

## THE STATE ELECTRICITY OMBUDSMAN

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### APPEAL PETITION NO. P/317/2012.

(Present T.P. Vivekanandan)

Appellant : Sri. T S Asok,  
Managing Director, Artech Relators, (P) Ltd,  
TC-15/1453, AIR Road,  
Vazhuthacaud, Thiruvananthapuram-Pin- 695 004.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,  
Beach, Pettah PO, Thiruvananthapuram- Pin- 695 024.

### ORDER.

#### Background of the case: -

The appellant is the Managing Director of M/S Artech Realtors (P) Ltd, and he is the builder and promoter of the building, 'Samruthi Lake View' under the jurisdiction of Electrical Section, Pettah. The appellant is challenging the demand for Rs. 37.61 lakhs raised by the transmission licensee which was remitted by him on 24.5.2011 in pursuance of letter No. DB.11/TDP/Terls/2011-12/261 dated 18.5.2011. The appellant vide his letter dated 27.7.2012, had requested the Deputy Chief Engineer, Transmission Circle for refund of the amount of Rs.37.61 paid by him. Thereafter, the appellant filed a complaint before the CGRF (South) Kottarakkara vide OP No. 809/2012 and the CGRF dismissed the petition on 19.10.2012, on the ground of lack of jurisdiction to entertain a complaint against recovery of any amount from a person other than the distribution licensee. Aggrieved by this order of the CGRF, the Appellant has submitted this appeal before this Forum.

#### Arguments of the Appellant: -

(1) The appellant has applied for 1260 KVA of electricity with a connected load of 1480.2 KW for energizing two transformers of capacity 630 KVA each, to the Asst Engineer, (AE), Pettah section. The Executive Engineer, Transmission Division vide letter dated 18.5.2011 asked the appellant to remit Rs. 37.61 lacs needed for allocating 1480 KW of power. The consumer paid the amount on 24.5.2011. After that the sanction for an estimated amount of Rs. 19.79 lacs was issued by the Exe. Engineer and he paid it on 17.8.2011 and received electric supply in 5/2012.

(2). The KSEB is only authorized to collect reasonable expenses incurred for that electricity supply applied for, under Sec. 46 and Clause 7(1) of Supply Code. It is also specified under Clause 7(3) that such costs shall be based on the schedule of rates approved by the Commission. The schedule of rates existing for the distribution works has been approved by the Hon Commission during 2009, vide order dated 28.8.2009. The collected sum of Rs. 37,61, 000/- never confirm any of the rates in the schedule annexure I & II with the order. It is specified in the above order that, "For works not covered under the estimate prior approval of Commission has to be obtained for levying charges as per Sec. 46 of the Act. It is also made clear that expenditure for giving connection to a particular consumer can only be levied from him/her. The development of infrastructure under transmission & distribution has to be met from capital expenditure provided in the ARR. The collection of Rs. 37, 61,000/- from the appellant as pro-rata amount needed for the Transmission Sector to extend the power supply or as development charges, is for the development of distribution infrastructure of KSEB. This 110 KV/11KV substation is a distribution infrastructure under Clause 2 (19) of Electricity Act, 2003, read with Clause 4 of the Electricity Rule, 2005. Therefore, this collection is illegal, since it is inconsistent with the above order and Clause 7 of Supply Code.

(3). If the requested electricity supply of 1260 KVA required commissioning of a new substation along with extension of electric line, the procedure to be adopted by KSEB is, as provided under clause 8 (4) of Supply Code, which is binding on KSEB. No such procedure is adopted either by the Deputy Chief Engineer, Transmission or by the EE, Electrical Division, Kazhakuttom, even though Rs. 37,61,000/- was collected for installation of transformer. The estimate for providing 12.5 MVA transformer (Exhb-P 7) was collected as an extra item, which is never allowed under regulations. Thus the respondent had violated clause 8 (4) of Supply Code.

