

STATE ELECTRICITY OMBUDSMAN

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Review Petition on the Appeal Petition No. P/ 207/ 2011.

(Present: T.P. Vivekanandan)

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

*(Represented by)*

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

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

ORDER.

Background of the case: -

The appellant is the builder & promoter of the Multi storied building named, 'Andoor buildings' under Electrical Section, Cantonment, Thiruvanathapuram. He has applied for new Electric service connection to the said building. An indoor Transformer and other electrical installations works for providing electric supply were carried out by the party through an Electrical contractor, as per the Electric scheme approved by the Electrical Inspector. He had remitted a sum of Rs. 8, 43,287/- as cost estimate of the electrical works needed to provide the supply, as directed by the respondent.

Even though he had remitted the amount including cost of RMU, it was not fitted in the line of supply and the respondent gave the supply through an alternate temporary arrangement (fitted an AB switch and HG fuse), as the 'RMU', meant for tapping 11 KV supply from the existing UG Cable (distribution main) was out of stock. Since the new device was not installed, the appellant had approached the AE for refunding the excess amount collected. Since there was no action, the appellant filed a complaint before CGRF. It is alleged that, in the order issued by CGRF, some parts of the orders were

unacceptable and some part lacked clarity in the matter of implementation. The excess amount of Rs 461652/- only was refunded plus interest @ 6% (Rs 99255/-), totaling to Rs. 5, 63,215/- on 5.4.2011 by KSEB. Aggrieved by the CGRF order, the appellant has filed an appeal before this Forum. This Forum, has pronounced the order on the Appeal Petition on 23.04.2012. The Appellant has approached this Forum with a Petition dated 08.05.2012, with the plea to Review the decision taken on the Appeal Petition.

Arguments of the review petitioner/ Appellant: -

(1). The review petitioner submits that there is error apparent on the face of the order and the analysis and findings of the Forum is wrong to the facts and rules. He contents that a new and important matter of evidence has been discovered which could not be presented earlier.

(2). According to the review petitioner, the analysis and findings of this Forum regarding part- C of the estimate is wrong due to the following reasons.

(2.1). 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.

(2.2). 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 the 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.

(2.3). 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.

(2.4). The referred Hon. Supreme Court order in Civil Appeal No. 4209 of 2007 dated 18.10.2011 is not universal. Moreover, it was not reported and not known to the party. Therefore, while delivering the order, the relevant portion of the said order should have been reproduced in the order by the Hon. Ombudsman. The supply code issued by the Regulatory Commission of a particular state is universal to that state only. Therefore the observation of the ombudsman is wrong.

(2.5). The amount illegally collected based on arbitrary estimate was retained by the licensee and generated further revenue out of it. Therefore this amount shall not be treated on par with the security deposit amounts collected legally. Hence the illegally collected amount demands higher rate of interest which the appellant has prayed for.

(2.6). Moreover, regulations stipulate to give interest to security deposit at bank rate. Therefore that interest cannot and shall not be limited to 6% annually. The bank rate (Repo rate) is decided by Reserve Bank of India from time to time. Therefore hon. Ombudsman cannot and shall not limit the bank rate to 6%.

Arguments of the Respondent: -

(1). The appellant's version is that the order No. KSERC/Supply Code/2/140/2005/1238 dated 26.10.2005 of KSERC, under which the estimate was prepared is for those items of works which were not covered under the estimate already approved for distribution works, covers only clause 30(b) & (d) of the supply code is not correct. There is no such direction stated in said order. Hence the observation and adjudication accordingly done by the Hon Ombudsman is correct. The appellant has not provided any document in support of his argument. Instead he has pointed out different clause in the Supply Code 2005 and KSEBoard Terms and Conditions, 2005 to mislead and argues that, it is the binding obligation of Licensee for extending, the supply from the Ring main Unit to the premise of appellant by adding required RMU/Add-on module in the distribution system. This argument is not true to the facts and rules prevailing. Hence the observation in the order that "it is noted that the expenses incurred for were for providing supply of power to the consumer alone and not for infrastructure development as alleged by the consumer" suggesting that the cost of RMU has to be borne by the applicant for supply.

