

THE STATE ELECTRICITY OMBUDSMAN  
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**APPEAL PETITION NO. P/005/2016**

(Present: V.V. Sathyarajan)

Dated: 26<sup>th</sup> April 2016

Appellant : Smt. C.P Maggie  
Hotel Prince Palace,  
Palayam, Thiruvananthapuram

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd,  
Puthenchantha,  
Thiruvananthapuram District

**ORDER**

**Background of the case:**

The appellant is a consumer having consumer nos. 11481 and 4758 with connected load of 5 kW and 39.76 kW respectively under the Electrical Section, Cantonment, Thiruvananthapuram. The appellant applied for an additional load of 70 kW after completing the construction of the building, but the respondent objected the enhancement of connected load and directed the appellant to comply with the formalities of High Rise building including erection of a new transformer for the enhancement of the connected load. The contention of the appellant is that the building is only a multi-storeyed one and not coming under the category of High rise buildings.

On the other hand, the respondent's contention is that as per the approved plan there is a terrace floor which is situated below the lift machine room and above the fourth floor. The terrace floor heights to 2.57 metre is a dwelling area which can be used for other functions and hence the total height of the building is 18.65 metre which comes under high rise building category and LT supply to high rise building can be issued only after satisfying the conditions as envisaged under relevant Regulations in the Supply Code, 2014.

Aggrieved against the stand of respondent, the appellant approached CGRF (South), Kottarakkara and filed OP No. 1577/2015. The Forum disposed of the petition on 18-01-2016 by upholding the decision of the respondent that the building having height of more than 16 metre and the appellant is bound to

comply the formalities of high rise building for availing enhancement of connected load. Not satisfied with the above decision, the appellant filed this appeal before this Authority.

**Arguments of the appellant:**

Appellant in this case is a consumer having consumer Nos. 11481 and 4758 with a connected load of 5 kW and 39.76 kW respectively, within the jurisdiction of Electrical Sub Division, Puthenchantha, Thiruvananthapuram. The appellant has availed a new connection for the construction purpose with consumer No. 11481. The appellant applied for an additional load of 70 kW after the completion of the multi-storeyed building, for which the appellant produced the approval from the Department of Electrical Inspectorate and Occupancy Certificate along with the sketch of building showing total area of 946.32 m<sup>2</sup> from ground floor to 5<sup>th</sup> terrace floor as the same being the area which can be occupied in tune with the purpose of construction. The building has also got No Objection Certificate from the Fire and Rescue Services in which the height of the building is clearly stated as 15.95 metres.

Even after submitting application for enhancement of connected load for 70 kW, the respondent objected the above proposal vide his letter dated 27-07-2015 and directed the appellant to comply with the formalities of High Rise building including erection of a new transformer for the enhancement of the connected load. The newly constructed building which is alleged to be a high rise building is only 15.95 meters in height and will not come under the purview of high rise buildings. Rule 110 of the Kerala Municipality Building Rule says that buildings having the height of 16 metres or more will be considered as a high rise building.

The Redressal Forum perused the commission report which stated that the terrace floor having an area of 73.67 metre and a height of 2.7 metres is a part of the building and above the terrace floor there is another construction of machine room and a stair case for the machine room having the height of 2.5 metres and in light of the commission report dismissed the complaint of the appellant stating that the building is a High Rise building. In the report of the commission itself it is stated that the construction in the 5th terrace floor is limited to stair case cabin, fire staircase and lift room. Further in Rule 32 of the Kerala Municipality Act, which deals with the height of the building, it is stated that: "Provided further that appurtenant roof structures like stair case tower, head tanks, air conditioning rooms, lift room, cellular telecommunications tower structures, cabin rooms, chimneys, parapet walls and similar structures other than pent houses shall not be included in the height of the building'

Hence the alleged 2.7 metres cannot be considered as a part of the total height of the building to consider it as a High Rise building and appellant is not liable to comply with the formalities of a High Rise building such as erection of transformer, Ring Main Unit etc for availing the connection, Therefore the findings and the conclusion arrived at by the lower authority taking into account the height of the construction which are statutory excluded from the height of the building is wrong and liable to be set aside'

### Nature of relief sought from Ombudsman

- a. To set aside the order of Consumer Grievance Redressal Forum
- b. To issue Order stating the newly built building as a non High Rise Building
- c. To instruct the Assistant Engineer to grant the extra load of 70 kW for the building without complying with the formalities of High Rise building.

### **Arguments of the respondent:**

The Appellant has 2 premises with consumer numbers 4158 & 11481 respectively with connected load 39.76 kW and 5 kW. The later was taken for construction purpose under LT VII A. The construction of the building viz. Hotel Prince Palace at Palayam, Thiruvananthapuram has been completed and the appellant approached licensee for a power feasibility of 74 kW. The gist of complaint by the appellant is that the building is only a multi-storeyed one and not coming under the category of High rise buildings. Hence she was not ready to satisfy the conditions as envisaged under the relevant Clauses for High Rise building in Kerala Electricity Supply Code, 2014.

The Kerala Municipality Building Rules; Clause 110 is stated as follows. "High-rise building means a building having a height of 16 metres or more". The said building heights to 18.65 metres and hence comes under the High Rise category. The appellant along with the request for power feasibility submitted a copy of approved plan from the Executive Engineer, Corporation of Thiruvananthapuram duly attested by Town Planning Officer. In addition to fourth floor, there is a terrace floor with a dwelling area of 73.67 sq. meters.