(4). The KSEB has a project for installing a 12.5 MVA transformer at Terls Substation and the Power could be supplied on completion of it, without collection of any sum provided under clause 8 (4).

(5). No Board order has been produced to collect Rs. 37.61 lakhs from the appellant and therefore the decision of the Deputy CE, Transmission is without authority and hence arbitrary. Transmission wing of KSEB does not have any authority to collect expenses for infrastructure development from applicants for electric supply.

(6). Even after collecting Rs. 225.21 lakhs, from 5 applicants, the DCE continued with collection of pro-rata amount of 12.5 MVA transformer from subsequent applicants and amassed enrichment.

(7). Any amount collected for electricity supply is advance, to the expenses to be incurred by KSEB and is subject to evaluation to arrive at the reasonable expenses incurred after commencement of supply or the completion of work. The officers of KSEB is authorized to refund the excess amounts collected vide orders 5 (2) of BO (FM) (Genl) No.510/2010(DPCII/AE/T&C of Supply 02/2009) dated 24.2.2010. Moreover, under Sec. 46 of Electricity Act, the distribution licensees are authorized to collect reasonable expenses "incurred" for that supply. However, the licensees are authorized to collect expenses for electric supply in advance under clauses 7 and 8 of Supply Code. This amount is collected based on an estimate and the same is prepared on the principle of approximation. Hence it is a guess estimate with probable quantities. Thus it is imperative to evaluate the works

on completion to arrive at the reasonable expenses incurred and to reimburse the excess collected or to collect which is found in short as the case may be. The KSEB have never evaluated the works in compliance with law and never reimbursed the excess amount collected despite making request for refund. This is violation of non-compliance of orders of the State Regulatory Commission.

(8). The expenses for establishing a distribution system is to be met from the capital expenditure provided in the ARR and is to be collected through tariff, as fixed charges. The collection of pro-rata amount from the applicant for supply is excess and no law allows for such collection of sum.

(9). All 110/11, 66/11, 33/11 KV substations are created and maintained by KSEB due to mandated obligation of it to establish and maintain a distribution system, under Sec. 42 of Electricity Act and universal obligation to supply electricity on request under Sec. 43, since KSEB is a Dist. licensee.

(10). The opinion expressed by the Appellate Tribunal for Electricity in the order in Appeal No.22 of 2007 is a factor in the matter of section 42 of Electricity Act, 2003 and hence helpful to decide this appeal. The relevant portions of the order are extracted below.

*“In order to discharge its obligation to supply electricity on request to the consumer’s premises as envisaged in Sect. 43 of the Electricity Act, 2003, the Dist: Licensee has a binding duty imposed by the Sec. 42 (1) of the Act, 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 with in 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 Electricity Act 2003 and Regulation”.*

(11). Where the demand of a supply connection is required, the licensee is authorized to recover the reasonable expenses incurred on such works from the applicant based on approved ‘schedule of charges and provide supply after such works are completed or within the time frame as fixed.

(12). The licensee has to develop schemes after undertaking feasibility studies and carry out the expansion works for providing supply to potential consumers in its area of supply. The investment is allowed to be recovered through tariff. The cost of the supply, from the “Distribution Mains” to the premises of the consumers is to be recovered as per ‘Schedule of Charges’ approved by KSERC. For meeting the demand of supply, the licensee is authorized to recover the reasonable expenses from applicants.

(13). The appellate Tribunal for Electricity on 14.05.2007 issued orders on Appeal No.22 of 2007 in which, Maharashtra Electricity Distribution Company Ltd was the appellant and The Maharashtra Electricity Regulatory Commission was the respondent. It was an appeal for allowing collecting ‘service line charges, which is an equivalent charge collected from this appellant by KSEBoard. The operative part of the Order is extracted below.

