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APPEAL PETITION NO. P/139/2015

(Present: V.V. Sathyarajan)

Dated: 14<sup>th</sup> December 2015

Appellant : M/s Skyline Foundations &  
Structures (P) Ltd.  
Karikkamuri Cross Road,  
Cochin 682011

Respondent : The Asst. Executive Engineer,  
Electrical Sub Division,  
KSE Board Limited  
Vytila, Ernakulam.

**ORDER**

**1. Background of the case:**

- 1.1. The appellant is a builder & promoter of the M/s Skyline Foundations and Structures (P) Ltd and has applied for a power requirement of 400 kVA to a new residential project 'SFS Branton Park' at Padamughal, Kakkanad under Electrical Section, Thrikkakkara, on 26-04-2012.
- 1.2. The Licensee has demanded a sum of Rs. 9,44,000.00 computed @ Rs.2360.00/kVA as pro-rata transmission side development charges on per kVA basis from the appellant, vide letter No. DB3-25/OYEC-TKRA/12-13 dated 1/9/2012 of Executive Engineer, Electrical Division, Tripunithura.
- 1.3. Against this demand, the appellant had filed WP (C) 21344/2012 and the Hon'ble High Court in its judgment dated 14-09-2012 directed KSEB to process the application of the appellant based on bonds and undertakings. It is also ordered that "connections will be given, on specific condition that within two weeks from pronouncement of the judgment, additional cost will be paid if demand is sustained and on failure all the connections given will be cut off.
- 1.4. An undertaking was executed by the appellant to this effect on 09-10-2012, challenging the levy of transmission side

development charges on per kVA basis by KSEB various consumers filed Writ Petitions before the Hon'ble High Court of Kerala. There were 17 Writ Petitions with common issue for consideration by the Hon'ble High Court.

- 1.5. The single judge of the Hon'ble High Court in its common judgment in WP (C) No.18726/2011 and connected cases held that the levy of transmission side development charges and the demand for non-refundable advance impugned in the Writ Petitions was illegal.
- 1.6. KSE Board filed Writ Appeals No. 900/2013 and connected cases challenging the common judgment rendered by single judge in WP(C) 18726/2011 and connected cases.
- 1.7. The Division Bench of the Hon'ble High Court in its judgment dated 30.06.2014 in the above Writ Appeals allowed the collection of transmission side development charges by setting aside the judgment of learned single judge in WP (C) 18726/2011 and connected cases.
- 1.8. Based on the judgment in WA 900 of 2013 the respondent again issued demand letter dated 04-12-2014 for Rs. 9,44,000.00 as transmission charges. But the appellant objected this stating that since they were not connected with the subject matter of W.A. No.900 of 2013 or any other writ appeals decided along with the above writ appeal, the said judgment does not decide the issue as far as they were concerned.
- 1.9. Meanwhile the Hon'ble KSERC in a case regarding the levy of transmission development charges had issued a final order in the judgment in OP 22/2011 dated 22-01-2015. In pursuance of the above order, the respondent again issued demand notice for Rs. 9,44,000.00 as transmission development charges.
- 1.10. The appellant approached the Hon'ble High court against the above demand by filing W.P. (C) 8881 of 2015. The Hon'ble High Court, vide impugned judgment dated 24/3/2015, ordered the appellant to approach the CGRF and also held that not to disconnect the supply pending final orders of the CGRF.
- 1.11. Accordingly the appellant filed a petition before the CGRF which was disposed vide Order No. 11/2015 dated 20-07-2015,

ordering that the demand raised by the respondent is correct and the petitioner is bound to pay the same.

