

## STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamangalam-Anchumana Temple Road  
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682024  
[www.keralaeo.org](http://www.keralaeo.org) - Ph.0484 2346488 Mob: +91 9567414885  
[Email:ombudsman.electricity@gmail](mailto:ombudsman.electricity@gmail.com)

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### Appeal Petition Nos: P/ 311/ 2012 & P/ 321/ 2012.

(Present: T. P. Vivekanandan)

(i) Case No: P/ 311/ 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.

(ii) Case No: P/ 321/ 2012

Appellant : Sri K C Chandrahasan,  
Managing Director, Kerala Travels Interserve Ltd,  
Yathrika, Vellayambalam, Thiruvananthapuram, 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.

*(All the Respondent's Cases were Represented by)*

Sri B Sakthidharan Nair, Board's Advocate,  
City Chambers, Vanchiyoor, Thiruvananthapuram-35.

ORDER.

Back ground of the Case: -

The Appellants are the promoters and builders of the disputed High rise buildings, named, 'Sreyas Apartments' and 'Yathrika' respectively, in the Thiruvananthapuram City limits, under the jurisdiction of KSEB. Both parties have approached the concerned Asst. Engineers, requesting power supply to their new buildings and accordingly, KSEB extended 11 KV supply to the said building premises, as their Power demand was more than 50 kVA and after collecting the cost estimates required for carrying out the work needed to give that supply. The complete Electrical works, like; 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 electric installation works and terminal arrangements including LT metering panel, in the High rise buildings, were all done by the appellants themselves. The appellants have procured the materials and incurred labour costs and also paid the Supervision charges as demanded by KSEB.

The KSEB has collected additional amounts, as OYEC charges (cost estimate) for providing each connection to the various Flats/apartments in the buildings, used mainly for residential purposes. The appellants are aggrieved by the collection of OYEC sums since no additional work was necessitated to give those electric service connections requested by them. Being aggrieved by the collection of OYEC amounts by KSEB, they filed complaints before the CGRF, Kottarakkara against it. It was held by the CGRF that the collection of OYEC sums by Licensee is illegal and unsustainable and ordered that the OYEC charges collected for independent units in the High rise building complex shall be reimbursed after deducting 10% supervision charges on the cost of materials used for each connection. Here the appellant prays to issue orders to refund the OYEC amounts collected by KSEB in full with interest, since the collection of such sums were never authorized by any Act or Rules and Regulations created by the KSERC.

Arguments of the Appellants in general: -

(1). The appellants argue that they have provided all electrical essentials in the building such as HT load break switch fuse unit, transformer, circuit breaker of proper rating at

the LT side of transformer, HT panel, LT panels including metering, MCB protection and the energy meters to all the independent units in the building, as per Clause 13 of KSEB T & C of Supply and the scheme approved by the Electrical Inspector.

(2). On production of energisation approval from the Electrical Inspector, KSEB supplied electricity at 11 kV under Clause 4(2)(b) & 4(5)(a) of Supply Code, as the requirement of electricity was above 100 kVA and below 3000 kVA. Since the appellants have provided all essentials in the building for conversion of supplied electricity at 11 KV to LT, control, distribute and maintain LT electricity within the premises, KSEB supplied electricity as mandated under Clause 13 (2) (h) of KSEB T & C of Supply at the point of supply which is the incoming terminal of HTSFU provided by the petitioner and so no LT electricity supply from KSEB's LT mains to the building is not at all necessary.

(3). Under the circumstances, the appellants approached the Assistant Engineer of the concerned Electrical section for allocating consumer numbers to independent units in the building. The Assistant Engineer (AE) required the petitioners to submit applications in the form issued and directed them to execute agreement for electricity supply.

(4). The AE had collected security deposit, allocated consumer numbers and collected amounts as OYEC from all individual consumers. No advance intimation of amounts or estimates was issued before collecting these OYEC amounts. It was told that the OYEC amounts collected were legitimate and it is as per the existing orders of KSE Board.