*In view of the above, it is clear that the “Service Line Charges” as proposed by the appellant are being allowed to be recovered through tariff. If the aforesaid proposal on “service line charges”*

*made by the appellant is accepted it will amount to doubling of the recovery of the expense from the consumers. The appeal is accordingly dismissed.*

(14). The Commission has ordered that, KSEB is only entitled to collect the expenses approved for giving connection to a consumer. Investment for development of the system or cost of equipment, is to be borne by the licensee. Such expenses incurred are to be recovered by way of charges like interest and depreciation included in the ARR. Despite such orders of the Commission, KSEB has collected this from the appellant.

(15). KSEBoard has earlier filed a petition before the Regulatory Commission seeking orders for collecting development charges from prospective LT, HT & EHT consumers vide OP No.13, dated 14.05.2009. After hearing all parties the Hon Commission disposed of the petition totally rejecting the proposal to recover development charges and ordered on 16.11.2009, pointing out the earlier order of the Commission, No. KSERC/IV/Supply Code/2009/746 Dated 28.08.2009, the order of the Appellate Tribunal for Electricity in the Appeal No.22 of 2007 and relevant law and regulations.

**Arguments of the Respondent: -**

Statement of facts furnished by the Assistant Executive Engineer, , Electrical Sub Division, Beach, Thiruvananthapuram for and on behalf of the KSEB against the representation filed by Sri.T.S.Asok.

(1). All the averments in the Petition except that are specifically admitted hereunder are denied.

(2). The appellant has applied for power for 1480KW, as the promoter of the building M/s.Smrudhi Lake View, Akkulam, and consists of 79 Nos flats/apartments constructed for sale to his customers. As per rules the appellant shall apply for individual LT connection at his own cost and also maintain the transformer and allied equipment at his cost. Accordingly the party voluntarily remitted the expenses for providing the electric supply and availed 79 Nos. of domestic -LT I (a) connections.

(2). Thereafter the appellant with the ulterior motive to derive unjust enrichment filed complaint before the CGRF (south), Kottarakkara as OP No.809/2012 by making false statements and also by misconstruing the provisions of Electricity Act 2003 and the regulations framed there under. The declaration of the appellant in column 3 of the complaint before the CGRF that, 'no Cons. No. is allotted for this 11 KV electricity supply by the KSEBoard distribution licensee' is false. With the oblique motive to by pass his customers from whom he has collected cost for availing supply and to derive unjust enrichment and double benefit the party suppressed 79 Cons. Nos. allotted to the building in the complaint. Thus the appellant has not come before the forums with clean hands. Hence the respondent request this Hon Electricity Ombudsman to reject the representation as per regulation 22(2) (i) of the KSERC (CGRF and EO) Regulations, 2005, which says; 'the Ombudsman may reject the representation at any stage if it appears that the representation is 'frivolous', 'vexatious ', and 'malafide'.

(3). The CGRF, established under Sec. 42 (5) of Electricity Act, 2003, lacks jurisdiction to entertain the dispute raised in the complaint filed before it. The appellant alleged that "the collection of the amount Rs.3761000/- towards proportionate cost needed for transmission sector to extend power was illegal. Hence the CGRF established under section 42 (5) coming under part VI " Distribution of Electricity" of the Electricity Act 2003, lacks jurisdiction to determine the complaint.

(4). The Petition is not maintainable as the same not being pursued by the party with reasonable diligence and also pursued without sufficient cause. As per Regulation 22 (2) of the KSERC (CGRF & EO) 2005, the Ombudsman may reject the representation if it appears to him that the petition is (i) without any sufficient cause. (ii) not being pursued by the party with reasonable diligence.