1.12. Challenging the decision of the CGRF, the appellant approached this Authority by filing this appeal petition.

**2. Arguments of appellant**

- 2.1 The appellant was challenging the demand for pro rata per kVA development charges demanded presumably for the development of the common transmission infrastructure. According to the appellant, he is entitled to obtain electricity connection after meeting the cost of work undertaken on the distribution side specifically for the purpose of giving electricity connection to the appellant.
- 2.2 The appellant had already paid all such costs on the distribution side. The Licensee is prohibited from demanding any amount as pro-rata transmission side development charges on per kVA basis from the appellant.
- 2.3 The Hon'ble KSERC has through in the judgment in OP 22/2011 dated 22-01-2015 permitted the licensee to demand any amount spent by the distribution profit centre in accordance with the stipulations contained in the said order. The demand made through the letter dated 04-03-2015 is not according to the stipulations contained in Order dated 23-05-2011 in Petition No. T.P 87/2011, KSEB's Circular dated 13-07-2011 and Judgment in OP 22/2011 dated 22-01-2015.
- 2.4 The demand dated 04-03-2015 for pro-rata per kVA charges which demand is specifically prohibited by the KSERC.
- 2.5 The contention of the appellant is that he is entitled to receive an estimate prepared as stipulated under KSERC's order dated 23-5-2011 and KSEB's Circular and any amount could be demanded under the stipulations contained in KSERC's order dated 22-01-2015.
- 2.6 The licensee is misusing its monopoly position to harass and threaten the appellant into meeting illegal demand. The licensee cannot disconnect power to residents of apartments with whom the licensee has separate agreements and especially when they have not committed any default.
- 2.7 The Licensee cannot make any unlawful gain at the expense of the appellant. The Respondent cannot act in contravention of

the license granted by the Regulatory Commission, the provisions of the Electricity Act 2003, the Code or the specific orders of the KSERC.

- 2.8 The licensee is in gross violation of KSERC orders and cannot act illegally or unfairly being a body under the State.
- 2.9 The appellant contented that the CGRF has not examined facts and the legal grounds raised by appellant and has not relied on relevant matters. Further, the CGRF has no jurisdiction to interpret KSERC orders or the Hon'ble High Court judgments.
- 2.10 In fact in a subsequent judgement, the very same division bench that passed the judgement in WA No 900 of 2013 and connected cases has held that the KSEB Ltd can raise demand only in accordance with the principles laid down by the KSERC in Order dated 23.05.2011 in Petition No. T.P 87/2011, also that the appellant has a right to challenge the estimate before the CGRF.
- 2.11 The CGRF failed to notice that the principle laid down by the learned Division Bench in the judgment in WA No. 900 of 2013 and connected cases was that the licensee was entitled to collect actual costs incurred for giving connection specifically to the appellant in accordance with the principles laid down by the KSERC in Order dated 23-05-2011 in Petition No. T.P 87/2011, which was produced by the Kerala State Electricity Board Ltd in the Writ Appeals.
- 2.12 It is apparent that the CGRF has passed the impugned order without examining the entire judgement in Writ Appeal No. 900 of 2013 and connected cases, and was only relying on certain passages of the judgement extracted in the KSERC order dated 22-01-2015.
- 2.13 The CGRF has not considered the grounds raised in the SLPs pending before the Hon'ble Supreme Court. The challenge was against the findings of the Learned Division Bench Order dated 23.05.2011 in Petition No. T.P – 87/2011 was applicable to all consumers and not merely to consumers above 11 KV in the Writ Appeal.
- 2.14 The challenge before the CGRF was on the ground that the demand is not in accordance with the formula contained in Order dated 23.05.2011 in Petition No. T.P 87/2011. The two challenges are entirely different. The challenge before the CGRF

is sustainable even if the SLPs are decided against the appellants before the Supreme Court. The CGRF has confused the two issues.

- 2.15 The CGRF has not relied on or considered the binding judicial authorities placed before it during the hearing of the case. The CGRF erred in concluding that pro rata per kVA development charges could be demanded, when the case of the Kerala State Electricity Board Ltd before the Learned Division Bench was that the KSEB Ltd was entitled to collect amounts actually spent by it reckoned in accordance with the procedure stipulated in KSERC dated Order dated 23.05.2011 in Petition No. T.P - 87/2011.
- 2.16 The CGRF has no authority to overrule or differ from the orders of the KSERC, to benefit the licensee. The appellant reserves the right to produce further documents and to raise additional grounds, if found necessary, at a later stage.
- 2.17 On above and other grounds/documents to be raised/produced before the Ombudsman, the Ombudsman may be pleased to set aside the impugned order and to grant the reliefs sought for below.
- 2.18 Nature of relief sought for from the Ombudsman.