(2). Clause 13 of KSE Board T & C of Supply, 2005 is to be followed for energisation of

High Rise building considering safety standards. The argument of the appellant that the licensee supply electricity at 11 KV as the total connected load is above 100 KVA, is misleading and against the fact that the appellant has availed LT connection after executing LT agreement. Hence the analysis and finding of the Hon Ombudsman regarding the Part-C of the estimate is correct.

(3). As per Board order Gel/No.510/2010 (DPC II/AE/T&C of supply 2002/2009 dated 24.02.2010 (Exhibit-2), Clause 3-8, in the case of LT consumers supervision charges shall be collected for all installation up to the metering point. Supervision charge shall be arrived based on standard rate or rates as per invoice/bill whichever is higher. The 'Andoor building', is a HT/LT consumer, having its own transformer, the supervision charges were calculated as per bills/Performa invoice submitted by the consumer up to the LT metering panel. Hence the Licensee action under Part-C is correct.

(4). The KSEB has collected amount only as authorized by the Regulatory Commission, as per order KSERC/Supply Code/2/140/2005/1238 dated 26.10.2005, under which the estimate was prepared. Those items of works which were not covered in the estimate already approved for distribution works, covers the relevant sub clause under Clause 30 of the supply code, as there is no specific remarks made by the Commission in this regard. Hence the principle expressed in the above order is applicable and as per this calculation method, the estimate was prepared and it is valid.

(5). The methodology of calculation is as follows:

1. Cost of Works.

- a. Cost of materials as per cost data of the Board.
- b. Centage Charge @16% of (a).
- c. Transportation Charges, if any.
- d. Labour Charges.

Total cost of work= a+b+c+d

2. Supervision charge @10% of the cost of work.

Total cost to be recovered =1+2

Hence the argument of the appellant that only 10% of labour charge of the laying cable can be collected as supervision charges instead of 10% supervision charges of the work including, capital cost, is misleading and against facts.

(6). The work deposit amount collected by the Licensee is not for making profit by investment. Hence the claim of the appellant to refund the amount with double the bank interest is not maintainable. Hence the order of the Ombudsman limiting the interest 6%

is correct and justified. Hence clauses 16(1) & 16(3) of Supply Code has no context in this matter, as these clause are for crediting, interest on security deposits to consumers account during the first quarter of the financial year and any lapse or delay in crediting interest to consumer account will cause the Licensee to pay double the bank interest.

(8). Here the review petition submitted by the appellant on the ground that new and important matter of evidence has been discovered and which could not be presented earlier and error apparent on the face of the order is misleading, misinterpreting and wrong and hence this review petition may be dismissed.

**Analysis and Findings: -**

The review petition was finally heard on 7.5.2013. Sri.Anadhakuttan Nair, appeared as the representative of the review petitioner and and Sri. A HariKrishnan, Asst. Exe. Engineer, ESD, Puthenchandha, have attended and argued on the above lines. On examining the Petition and the arguments from either side, this Authority comes to the following conclusions and decisions thereof.

All the points raised by the appellant in the review petition are the points to be raised in the appeal petition against this Forum's order, if it is challenged, in a Superior Court of Law. No mistake or apparent errors on the face of record were pointed out by the appellant and hence cannot be considered now for a review petition as most of them are the arguments 'challenging the decision' taken by this Forum. However, this Forum wants to discuss the following points challenged under the 'review' petition.

**(1).** The appellant alleges that, the estimate 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 10% supervision charges on cost of materials, plants, accessories, labour charges and other items, which were actually incurred by the appellant and on which supervision of the license is not necessary. But the opponent claims that, since the schedule of rates for the Distribution works were approved by the Commission, which is not comprehensive and therefore its order KSERC/Supply Code/2/140/2005/dated 26.10.2005, approving a methodology for arriving at the estimate amount was followed.

**(1.1).** As per rule, 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 Electricity Act, 2003, i.e. any expenses reasonably incurred in providing any eclectic line or electrical plant used for the purpose of giving that supply. The Act

clearly empowers the Licensee to collect the cost of any electric Line or electric plant required to provide that supply to bring supply up to consumer premise. If the party carries out a certain portion of the work, he need to pay the supervision charges @ 10% of that portion of the work and need not pay the estimate cost of that portion.