(5). The appellants submit that the above OYEC amounts were collected in violation of Section 46 of Electricity Act 2003, since the licensee has never incurred any expenses while allocating consumer numbers to independent units in the building. The amounts collected by the licensee were the schedule of rates approved by the State Regulatory Commission for electricity supply at LT, from its mains using 'weather proof' wire for different loads, whereas it has never supplied LT electricity from its LT mains and hence it has never incurred any expenses.

(6). The OYEC scheme ceased to exist after coming into force of Kerala Electricity Supply Code on 2/3/2005 and thereby the licensee shall not collect the OYEC amounts.

(7). At a different situation, when the licensee provides the material and installs it at his cost, which is needed for giving that electricity supply, it is stipulated under Clause 7(3) of Supply code that the estimate shall be based on the schedule of rates approved by the Commission for its various works. In such cases, KSEB can include the approved schedule of rates in the estimate for electricity supply to arrive at the reasonable costs to be realised. But when the applicant for electricity chose to provide the essentials for electricity supply under Clause 5(8) of T & C of Supply, the Commission has never authorised the licensee to collect other amounts.

(8). Another contention is that the KSEB is not authorised or mandated to supervise the work undertaken and executed by the appellant as provided under Clause 13 of KSEB T & C of Supply. No supervision of the licensee and no advice on technical matters and safety are needed for providing that. If the licensee claim that it gave such services, then the installation shall not be connected with the licensee's supply system under Rule 45 of Indian Electricity Rule 1956.

(9). The CGRF ordered that, "the Board is empowered to realize only 10% supervision charges on the cost of material and this amount shall be deducted for each connection", but the CGRF has not specified which are the materials used for each connection. At the same time vide para (2) page 9 of the order, the CGRF has stated that, "in this case the Board did not use any materials for effecting LT supply to the Petitioner premises. If no materials are used by Board there cannot be any expenses for materials incurred by the Board. If no expenditure is incurred by the Board no amount can be realised".

There-fore the order of the CGRF is lacking congruency.

(10).The appellants submit that the order of CGRF is arbitrary to that extend that 10% supervision charge on cost of materials used for each connection shall be deducted from the OYEC amounts. The opinion of the Supreme Court of India on arbitrariness is extracted below.

*"An authority, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not*

*act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution". [In Neelima Misra Vs Harinder Kaur Paintal and Others (AIR 1990 SC 1402)].*

Nature of reliefs sought for: -

1. To issue orders directing the KSEB to return the OYEC amounts collected in full while assigning consumer numbers to independent units in the building as onetime payment along with interest at the rate of double the bank rate with effect from the dates of its independent collection.
2. To issue orders to pay the cost and expenses of the petitions.
3. Such other relief, the complainant prays for during the course of appeal.

Arguments of the respondents in general: -

(1). The statement of the Petitioners that, the licensee supplies HT electricity only and therefore inclusion of essentials provided by the petitioners to transform and distribute LT electricity in the building from and beyond HTSFU, under clause 13 of KSEB T & C of Supply, in the estimate and collection of amounts on it as illegal, is misconceived. It is totally against Sec.46 of EA, 2003 read with Reg. 5, 7, 8(9) of Electricity Supply Code 2005 and Reg. 5(8) of KSEB T & C of Supply, 2005. The Reg. 4 (1) of the Supply Code 2005 clearly stipulates that "the point of commencement of supply shall be the incoming terminal of the cut outs installed by the consumer". All the said consumers are availing LT supply as per Reg.4 (2) (a) and so point of commencement of supply is the incoming terminal provided after the energy meter and is not HTSFU as claimed by the appellant. Hence the prospective consumers are bound to remit expenses needed up to this point. The KSEB is not making any regulations as alleged by the party. The orders issued by KSEB on certain specific matters are all in accordance with existing law and rules and are strictly in accordance with Sections 131 and 172 of Elec. Act, 2003, read with transfer scheme framed by the state.