Setting aside the impugned order of the CGRF and holding that:

1. The Respondent is not entitled to demand any per kVA development charge for transmission side development of common infrastructure.
2. The Respondent is entitled to demand charges only for the actual costs incurred for providing electricity connection to the Complainant, and that no notional or arbitrary amounts could be demanded.
3. The Respondent could make any demand only in accordance with the orders issued by the Regulatory Commission and more specifically in accordance with Order dated 23-05-2011 in Petition No. T.P – 87/2011 and Order dated 22-01-2015 in O.P No. - 22/2011.
4. The Respondent is bound by Circular No. KSEB/TRAC/S Code/SCC/R2/09/502 dated 13-07-2011 which was issued pursuant to Order dated 23-05-2011 in Petition No. T.P - 87/2011

5. To pass such other orders as the Ombudsman may deem fit and proper to pass on the facts and in the circumstances of the case.

**3. Arguments of the respondent:**

- 3.1 The respondent submitted that M/s Skyline Foundations applied for supply of power for a load of 400 kVA HT/LT connections to their residential project, SFS Branton Park at Padamughal, Kakkanad under Electrical Section, Thrikkakkara on 26-04-2012.
- 3.2 The feasibility of connecting this load to 11 KV Satellite feeder emanating from 66 KV Substation Kakkanad was sought by the office of the Assistant Executive Engineer, Electrical Sub Division, Vyttila from Transmission Division Brahmapuram.
- 3.3 The Executive Engineer, Transmission Division, Brahmapuram directed to collect the cost of giving supply from 66 kV Sub Station, Kakkanad @ Rs. 2,360.00 per kVA of allocated power to the beneficiaries as per the Board Order B.O. (FM) No. 3234/2008 (TPC2/305/2008) Dated, Thiruvananthapuram, 30-12-2008.
- 3.4 The total estimated costs sanctioned vide the above Board Order for the installation of the third 10 MVA transformer for enhancing the capacity of the station is Rs. 236 lakhs. As per the stipulations of the order under, the expenditure has to be realised from the new consumers. Hence, a proportionate amount of Rs 9,44,000.00 for 400 kVA of requested power was demanded by KSEB.
- 3.5 The Administrative Sanction for the estimate for giving supply of power to the residential apartment constructed by the appellant was sanctioned vide AS No. 29/12/13 dated 11-10-2012 of Executive Engineer, Electrical Division, Tripunithura. The cost of supply of the transmission part was intimated to the party vide letter dated 09-08-2012.
- 3.6 The estimate sanctioned for the installation of the 3<sup>rd</sup> 10 MVA transformer, specifically for the supply of power to the prospective beneficiaries was Rs. 236 lakhs, i.e., Rs. 2,360.00 per kVA. In this case only a cost per kVA amount of Rs. 2,360.00 per kVA, as per the sanctioned cost estimate and Board Order, is demanded from the beneficiary so as not to overburden only a single beneficiary seeking supply of power from 66 kV Substation, Kakkanad.