**(1.2).** It is true that cost estimates approved by the commission vide its sanction letter No. KSERC /Supply Code/2/140/2005/dated 26.10.2005, is the methodology for calculating the 'Rate for Distribution works' (for works not included in the earlier approved list) to be carried out by the KSE Board. But it keeps silent, if the said works were carried out by the consumer himself by incurring the material and labour costs. The methodology issued by KSERC, suggests to arrive at the cost to be recovered from the consumer, by adding to the cost of the item, the centage charges, transportation and labour charges. The centage charges will be applicable in KSEB, since it is added when the item is issued from store, where it has to bear the storage and overhead cost etc. Hence the contention of the appellant is found having logic against the inclusion of centage charges in the estimate of the work, opted to be done by the party (including the supply of the materials). But when there are no approved rates of estimate cost of works, when the party opts to do the Line work by himself to extent the electric supply to his premises, then the available methodology of cost estimation, approved by the Commission has to be relied upon, where the only difference is; the work is being done by KSEB or by the consumer. Hence the method is found reasonable to be accepted.

**(2).** The Clause 7 of Electricity Supply Code, *“the Commission authorizes the Licensee, to recover from the owner or occupier of any premises requiring supply, the expenses reasonably incurred in providing any eclectic line or electrical plant required specifically for the purpose of giving such supply”*.

**(2.1).** Further, under Sec.43 of the Electricity Act,- Duty to supply on request states; *“...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 provide the supply of 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, i.e. from the nearest distribution main to the Metering panel of a High rise building, if the party wants LT service connections. The contention of the appellant that, the materials required to provide the supply is only 11 kV UG cable and its end terminations is not acceptable for providing LT connections.

**(2.2).** The RMU is an electric plant, which is not under the control of the consumer, and hence its cost can be collected by KSEB, at the rate approved by the Commission, if the same is needed to provide electric supply to the appellant.

Further, the appellant has not a contention that 'RMU' is not required in his case, but has an argument that it should be provided by the Licensee only, as it is a part of Distribution system. But this argument is not correct since the exemption is limited to; "Provided that, the Licensee shall not be entitled to recover such expenditure if such expenditure is under the scheme approved by the Commission or otherwise charged in the Annual Revenue Requirements of the Licensee".

Hence the exemption from the payment of cost estimate of electric line and electric plant or completely, for providing the electric supply to anyone, is restricted for certain cases only and the appellant does not belong to that group.

**(3).** The appellant contents 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. 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 and hence KSEB is not at all entitled to collect supervision charges on the cost of electrical works done by the applicant.

**3.1).** 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”.*

**3.2).** The sub section (5) of Regulation (8) of Electricity Supply code states that, if the power demand of a High rise building is below 50 kVA, the same shall be given from the LT lines of KSEB. But if it exceeds 50 kVA load, the owner/occupier has to provide a separate Transformer of sufficient capacity. This is followed by sub section (9) of the same Regulation, which reads as;

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 was created for cases where the consumer himself opt to provide the electric line or electric plant, under Reg.8(2) to 8(5). The Reg.8(9) is a general one after the clauses 8(2) to 8(5) and the general clauses starting from 8(6) - Instalment facility etc. The Reg. 8(9) 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.

**3.3).** 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 KSEB can give information based on the fault level of the Substation feeding the electric power 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 KSEB and issue the guidance needed.



**3.4).** 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.

**3.5).** The wiring supervisor is authorized 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 Engineering and had undergone training, are authorized persons to perform supervision in their area of jurisdiction, as per CEA Regulations, 2010, vide Chapter II- Clauses (3), (7) and (29).

**3.6).** 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 a 'wiring supervisor alone'. Other competent and qualified persons under clause (7) referred above are also eligible. Moreover, Regulation 8(9) of Electricity Supply Code, 2005, specifically authorize and directs the KSEB, that it should supervise the works of the applicant and provide guidance in technical matters and matters relating to safety, when the applicant himself provides the electric Line/sub station. Hence I am of the view that, KSEB can also supervise the electrical works of a High rise building where the party has applied for electric supply and Board intends to provide it, to ensure safety and better reliability of KSEB system.