(5). The Hon CGRF dismissed the complaint as it found not maintainable on the basis of the above contention. But it is strange to note the contention regarding collection Rs.3761000/-, where it is alleged in the Petition that; "This 110 KV/11 KV substation is a distribution infrastructure under clause 2(19) of the Electricity Act 2003 read with clause 4 of the Electricity rules 2005. Therefore this collection is illegal since it is inconsistent with the above order and clause 7 of Supply Code". Thus the party who has pursued the complaint in the CGRF, that the sum collected was towards development of transmission infrastructure and is illegal, has now turn around and say in the petition that the amount collected was towards development of distribution infrastructure. He is approbating and reprobating at the same time which is not permissible under law. The aforesaid inconsistent plea of the party takes to the irrefutable conclusion that he had filed the Petition with out sufficient cause and also pursuing the complaint without due diligence. In either of the above cases the representation is liable to be rejected under regulation 22 (2) stated above.

(6). The statement of the appellant that sum of Rs.3761000/- was collected for the development of distribution/transmission infrastructure of KSEB is misconceived. He has applied for 1480 KW of power in the capacity as the builder and promoter of the building namely M/S.Smrudhi Lake View, which contains several flats /apartments (79 Nos.) constructed for selling to his various customers. The rules that govern for effecting supply is Section 43 (1), (2) & 46 of the Electricity Act 2003. Sec.46:The state 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 in providing any electric line or electrical plant used for the purpose of giving that supply.

The Regulation 6(5) of the Electricity Supply Code, 2005: the Licensee shall provide if required any electric plant or electric line required for providing supply to the premises.

The Regulation 7 (1): Subject to the conditions under clause 8, the Commission authorizes the licensee under section 46 of the Act, to recover from the owner or occupier of any premises requiring supply the expenses reasonably incurred by the licensee for providing any electric line or electric plant required specifically for the purpose of giving that supply: 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 ARR of the Licensee.

Reg. 8(5): "Subject to sub clause 1, 2, 3 & 4 in case of multi-storied building having connected load below 50 KVA, licensee shall provide service connection from the LT line. For the loads of 50 KVA and above connection shall be effected only after installation of separate transformer of adequate capacity by the owner or occupier irrespective of the category of the consumer". So a reading of section 43 (1) and section 43 (2) of the Electricity Act 2003 read with regulation 8 (5) of the Electricity Supply code 2005 will make it clear that for getting power supply to his building , The complainant/appellant shall install transformer and allied equipments at his own cost.

(7). Sec. 46 of the E Act 2003 read with regulation 7(1) of the Supply code, 2005, empowers KSEB to recover expenses incurred for providing electric line/plant specifically for giving such supply provided such expenditure is not under the scheme approved by the KSERC or not charged in the ARR of the licensee. Hence the collection of the amount of Rs.3761000/- being the shared cost for installing 1 number 12.5 MVA transformers from the appellant was legal.

(8). Again Sect. 43 (3) of the Electricity Act 2003 read with regulation 6 (5) of the Electricity Supply Code 2005 stipulates that the licensee shall provide, if required, any electric plant or line required for providing supply to the premises. Accordingly the following consumers required the KSEBoard to the premises. Accordingly the following consumers required the KSEBoard to install 1 number 12.5 MVA 110 KV/11KV transformer at a cost of 225.21 lakhs to be divided proportionately among and according to their requirement. They are;

(a). M/S. Brahmos Aerospace Ltd, (b). M/S.Air India Engineering Base, (c). SFS Cyber Palm Project, (d). M/S.Heera Infocity and (e). M/S.Skyline Builders.

Subsequently M/S.Heera Infocity did not remit the amount and their application was cancelled. In the meantime the appellant opted to share the cost on finding that his demand for power can be catered only from the 12.5 MVA transformer proposed. Accordingly his share of the cost was worked out to be Rs.3761000/- and informed him (Ext R1, R2, R3). He voluntarily remitted the said amount without any protest or objection whatsoever. There was no illegality in recovering the said expenditure since the said equipment is to be installed under section 43(2) of the Electricity Supply code 2005. The said equipment is neither covered under the scheme approved by the commission nor otherwise charged in the ARR of the licensee. Hence the collection of the expenditure is within the parameters of the Electricity Act 2003 and the regulations and others framed there under.