- 3.7 As per Section 46 of Electricity Act, 2003, the State Commission was empowered to frame regulations authorizing distribution licensee to charge from a person requiring supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.
- 3.8 Regulation 7 of the Supply Code, 2005, empowers the licensee to recover the expenditure. Clause 4 KSEB Terms and Conditions of Supply, 2005 authorizes licensee to recover the expenses reasonably incurred by the licensee for providing any electric line or plant required specifically for the purpose of giving such supply.
- 3.9 As per the above Regulations and Order No. TP 87/2011 of KSEB, the licensee could have demanded the entire cost of capacity enhancement from the appellant. Instead, as the appellant needed only 400 kVA, KSEB demanded only proportionate amount of capacity enhancement corresponding to 400 kVA which is Rs. 9,44,000.00. KSEB adopted this method to reduce the burden on the appellant of paying huge sums as transmission development charges.
- 3.10 In Ernakulam district, many applications for power allocation are received simultaneously, wherein initial requests could be met from the existing infrastructure, whereas catering some subsequent request, even though with a lower demand, necessitated construction of new substations / up-gradation of an existing one or installation / capacity enhancement of transformers etc. Once such work is sanctioned, there would be surplus capacity to cater to the requirements of subsequent applicants. This created an anomalous situation where some consumers needed to bear the entire burden of creating transformer infrastructure.
- 3.11 Even though Section 46 of the Electricity Act, 2003 and Regulation 7 of the Supply Code, empower KSEB to recover cost incurred for providing supply, often disputes arose as to from whom such cost has to be levied, whether it is from the first applicant who has submitted the request or from the applicant who has first remitted the required fees. For investments involving huge expenditure, only one applicant had to bear the entire cost for the establishment of capital works, even though his power requirement may only be a fraction of the total installed capacity. On the other hand, the other applicants, whose demand is catered from the investment already made, need not bear any cost towards, providing supply to his establishment. Hence in order to administer the processing of applications properly and to avoid the inequitable distribution of expenses, KSEB started to levy cost of giving supply as per kVA

rate of the total expenditure incurred for the development of the infrastructure facilities from all prospective consumers who are the beneficiaries of the electric plant so created.

- 3.12 It is submitted that the cost as per the estimate for construction of the entire capital work is not levied from such applicants and instead, the total cost is divided among all the beneficiaries/applicants considering their power requirement. The methodology was implemented in good faith in order to have an equitable distribution of expenses rather than burdening any one applicant from bearing the entire cost of providing the infrastructure, and relieving the others from bearing any cost.
- 3.13 The appellant had filed WP © 21344/2012 against the demand of transmission cost for the supply of power to his project SFS Branton Park. The Hon'ble High Court in the judgment dated 14-09-2012 directed KSEB to process the application based on bonds and undertaking.
- 3.14 The Hon'ble High Court has also ordered that connection will be given, on specific condition that within 2 weeks from the pronouncement of the judgment additional cost will be paid if demand is sustained and on failure of all the connections given will be cut off. An undertaking was executed by the appellant to this effect on 09-10-2012.
- 3.15 The Learned Single Judge in WP (C) No. 18726/2011 and connected cases found that collection of transmission side development charges are illegal.
- 3.16 The KSE Board filed Writ Appeal no. 900/2013 and connected cases against the common judgment rendered by single judge in W P (C) 18726/2011 and connected cases. Vide judgment dated 30-0-2014 in the above Writ Appeal the Division Bench of the Hon'ble High Court allowed the collection of transmission side development charges by setting aside the judgment of Learned Single Judge in WP (C) 18726/2011 and connected cases.
- 3.17 In the judgment in OP 22/2011 dated 22-01-2015 by the Hon'ble KSEB it is clearly stated in Para 81 (3) and 81 (4) KSEB Ltd can recover the transmission charges from the consumers according to the judgment of the Hon'ble High Court.
- 3.18 Based on the judgment in Writ Appeal 900 of 2013 and judgement in OP 22/2011, the appellant was requested to remit



the cost of the transmission part but the appellant didn't pay the same till date.