(2).The contention of the appellants that the service connection OYEC was collected for assigning consumer number is misleading. The amounts were collected after executing

LT agreement for providing LT supply to their premises on the basis of connected load as approved by KSERC and also by valid orders issued by the KSEB. The cost data for distribution works were approved by KSERC vide order KSERC/Supply Code/2/140/05/1031 dated 26.7.2005(Ext- R4) and KSERC/IV/Supply Code/2009/746 dated 28.8.2009 (Ext. R5). Based on the approved rates, the licensee had demanded the cost for giving 'weather proof' service connection and the same was paid by the parties without any protest. Hence the action of the Assistant Engineer concerned is in order and the claim for refund of the amounts is unsustainable.

(3).The amount collected for effecting electricity to the applicant's premises are only the reasonable expense as stipulated by rules and no additional costs were collected from them. The statement of the appellant that there was no advance intimation of OYEC is not correct. If any person has objection to the demanded amount, he should have either filed objection or remitted the amount under protest. Since nothing had happened, so the only inference is that they admitted demand and paid the amount. There after they had availed electricity supply and enjoyed it. After this, raising the objection is illegal.

(4).The OYEC amounts were collected, for effecting service connection on out of turn priority, was an approved clause by Govt. and used throughout the state of Kerala by KSEB, till new Acts and Codes came into force on later stage. The charges collected from the appellants are only the cost for providing the service connection, though it is termed under 'OYEC', which are coined for referring to the cost of providing supply to different category of consumers, since these words being familiar to the consumers.

In this case, as the service connection required by the petitioners did not require the licensee to construct overhead lines or UG cables from the indoor transformer, only the basic rate for providing weather proof service connection as provided in Clause 1(i) of the order approved by the Commission (Ext. R4 & R5) were collected. The petitioners might have mistaken the term weather proof service due to absence of weather proof service line. A weather proof service connection simply means that it is one which is resistant to the effects of bad weather.

(5). As per Reg. 13(1) (i) of the T & C of Supply, indoor installations are provided in the premises considering safety aspects and space constraints. The fact that transformer installed in the premises does not give a claim that the consumer is availing HT supply at the premises. The contention of the appellants that the premise is supplied with HT supply and that the obligation of the licensee to supply energy ends at the incoming terminal of HTSFU is false and totally misleading. However KSEB is willing to provide HT connection to these consumers, if they satisfy the conditions, which includes installation of separate HT metering arrangement for each consumer.

(6). The Sec. 8(9) of Electricity Supply Code, 2005, stipulates that where the applicant does not require the licensee to provide the electric line or electric plant, but choose to provide them by himself, he shall pay 10% of the expenses as supervision charges to the licensee for providing such services and forgetting the work executed by a licensed contractor. The KSERC letter No. KSERC/Supply Code/2/140/2005 dated 26.10.2005 has clarified that supervision charges are to be calculated on the total expenses which include cost of materials, centage charges @ 16% of cost of materials, transportation charges, if any, and labour charges. The appellants have misconceived 'the supervision charges' as if it means transporting and allied expenses for the procurement of devices and materials. The Reg.8(9) says "the licensee shall supervise the work of the applicant and provide guidance in technical matters and matters relating to safety". The safety of electrical system depends on the quality of materials and equipment used init. Hence the cable, plant and accessories are purchased by the petitioners, under the technical guidance, of the officials of the licensee. Hence the collection of 10% of the total cost as supervision charges by the licensee is justifiable. The electrical inspectorate has never posted anybody to supervise the electrical works carried out at the consumers' premise. Further the purpose of the so called supervision of others and the licensee are different and distinct as is clear from Reg. 8(9) of Electricity Supply Code 2005. In this case, the licensee had supervised the electrical works up to the commencement of supply of the LT consumers to ensure the quality of work and materials to avoid chances of any loss or damage caused to the distribution system maintained by the licensee.

(7).The respondent submits that, as all the allegations are totally baseless and created by misinterpreting the law, the complaints may be dismissed.