(9). The statement of the appellant that the amount collected from him was advance is not true. The amount collected from him was the expenditure met for availing electricity supply. The sum of Rs.3761000/ remitted by the appellant was the actual cost hence further refund was unwarranted.

(10). The Ext P2 and P3 are internal communications of the licensee's officers and have no sanction of law. The allegation that the Deputy Chief Engineer has committed non-compliance of the order dated 16.11.2009 is vague as he has not stated in which way the order was not complied. The fact and circumstances of the cited decision are distinguishable on facts. The Assistant Exe. Engineer, Electrical Sub Division, Beach and the Deputy Chief Engineer, Transmission circle filed version and clearly explained the basis of collecting the aforesaid amount (Ext R7 & R8). The statement of the appellant that there was no sanction of KSEB to collect Rs. 3761000/- is misconceived and hence denied. The KSEB has already issued order to collect Rs.255.2 lacs from consumers who required the Board to install a T'rfr & equipments and hence a further order was unwarranted (Ext R3). The orders issued by the KSEB have legal sanction as per Sec.131 of Electricity Act 2003.

(11). The allegation of the appellant that the appellant's requirements of power supply could be catered from 66 KV Veli substation, is misconceived and hence denied. The transformer station at Ourvathilkota School is fed from the Venpalavattom structure at Karikkakom 11 KV feeder from 66 KV substation, Veli. The total capacity of the existing transformers at 66 KV substation, Veli was

only 26 MVA. During 2011, the load at Veli substation was in full condition (Up to 1100 A out of 1260 A capacity) and which exceeds N-1 statutory condition. Normally transformer is not loaded 100% for flexibility operations. But due to system and financial constraints the transformers are to be put in 80 to 85% of full load capacity. Beyond this limit, addition of new transformer is needed. Hence the required load cannot be shared from Veli 66KV Sub station through Karikkakom feeder. (12). The appellant's contentions that he is the only person who remitted the amount and no other persons shall claim this amount, is not admitted. The appellant is the promoter of multi storied building consisted of flats/apartments with the funds raised from the customers and the cost for availing electricity, water, taxes and duties etc. were passed on to the customers. The appellant filed this representation without impleading his customers with the oblique motive to derive unjust enrichment and double benefit which has no sanction of law. Hence the appellant is not entitled to get any reliefs.

### ANALYSIS AND FINDINGS:-

The Hearing of the Case was done on 14.05.2013 & 28.11.2013, in my chamber at Edappalli, Kochi and Sri. Anandakuttan Nair, has represented for the appellant and Sri.Ajithkumar K, AEE, ESD, Beach and Sri B Satkthidharan Nair, the learned Advocate has represented for the opposite side. On examining the Petition, the argument notes filed by the Appellant, the counter statement of the Respondent, perusing the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

**1.0.** As per SEC.46 of Electricity Act, 2003, the Licensee is authorized to collect from the consumer the reasonable cost of works needed for providing that electric supply and accordingly the KSEB has collected the amount. The said estimate cost include, the distribution Line work costs which is not disputed and also contains the share of the cost of Transmission works carried out by KSEB to provide that supply which is disputed by the consumer.

*Hence the question to be decided is whether the KSEB can collect the cost of Transmission strengthening works for providing electric supply or its share of total cost incurred for transmission works, if there are more applicants for Power from the same locality?.*

**1.1.** 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"*. Hence, this Forum decided

to hear and dispose the Petition on merits, rather than remanding the Case to CGRF, as pleaded by the appellant.

**1.2.** The appellant alleges that, KSEB has collected huge amount from him towards Transmission cost i.e. for installing a 12.5 MVA capacity Transformer at the Substation, for which he was forced to give his share of Rs. 37.61 lacs, for getting supply to his Multistoried building. The distribution line or system goes on expanding, by adding lines constructed for the new consumers. Hence the latter applicants for power supply need to bear the cost of taking supply from the existing set up of Lines and hence may be advantageous to them. However, there are also situations that need fresh lines to be constructed or the existing lines to be strengthened to provide that power supply to the new entrants, for which the party may be required to pay more. These cannot be argued as arbitrariness. It is the natural course of action and no discrimination can be alleged over the same.