- 3.19 The appellant approached the Hon'ble High court against the above demand by filing WP (C) 8881/2015, Vide judgment dated 24-03-2015 the Hon'ble High Court directed the appellant to approach CGRF. Accordingly, the appellant approached CGRF and the Forum vide its order dated 20-07-2015 directing the appellant to pay the transmission development charges.
- 3.20 The demand of the transmission part is legal and not in violation of the existing provisions of the rules. The amount demanded is arrived based on the estimate cost of work for the capacity enhancement works necessitated for giving supply to the appellant and the prospective consumer. Hence the demand is legal.
- 3.21 The argument made by the appellant that amount demanded is not based on the cost data approved by KSEERC is baseless and against the facts. The amount demanded is arrived based on the estimate cost of work for the capacity enhancement works necessitated for giving supply to the appellant and the prospective consumer.
- 3.22 No illegal gain is expected by the KSE Board from the consumers. The demand to remit the expenditure for the additional capacity enhancement is quite legal and not violating any prevailing rules and regulations.
- 3.23 There are no valid grounds to exempt the appellant from remitting the required amount of money. All the arguments made by the appellant are baseless and liable to be dismissed.
- 3.24 It is clear from the above stated facts that the respondents are duty bound and acted in consonance with statutory and constitutional provisions and in compliance with the principles of natural justice. Hence it is humbly prayed to direct the appellant to remit the transmission charges and the petition may be dismissed.

#### **4. Analysis and findings**

- 4.1 A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 19-08-2015. Advocate Sri Ziyad

Rahman, was present for the appellant's side and Smt. Telsy George, Assistant Executive Engineer, Electrical Sub Division, Vyttila represented the respondent's side. Both sides have presented their arguments on the lines as stated above.

- 4.2 On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.
- 4.3 The instant appeal has been filed against the demand issued for a sum of Rs. 9,44,000.00 computed @ of Rs. 2,360.00 per kVA for 400 kVA as development charges on the transmission works and is not in consonance with the order dated 22-01-2005 in OP No. 22/2011 of the Commission.
- 4.4 The appellant is aggrieved to the extent that the respondent has no right to collect the pro-rata development charge or any other similar charge in any other name. However, he is entitled to get an estimate prepared as stipulated under Order dated 23-05-2011 in Petition No. T.P 87/2011 and Circular No. KSEB/TRAC/S Code/SCC/R2/09/502 dated 13-07-2011.
- 4.5 Further, the respondent could make any demand only in accordance with the orders issued by the Regulatory Commission and more specifically in accordance with Order dated 23-05-2011 in Petition No. T.P. 87/2011 and as per the stipulations contained in order dated 22-01-2015 in O.P No. 22/2011.
- 4.6 Hence the point to be decided in this case is as to whether collection of transmission side development charge on per kVA basis is in accordance with the above orders of the Regulatory Commission.
- 4.7 On a perusal of the above orders it can be seen that in the Petition No. TP-87/2011 filed by KSEB before the Regulatory Commission in the matter of approval of cost data for transmission works. In the order dated 30-11-2010 issued by the Commission, it is held 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.
- 4.8 The Commission has approved the following methodology for estimating the cost of providing HT/EHT connections and for executing transmission works in favour of other beneficiaries.

<b>Sl. No.</b>	<b>Description</b>	<b>Amount (Provisional)</b>
1	Cost of materials	A
2	Erection & Commissioning	B = 7.5% of A
3	Transportation, Insurance & contingencies	C = 6% of A
4	Civil Works and special works like SCADA etc if any	As per estimation = D
5	Tree cutting compensation if any	As per estimation = E
6	Sub-Total	F = A+B+C+D+E
7	Overhead/Supervision charges	G = 10% of F
8	Total	F+G
9	Taxes & Duties if any extra	