**Analysis and Findings: -**

Both the Appeal Petitions filed, were noted as containing identical issues and hence decided to deliver a common judgement, applicable to both cases.

The hearing of the cases were conducted in my Chamber at Edappally, Kochi; the 1<sup>st</sup> appellant on 10.5.2013 and the 2<sup>nd</sup> appellant on 14.5.2013. In both cases, Sri. K . Anandakuttan Nair has represented for the appellants and the learned Advocate, Sri B Sakthidharan Nair has appeared for the opposite side, accompanied by the Asst. Exe. Engineer of concerned Electrical Sub divisions 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 the facts and circumstances of the case, this Authority comes to the following Findings and Conclusions leading to the decisions thereof.

The appellant has raised mainly two contentions.

- (i). Refund the OYEC amounts collected for giving independent service connections to the appellants in their respective High rise Buildings.
- (ii). To pay interest at the double the rate on the collected amount as onetime payment.

The respondent has collected 'OYEC' amounts (cost estimates), from the owner or occupier, for giving each and every individual electric connections in the Multi storied Building, of the appellants. According to the respondent, the amounts of OYEC charges were the rates for giving the 'LT electric service connections' to the consumers, from the Licensee's Electric Lines and is as per the 'cost estimate for distribution works', approved by the State Regulatory Commission and hence it is authorized. But as per the appellant's view, all Electric Line works and electrical installations up to LT metering Panel of the building, like; laying of UG Cable from the nearest 11 KV RMU to Indoor Transformer, erection of Transformer and its incoming side control panels and LT side terminal arrangements including the metering panels, were carried out by them, after paying the estimate costs of works and supervision charges, as demanded by KSEB. Moreover, the appellant points out that all the LT side energy meters required for the

independent consumers in the said building were also provided by the appellants at their cost, as per Clause 13(i) and 13 (2) (i) of KSE Board Terms and Conditions of Supply. The appellants submit that, since they have paid full costs for the whole work needed for taking the electric supply and no additional works remain to be executed by the KSEB, other than just giving the 'connection' to the meters, already installed in the metering panel and seal it, which are obligatory on the part of KSEB, the Licensee is not at all entitled to collect any further amounts under the pretext of OYEC or so, to provide the electric service connections.

But the respondents denies this argument by insisting the provisions under Section 46 of IE Act 2003, which allows the licensee to charge the consumer, any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply. As per the statement of the respondent, KSEB has collected earlier, only the basic charges required for the works up to the meter board from the consumer. To carry out the balance work of, providing the electric service connection to various consumers, the estimated costs as approved by the Hon Commission, similar to that for giving the WP Service connection to other consumers, has also to be paid by the consumers of the High Rise (Multi-storied) building, the respondents argue.

The Regulation (7) of the Electricity Supply Code, 2005 relates to ' Power to recover expenditure'. This provision is an elaboration of Sec.46 of Electricity Act, 2003, which states that the State Regulatory Commission may issue Regulations, authorizing the distribution licensee to charge from a person requiring supply of electricity in pursuance of Section 43, of the Act, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. As such, KSEB has demanded the OYEC charges for giving the electric connection, merely relying on the order of the Hon Commission approving the 'estimate rate for distribution works', which is actually meant for providing WP service connections from OH (overhead) electric lines and UG cables. In cases of WP services, the Licensee is incurring cost of WP wire, GI wire, Insulation tape, screws etc. to fix the Service wire up to the meter board and for fixing the meter of the consumer. But no such expenses is incurred in providing

the electric connection of a High rise building, by the Licensee, where the Metering panels including the Meters are fixed by the owner and the works were carried out by the party. The only work that is remaining in such cases (for a High rise building ) is, just to make the end connections to the meters and seal it and energize the electric supply to the individual consumers, which means that no additional expenses are incurred to give that supply.

