20,000/- (filed document), it may be revised as follows;

Part A- The Cost of RMU may be taken as Rs. 4,33,200/- instead of Rs. 6, 60, 000/-.

Part A1- Delete the cost of Add on Module as it is not required when a RMU is provided.

Part-B- Delete this portion completely.

Part-C- Delete items of , supplying and fixing main panel and metering panel, LT cables, Road restoring charges, Lawn and foot path restoration, GI pipe and PTCC sanction.

The cost estimate of Rs.12, 20, 000/- including the Supervision charges collected from the consumer has to be revised accordingly as stated above.

Though the CGRF has dealt the cases very elaborately and covered all points, it did not deliver clear orders but left for the Licensee's Policy decision without specifying any time limit and may cause indefinite delay. Hence the CGRF order, in OP No.771/2012 dated 06.10.2012 and in OP No.769/2012 dated 04.08.2012, of CGRF, Kottarakkara, are set aside.

Having concluded and decided as above it is ordered accordingly. The Appeal Petitions filed by the appellants is found having some merits and is allowed to the extent it is ordered and stands disposed of accordingly. No order on costs.

Dated the 26th of June, 2013.

Electricity Ombudsman.

Ref No. P/288/2012, P/312/2012, P/319/2012, P/332/2012, P/320/2012,
And P/329/2012/ 1792 / Dated: 26.06.2013.

Forwarded to: -

- (1) Smt. BinduRiya Alex,
Vega ventures (Pvt) Ltd, Kuravankonam
Kawdiyar , Thiruvananthapuram, Pin.69500.
- (2) The Assistant Executive Engineer
Electrical Sub Division (KSEB)
Kesavadasapuram, Pattam, Thiruvananthapuram, Pin: 695004.
- (3). Smt. Jasmine Rajesh,
T C No 16/136, Kumaramangalam,
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- (4). Assistant Executive Engineer,
Electrical Sub Division, (KSEB), Beach, Chakka,
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- (5). Sri K C Chandrahasan,
Managing Director, Kerala Travels Interserve Ltd,
Yathrika, Vellayambalam, Thiruvananthapuram, Pin.695003.
- (6). Assistant Executive Engineer,
Electrical Sub Division, (KSEB), Vellayambalam,
Thiruvananthapuram. Pin. 695004.

Copy to:-

- (i) The Secretary, Kerala State Electricity Regulatory Commission
K P F C Bhavan, Vellayambalam, Thiruvananthapuram. Pin: 695010.
- (ii) The Secretary, KSE Board,
Vydyuthi Bhavanam, Pattam, Thiruvananthapuram, Pin: 695004.
- (iii) The Chairperson, CGRF (South),
KSEB, Vydyuthi Bhavanam, Kottarakkara.