- 4.9 In the order it was also specified that the licensee shall prepare the estimate of costs of the works based on the principles laid down above. A copy of the estimate thus prepared should be handed over to the beneficiary under acknowledgement.
- 4.10 On completion of works, the licensee shall prepare an evaluation statement of the work, based on actual quantities, within 3 months of completion/energisation of the works and hand over the same to the beneficiary.
- 4.11 The beneficiaries shall be bound to remit the excess cost if any, within one month, failing which the Licensee shall be entitled to recover the same, as if it was arrears of current charges under appropriate regulations. Excess remittances if any shall be refunded by the Licensees by adjustment in the monthly current charges/ direct refund within a period of 3 months.
- 4.12 The Commission has also ordered that any dispute on the matter, including the rates, quantum of works executed etc shall be subject to review by CGRF and Ombudsman. Therefore, any individual dispute of the consumer related to the development charges can be brought before such Forum by the respective consumers.
- 4.10 In petition No. OP 22/2011 the Commission had issued an interim order on 07-10-2011. In the said interim order the following directions were given.
- (i) The Kerala State Electricity Board is directed not to proceed with the pro-rata system devised arbitrarily till a decision is taken on the OP 22/2011 filed by KSSIA (Ernakulam)
  - (ii) KSEB is further directed to give connection to the consumers listed in Exhibit-1 of the petition OP 22/2011

by executing indemnity bond as commitment for making payments of additional charges if allowed in final orders of the Commission on the above petition.

- (iii) KSEB may proceed with collection of transmission charges as per the order of the Commission dated 23-05-2011 on TP 87/2011.

4.13 In view of the above direction issued by the Commission on 07-10-2011, various consumers filed Writ Petitions before the Hon'ble High Court of Kerala challenging the levy of transmission side development charges on per kVA basis by KSEB.

4.14 The Single Bench of Hon'ble High Court in its common judgment dated 22-11-2012 in WP (C) No. 18726/2011 and connected cases, held that the levy of transmission side development charges and the demand for non-refundable advance impugned in the Writ Petitions was illegal and on that basis the Learned Single Judge had ordered that the amounts realized from the Writ Petitioners should be refunded to them with simple interest @ 6% per annum.

4.15 KSE Board filed Writ Appeal no. 900/2013 and connected cases challenging the common judgment rendered by Single Judge in WP (C) 18726/2011 and connected cases.

4.16 The Division Bench of the Hon'ble High Court in its judgment dated 30-06-2014 in the above Writ Appeals allowed the collection of transmission side development charges by setting aside the judgment of Learned Single Judge in WP (C) 18726/2011 and connected cases.

4.17 Meanwhile the Hon'ble KSEB had issued a final order in petition OP No. 22/2011 dated 22-01-2015. The order reads as follows:

(1) KSEB Limited has the right to recover the reasonable expenditure, specifically incurred by its distribution profit centre for providing electric line and electrical plant required for giving supply of electricity to any consumer irrespective of whether such electric line and electrical plant are in the distribution system or the transmission system owned by the distribution profit centre, subject to the following conditions:-

- (i) the expenditure has been incurred by the distribution profit centre;
- (ii) the expenditure is reasonable;

- (iii) the expenditure has been estimated fairly and transparently in accordance with the cost data approved by the Commission;
- (iv) the expenditure is incurred for providing electric line or electrical plant used for the purpose of giving that supply; and
- (v) the expenditure is not included in the ARR & ERC or in any other investment plan approved by the Commission,

(2) The individual cases for recovery of expenditure from the consumers under section 46 of the Electricity Act, 2003, as mentioned in the petition may be settled in accordance with the principles pronounced by the Hon'ble High Court in its Judgment dated 30-06-2014 in Writ Appeal No. 900/2013 and connected cases.

(3) The individual cases which arose on or before 31-03-2014, for recovery of expenditure from the consumers under section 46 of the Electricity Act, 2003, which are not mentioned in the petition, may also be settled in accordance with the principles pronounced by the Hon'ble High Court in its Judgment dated 30-06-2014 in Writ Appeal No. 900/2013 and connected cases.

(4) The recovery of expenditure under Section 46 of the Electricity Act, 2003 in the cases which arose on or after 01.04.2014 shall be regulated in accordance with the provisions in the Kerala Electricity Supply Code, 2014, since the Judgment of the Hon'ble High Court dated 30.06.2014 in Writ Appeal No. 900/2013 and connected cases was issued in view of the provisions in the Supply Code, 2005.