**1.3.** The relevant rules and regulations which govern in the matter for deciding, whether the cost of Transmission can be collected or not from the consumers, are reproduced below.

Sect. 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.

**1.4.** 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 term ‘to develop’ above, does not imply that all the cost for the development of distribution system 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 from an applicant for electricity, which states the Licensee can collect, “any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply”.

**1.5.** The KSEB states that there was no developmental plan included in the ARR to strengthen the Capacity of the Sub station by installing a Transformer etc. in the current Plan, in the appellant’s area of Power Demanded. Hence the option before an applicant for power in such cases is, either to pay total cost or share the cost of works among the simultaneous applicants for power or wait till the said work is taken up and completed by the Licensee under its Annual Plan. Further under



Sec.43 of the 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 electricity to such premises immediately after such extension or commissioning within such period as may be specified by the Appropriate Commission". Here, in such cases where the existing distribution system requires development, 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 Regulatory Commission. The Commission has also fixed the time frame to complete such works (extension of distribution main) after collecting the estimate costs required for such works from the consumer, by creating Regulations namely, Reg. 8(2) to (5), under Electricity Supply Code. Thus it is clear that the KSEB can demand cost of all items, including Distribution and Transmission (Sub Station) works, needed to provide that electric supply.

**1.6.** Otherwise the applicants for electricity has to wait till the infrastructure development has been created by the Licensee, for catering the Power demand of the consumers, like Substation Construction, Installing additional Transformers, Up rating the present Capacity of the Station, Strengthening the Transmission and Distribution system etc. as the case may be. In such cases, the expenses for the same are met using funds, as proposed in the Annual Plan of capital works in the ARR of the Licensee. This may take time and the applicant has to wait or he has to opt for incurring the reasonable expenses.

**1.7.** In this case, it is reported that 5 Nos. of consumers have demanded a large quantum of Power and since the same cannot be met from the present set up of distribution system, the KSEB has proposed an estimate for the installation of a higher capacity Transformer (T'rfr) to meet their combined Power demand. Accordingly, the 5 applicants for Power remitted the share of the cost including the appellant and obtained the electric supply in time. Now the remaining question is whether the share of the Transmission cost collected from the appellant, for the installation of a Transformer at the Substation, is admissible as per Law?.

**1.8.** Here the appellant wants a power demand of 1480 KW and from the report of the KSEB, it is evident that it requires extension of Distribution main, to bring supply to appellant's premise and the relevant clause applicable shall be Reg. 8(4) of Electricity Supply Code, 2005, where both

extension of distribution main as well as commissioning of a sub station is required to provide the electric supply of 1480 KW, demanded by the applicant. This fact is not disputed by the consumer.

**1.9.** If an applicant for electricity requires extension of distribution main, to bring supply to his premises, then the reasonable expenses to extend the distribution main has to be borne by the consumer himself. Here the main work involved is the strengthening the capacity of Sub Station by adding one Transformer of sufficient capacity. Since all the consumers required large amount of Power i.e. around 1000 KVA to 3000 KVA, the KSEB is seen to have proposed a single Transformer to cater all the 5 applicants of power and accordingly put up an estimate and collected the cost by sharing among the applicants. For the above reasons, it is found reasonable and hence justifiable, the collection of the shared cost of works, required to provide electric supply to the 5 applicants under the same jurisdictional area of Electrical Section and almost at the same time.

**1.11.** The respondent has collected the share of the cost amounting to 37.61 lacs, out of the total estimate cost of 225.21 lacs for the Transformer rated at 12.5 MVA, 110 KV / 11 KV and the remaining cost shared by other 4 Nos. of applicants, for the exclusive improvement of the transmission work, to provide that electric supply to the said applicants.