The respondents have not an argument that they incurred any additional costs, to provide the said individual connections to various consumers of the High rise building, after completion of all the electrical Installation works, from Indoor Transformer to the Terminal arrangements of the metering panel of the building, carried out by the party. Hence I am of the view that, collection of the OYEC charges (cost estimate), to provide independent electric service connections to various consumers, i.e. to individual Flats, Apartments, Rooms etc. of a High rise building, is not justifiable, when the respondents have already collected the costs estimates and the supervision charges, from the owner or the occupier, to bring the HT/ LT electric supply up to the metering panel and is not incurring any additional expenses to do the balance work of connecting wires to the Meter or in other words, in energising supply to the consumer through his energy meter.

The appellants request to refund the excess amount collected with double the rate of interest. The provision under 'Electricity Supply Code, 2005, allows interest at twice the bank rate, for the refund of excess amount collected by the Licensee. Here the bank rate means the rate at which the Reserve Bank of India is prepared to buy or rediscount bills of exchange under the RBI Act, 1934.

DECISION: -

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

The collection of OYEC charges from the appellants, for providing independent LT electric service connections to various Apartments/Flats or Rooms etc. of the High rise building of the appellants, was found as arbitrary by the CGRF and the KSEB was ordered to refund the amount so collected.

The respondent does not dispute the fact that, initially they have collected the estimated cost of works and supervision charges, as the case may be, to bring the electric supply up to the metering panel of the respective High rise buildings of the appellants. Now, again demanding a sum for energizing supply of electricity to various independent consumers (various Apartments/Flats or Rooms etc) of the same building, just for the work of providing wire connections to the individual Meters and seal it, which is the duty of a Licensee, under the pretext of Hon KSERC order earmarked for giving WP service connections, is found as not justifiable. No additional materials are required by the licensee for giving the said electric connections in this case. The Sec. 46 of the Electricity Act, 2003, clearly emphasis that only the “expenses reasonably incurred for providing any electric line or plant used for the purpose of giving that supply”, should be collected from the consumer. Asking any additional amount under any manner is unjust and illegal. Hence the respondents are directed to refund the OYEC charges collected from the respective appellants for providing the electric service connection to their High rise buildings.

(i). Case No. P/ 311/ 2012 – filed by Jsmina Rajesh.

Consumer Nos. 13355 to 13382, Consumer Nos. 13397 to 13400, 13443 to 13445, and 13481 to 13483, a total of 38 connections are represented by the appellant. If the OYEC amounts, for the stated Consumer Nos. were found remitted by the appellant for taking individual service connections in the said High rise building, ‘Sreyas Apartments’, it shall be refunded with interest at twice the bank rate, from the date of collection of OYEC amount to the day of refund, within 60 days of this order.

(ii). Case No.P/ 321/ 2012 – filed by Sri. K C Chandrahasan.

Consumer Nos. 15685, 15695, 15697 and 15819, (total four numbers of service connections) are represented by the appellant. If the OYEC amounts, for the stated Consumer Nos. were found remitted by the appellant for taking individual service connections in the said High rise building, ‘Yathrika’, it shall be refunded with interest at twice the bank rate, from the date of collection of OYEC amount to the day of refund, within 60 days of this order.

The related CGRF judgements, both dated 4.08.2012, in the Petitions filed before the CGRF, Kottarakkara, by the appellants and numbered as OP No 768/2012 and OP No 770/2012, respectively, are set aside.

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

Dated the 15<sup>th</sup> of July, 2013,

Electricity Ombudsman.

Ref. No.P/ 311/ 2012 and P/ 321/ 2012/ 1848 / Dated 15.07.2013.

- Forwarded to: -
- (1). Smt. Jasmine Rajesh,  
T C No 16/136, Kumaramangalam, Easwaravilasom Road,  
Vazhuthakadu, Thiruvananthapuram, Pin.695014.
  - (2). Assistant Executive Engineer,  
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  - (4 ). 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. 695010.
  - (ii) The Secretary, KSE Board,  
Vydyuthi Bhavanam, Pattam, Thiruvananthapuram, Pin: 695004.
  - (iii) The Chairperson, CGRF (South),  
KSEB, Vydyuthi Bhavanam, Kottarakkara.