4.18 In the letter dated 31-12-2014 addressed to Assistant Engineer, Electrical Section, Thrikkakkara, the appellant has submitted that the matter of SFS Branton Park was not the subject matter of W.A. No.900 of 2013 or any other Writ Appeals decided along with the above Writ Appeal.

4.19 But it may be noted that various consumers filed writ petitions before the High Court challenging the levy of transmission side development charges on per kVA basis by KSEB. Writ Appeal No. 900/2013 and other connected appeals were filed by KSEB challenging the common judgment by the single judge. The appellant is not a party in the Writ Appeal No. 900/2013 or other connected cases and SLPs filed before the Hon'ble Supreme Court.

4.20 The Commission has not admitted an argument that the judgment dated 30-06-2014 of the High Court in Writ Appeal

No.900/2013 and connected cases is only applicable to the petitioners mentioned therein and it has no general application. The Commission cannot take a view that the said judgment of the High Court in a Writ Appeal has no application in other individual cases on the same matter.

- 4.21 Generally the principle pronounced by the Hon'ble High Court in its judgment has to be followed by KSEB in similar cases. If the petitioner wants such clarification it is for him to move the Hon'ble High Court and obtain such clarification.
- 4.22 In the SLPs filed by the connected parties against the judgment in Writ Appeal No. 900/2013, the Hon'ble Supreme Court have not stayed or annulled the judgment in the Writ Appeal.
- 4.23 On a perusal of the estimate for enhancing the station capacity by installing a 10 MVA Transformer for an amount of Rs. 236 lakhs prepared by the respondent, it is found that the estimate prepared is not in consonance with Circular No. KSEB/TRAC/S Code/SCC/R2/09/502 dated 13-07-2011 which was issued pursuant to Order dated 23-05-2011 in Petition No. TP 87/2011. The following variation is noted against the methodology for fixing the cost as stipulated by the KSEB in its orders.
1. Added 3% extra for spares in the estimate of materials (Part-1 Materials) which is not allowable as per KSEB circular dated 13-07-2011. Due to this an excess amount of Rs. 5,01,489.47 is charged.
  2. Erection & Commissioning (Part-2) was calculated as 10% of part-1 in the estimate instead of 7.5%.
  3. Insurance, transportation & contingencies was calculated as 13.75% (10% + 3.75%) of Part I instead of 6%.
- 4.24 In addition to the above discrepancies in the preparation of estimate, the respondent has not seen handed over a copy of the estimate prepared without observing the cost of works based on the latest material cost data. Further, the respondent has not prepared an evaluation statement of the works based on actual quantities within 3 months of completion / energisation of the work as stipulated in the Order dated 23-05-2011 in Petition No. TP 87/2011 of Commission.
- 4.25 It is the bounden responsibility on the part of respondent to prepare the estimate fairly and transparently in accordance with the cost data approved by the Commission and on completion of works the licensee has to prepare and hand over an evaluation statement of the work, based on actual quantities, within 3 months of completion/energisation of the works. On the basis of

this the excess/arrears shall be recovered/ adjusted by the respondent. This was not seen followed in this case which amounts to lapses on the part of respondent.

- 4.26 According to statutory provisions and facts it is clear that distribution licensee can recover the expenditure specifically incurred for giving connectivity to a consumer provided
1. The expenditure has been incurred by the distribution licensee.
  2. The expenditure is reasonable.
  3. The expenditure has been estimated fairly and transparently in accordance with the cost data approved by the Commission.
  4. The expenditure is incurred for providing electric line or electrical plant used for the purpose of giving that supply and
  5. The expenditure is not included in the ARR and ERC or in any other investment plan approved by the Commission. Such expenditure can be recovered irrespective of whether it is for distribution line or transmission line or sub station.
- 4.27 As per Regulation 8 (3a) of Supply Code, 2005 deals with supply where new sub station is to be commissioned – ***if the licensee finds that supply of electricity to premises applied for requires commissioning of a new sub station which is not covered as part of the investment plan approved by the Commission, the licensee shall inspect the premises of the applicant and prepare the cost estimate for the work and intimate the applicant within one month of receipt of application.***
- 4.28 According to the Commission the judgment of Hon'ble High Court dated 30-06-2014 in Writ Appeal No. 900/2013 and connected cases has to be understood and implemented in view of the Section 46 of Electricity Act, 2003. The licensee may require the applicant to pay the cost estimate worked out under the sub clause (3 a) within a period of one month or such extended period as the licensee may allow at the request of the applicant. Here in this petition the respondent has not produced any documents to prove these facts.
- 4.29 However, the respondent stated that for investments involving huge expenditure only one applicant had to bear the entire cost for the establishment of capital works even though his power requirement may only be a fraction of the total installed capacity.