**3.7).** The Regulation for Street Light installation by the Local Bodies 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 through 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 the street lights for the 'general public' 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. When there is lack of clear provision, the intention of the Rule for the supervision charges has to be decided, in comparison with similar nature works where the rule is squarely applicable. Hence this Regulation 8(8) 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.

**3.8).** In Civil Appeal No. 4009 of 2007 Hon. Supreme Court of India dismissed the appeal petition against supervision charge demanded by the licensee, with the following general observations. (Compiled from order and under lined portion added for clarity).

- a. Supervision charges would be governed by the Supply Code with effect from the date of enforcement of the code.
- b. If the work is to be done by the party, licensee shall charge (15% in the case of UP) supervision charges *on the total estimated cost*, as supervision charges.
- c. Erection of transmission lines, associated distribution substations, and LT distribution mains, are having dangerous connotations. *If appropriate standards are not maintained, disastrous consequences are possible. Delegation of such activity has necessarily to be regulated by supervision, so as to avoid any lapses. Supervision needs inputs which have to be paid for. The electricity supply code stipulates certain percentage (15% in the case of UP and 10% in Kerala) of the total estimated cost of electrification works as supervision charges.*
- d. The argument that public at large would have to bear the brunt of supervision charge is totally unacceptable.
- e. Supervision charges are being levied, so that interested parties who decides to carry out the activities of erection of transmission lines, associated distribution substations and LT distribution mains, on their own, abide by the minimum

prescribed norms. Higher public cost ensuring prescribed safety measures, would certainly override the cost consideration projected by the applicant.

It is clear from the above that, the general observations are not case specific, and is applicable to all State Regulatory Commissions, Licensees and applicants. The Apex court decision is binding on all courts below it. A precedent is a previous instance or case which furnishes an example or rule for subsequent conduct, and a pattern upon which subsequent conduct is based. Hence as such, the above Hon Supreme Court order is universal in nature in upholding the legality on charging the supervision charges on the total estimate cost.

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

**DECISION: -**

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

(1). This Forum has considered all the issues raised by the appellant in detail and have come to a conclusion and accordingly pronounced the judgment dated 23.4. 2012. The issue of collection of 'Supervision Charges' by KSEB on the works executed by the party himself, was also examined in detail by this Forum at that time. The additional and other fresh averments of the appellant submitted in the review petition was also analyzed and came to the conclusion that the contentions raised do not pose for a review on the decision already taken by this Forum in this regard.

(2). If the party is aggrieved on this point of difference in the cost estimates, between the one prepared for collecting the estimate cost of work initially and the revised one prepared based on the Forum's order, the party can approach the respondent and if not satisfied with its decision, can urge the issue before the CGRF, on this point.

(3). Bank rate means the rate at which the RBI prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase under RBI Act, 1934, and as such, it may be taken as the ruling rate from time to time. If the wiring of the 'Light and Power' circuits of the building and the LT metering panel works, has been carried out by

the Electrical contractor, under a 'wiring supervisor' alone, that part can be excluded from the estimate for calculating the supervision charges.

In this review petition, no mistake or apparent errors on the face of record were pointed out by the appellant. Also there is no discovery of a new and important matter or evidence produced by the appellant warranting a review on the issues raised before this Forum and on which decisions were taken vide the Judgment dated 23.4.2012.

Having concluded and decided as above it is ordered accordingly. The Review petition filed by the appellant is found having no merits and is disposed of with the directions issued as above. No order on costs.

Dated the 18<sup>th</sup> of July, 2013.

Electricity Ombudsman.

Review Petition on Appeal Petition No. P/207/2011/1860 /Dated 18.7.2013.

Forwarded to : (1). Sri. Abraham Joseph,  
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Copy to: (1). The Secretary. Kerala State Electricity Regulatory Commission,  
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(2). The Secretary, KSEBoard, Vydyuthibhavanam, Pattom,  
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(3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEBoard, Vydyuthi bhavanam, Kottarakkara.