**1.12.** The Reg. (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 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 charges for giving the electric connection, merely relying on the order of the Hon Commission approving the 'estimate rate for transmission works', which is meant for providing service connections to applicants for electricity.

**Decision: -**

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

(i). In the Order of the Hon State Electricity Regulatory Commission, in the Petition No. TP-87/2011 dated 30.11.2010, in the matter of "Approval of cost data for Transmission works", the following observations are seen made under the heading, 'Analysis of the Commission'. ".....4.4 From the above, it is clear that the Licensee is entitled to recover the cost of works on the distribution side as

well as transmission side based on the estimated cost of works. The estimate has to be done in a transparent and fair manner. ....The Licensee should not be allowed to take any undue advantage from the provisions in the Electricity Act, 2003 and the Supply Code cited.

(ii). As the Hon Commission has endorsed the collection of the transmission side works also, it is clear that the Respondent is authorized to collect the cost of Transmission part of work required to provide that supply. But in this case, it is seen that the Respondent has not installed the 12.5 MVA transformer yet, whose cost was paid (shared by 5 applicants for power including the appellant). This collection of amount cannot be argued as proportionate charges or developmental charges, but it is the cost of Transmission part, for providing that electric supply to the applicant for power. That is to say, instead of providing separate transmission part of works for each applicant, the respondent proposed a single Transformer of combined capacity to meet the demand of 5 Nos of applicants for power (who has applied almost at the same time) and accordingly collected its due share of cost from them (5 applicants) according to their power demand. Hence the action of the KSEB is not arbitrary as alleged but is legitimized to collect the cost of Transmission part of works.

(iii). But it is seen that the Respondent has effected electric connections to all the 5 applicants, without installing the new transformer as proposed and for which the amount was collected by sharing the total cost of Transformer among the applicants. The KSEB has provided the Electric supply to all the 5 applicants, by transferring and rearranging the electrical load, with in their System (among the Veli and Terls Substations of KSEB) and thus was able to provide the supply. The KSEB's work of installing a new 12.5 MVA T'rfr at the Substation is still pending. This suggests that the power demanded by the applicants could have been provided by rearrangement of loads alone, among the nearby Substations and there was no need for the collection of cost of works, towards transmission part (the requirement for installation of a separate 12.5 MVA transformer), in this case. It is also noted that, as per Sec. 46 of the EA, 2003, the Licensee is only authorized to collect the reasonable expenses incurred for providing that supply of electricity to the applicants for power. Hence I am of the view that the collection of the Transmission part of work (share of the cost of 12.5 MVA transformer), from the appellant by the respondent is illegal and arbitrary and has to be refunded. But the respondent is eligible to collect the cost of works required for the

rearrangement of Loads between the various Substations to provide the supply to the appellant. Since the KSEB has not provided the same cost, I direct the Respondent to assess the said cost and also the applicable share of Cost of the appellant in it. Thereafter, the respondent has to evaluate the actual cost of work needed to provide supply to the appellant and shall refund the excess sum collected for the work with applicable interest.

Hence I order that the respondent shall finalize the actual cost of work needed to provide electric supply to the appellant and then refund the excess amount collected within 60 days of this order.

Having concluded and decided as above it is ordered accordingly. The Appeal Petitions filed by the appellants is found having merits and is allowed to the extent ordered and the Petition stands disposed of accordingly. The related CGRF (South) Kottarakkara order in Petition, vide OP No. 809/2012 dated 19.10.2012, is set aside. No order on costs.

Dated the 23<sup>rd</sup> of December, 2013.

Electricity Ombudsman.

Ref. No. P / 317/ 2012/ 2119 / Dated 23.12.2013.

Forwarded to (1): Sri. T S Asok,  
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TC-15/1453, AIR Road, Vazhuthacaud,  
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(2): The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard,  
Beach, Pettah PO, Thiruvananthapuram-24.

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.