- 4.30 On the other hand, the other applicants whose demand is catered from the investment already made need not bear any cost towards providing supply to his establishment.
- 4.31 In order to administer the processing of applications properly and to avoid inequitable distribution of expenses, KSEB started to levy cost of giving supply as per kVA rate of total expenditure incurred for the development of the infrastructure facilities from all prospective consumers who are the beneficiaries of the electric plant so created.
- 4.32 The cost as per the estimate for the construction of the entire capital work is not levied from such applicants and instead, the total cost is divided among all the beneficiaries/applicants considering their power requirement.
- 4.33 The methodology was implemented in good faith in order to have an equitable distribution of expenses rather than burdening any one applicant from bearing the entire cost of providing infrastructure, and relieving the others from bearing any cost.
- 4.34 Hence the demand of charges on transmission part is legal and not in violation of existing provisions of the rules. The amount demanded is arrived based on the estimate cost of work for the capacity enhancement necessitated for giving supply to the appellant and the prospective consumers.

## **5 Decision**

- 5.1 The Division Bench of Hon'ble High Court laid down the law in its judgment dated 30-06-2014 in Writ Appeal No. 900/2013 and in view of the direction issued by the Hon'ble Commission to treat the pending cases in accordance with law laid down by the Hon'ble High Court till 01-04-2014, the date on which new Supply Code came into existence.
- 5.2 The individual cases which arose on or before 31-03-2014 for recovery of expenditure from the consumers under Section 46 of Electricity Act, 2003 which are not mentioned in the petition may also be settled in accordance with the principles pronounced by the Hon'ble High Court in its judgment dated 30-06-2014 in Writ Appeal No. 900/2013 and connected cases.
- 5.3 According to the judgment in Writ Appeal No. 900 of 2013 of Hon'ble High Court and in OP No. 22/2011 of Hon'ble Commission the licensee can recover the transmission charges from the appellant and this Authority is of the view that there is no violation in issuing the demand for transmission charges. But it is found that the cost estimated is not in accordance with



the order dated 23-05-2011 in petition No. TP 87/2011. Hence the respondent is directed to issue revised demand in accordance with the order dated 23-05-2011 in petition No. TP 87/2011 to the appellant on proper acknowledgement within a period of 30 days.

- 5.4 Since the work is already completed and energised, the respondent shall prepare an evaluation statement of the work based on actual quantities.
- 5.5 The appellant shall remit the excess cost if any, within one month, failing which the Licensee shall be entitled to recover the same, as if it was arrears of current charges under appropriate regulations.
- 5.6 Excess remittances if any shall be refunded by the respondent by adjustment in the monthly current charges/ direct refund within a period of 3 months.
- 5.7 Having concluded and decided as above it is ordered accordingly. The appeal filed by the appellant is admitted to the extent as ordered above. The order of CGRF in petition No. CGRF-CR/Comp.11/2015-16 dated 20-07-2015 is modified accordingly. No order as to costs.

#### **ELECTRICITY OMBUDSMAN**

P/139/2015/\_\_\_\_\_ Dated:\_\_\_\_\_

1. M/s Skyline Foundations & Structures (P) Ltd., Karikkamuri Cross Road, Cochin 682011
2. The Asst. Executive Engineer, Electrical Sub Division, KSE Board Limited, Vyttila, Ernakulam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018