The certificate accorded by Thiruvananthapuram Corporation is marked and clearly indicated in the document that the building has a

1. Ground floor
2. First floor to fourth floor and
3. Terrace floor.

In addition to this, there is a machine room over the terrace floor again heights to 2.5 metre. The area of terrace floor is 73.67 metre square and its height is 2.7metre till fourth floor (Excluding terrace floor and including fourth floor) is 15.95m. Hence the total physical height of the building is Height till 4th floor + Terrace floor + Machine room = 15.96+2.7+2.5 = 21.15 meter. But machine room can be exempted and hence height is arrived as 18.65m.

Further, appellant submitted a no objection certificate from the Divisional Officer, Fire and Rescue Services, Thiruvananthapuram. Appellant rely on this certificate and claim the height as 15.95 metres. It is clearly mentioned under Clause (4) that "This no objection certificate pertains only to the fire fighting arrangements installed in the building. The civil construction shall be got inspected and approved by the Local Authority. A measurement was made at site

by a Commission appointed by Hon'ble CGRF in the presence of appellant and the same was duly accepted by the appellant.

However, Section 32 of The Kerala Municipality Building Rules grants certain exceptions which may not be counted as the height of the building. The total height from the ground level to fourth floor (including 4th floor) is 15.95 m. Terrace floor is situated above the fourth floor and is 2.7m. Machine room is still above and is at a height of 2.5m above terrace floor. The machine room can be exempted from the height. Split-up details of terrace floor (73.67 metre square):

|                         |         |
|-------------------------|---------|
| General staircase cabin | 18.92M2 |
| Fire staircase cabin    | 11.05M2 |
| Lift Room               | 6.37M2  |
| Roofed area             | 37.33M2 |

As per clause 32 of Kerala Municipality Building Rules the terrace floor may not be included in height if it comprises only stair case towers and lift room. But it consists of a roofed area comprising of 37.33 Metre square dwelling area which can be used for other function. Hence in addition to 15.95 metre, the height of 2.7 metre of terrace floor thus totalling to a height of 18.65m. Any multi-storeyed building more than 16m height comes under the category of High Rise building in Kerala Municipality Building Rules. Hence the procedure for effecting electricity connection attracts Clause 49 of Kerala Electricity Supply Code, 2014. Clause 49(5) of supply Code, 2014 of Hon'ble Kerala state Electricity Regulatory Commission is quoted below.

"The development authority or the promoter or the builder or such other person, as the case may be, who construct such colony or complex or high rise building under the clauses (a), (b) and (c) (High rise building irrespective of load demand) of sub regulation 1 above shall at his cost construct the required internal distribution network including the service line, transformer, switch gear etc. as per the detailed scheme approved by the Electrical Inspectorate, for receiving power from the Licensee and for distributing it and shall hand over such internal distribution network up to and including the metering point to the licensee before commencement of supply of Electricity.

To establish that it is not a High Rise building the appellant submitted the following documents.

1. Copy of Kerala Municipality Building Rules; Clause (110).
2. Building plan from Thiruvananthapuram Corporation
3. Occupancy Certificate.
4. NOC from Fire and Rescue Services.

But none of the document can prove that the construction is not a high rise building. Under Clause (4) last Paragraph of the Fire Certificate issued by the Divisional Officer, Fire and Rescue Services, Thiruvananthapuram it is clearly stated that the No Objection Certificate pertains only to the fire fighting arrangements installed in the building. The Civil construction shall be got

inspected and approved by the appropriate Local Authority. The approval of Local Authority is a talking record in terms of civil construction. Terrace part is a dwelling area comprising of 73.67M<sup>2</sup>.

A physical scenario of the terrace floor and machine room presented before Hon'ble State Electricity Ombudsman (Commission report of Hon'ble CGRF) is clearly shows that a dwelling area of 37.33 M<sup>2</sup> is constructed other than lift room/stair case towers. So the terrace floor must be added to calculate the total height thus totalling to 18.65m which figures under High Rise building. As stated by the appellant the report of commission regarding terrace floor is not limited to stair case and lift room, but it extends to a roofed dwelling area of 37.33 M<sup>2</sup>. Irrespective of connected load, the applicant is liable to comply with the formalities of a High Rise building. Appellant shall at his cost construct the required internal distribution network including the service line, transformer, switch gear etc. The findings and the conclusion arrived at by the Hon'ble CGRF taking into account the height of building is correct and as per Rules and Regulations in force.

### **Analysis and Findings**

The hearing of the case was conducted in my chamber at Edappally, Kochi on 20-04-2016. Advocate Vishnu B. Kurup represented for appellant's side and Sri Noushad S, Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Puthanchantha represented for the respondent's side. Both sides have presented their version on the lines as stated above. From the pleading on records and submission raised by the appellant, statement of facts filed by the respondent, the arguments made in the hearing and considering all the facts and circumstances of the case, the issue arose for consideration in this appeal whether the appellant's premises is a building coming under High Rise category or not.

The appellant is aggrieved against the directions of the respondent to comply with the procedures for effecting electricity connection as per Regulation 49 of Kerala Electricity Supply Code, 2014. According to Regulation 49(5) of Supply Code, *"the development authority or the promoter or the builder or such other person, as the case may be, who construct such colony or complex or high rise building under Clauses (a), (b) and (c) of sub regulation (1), shall at his cost construct the required internal distribution network including the service line, transformer, switch gear etc. as per the detailed scheme approved by the Electrical Inspectorate for receiving power from the licensee and for distributing it and shall handover such internal distribution network up to and including the meter point to the licensee before commencement of supply of Electricity"*. So irrespective of connected load the appellant is liable to install service line, transformer and switch gear etc. for receiving power from the licensee.

While considering the height of the building the respondent included the terrace floor having an area of 73.67 M<sup>2</sup> and its height of 2.7 M and found that the total height of the building is 18.65 Metre. In addition to the terrace floor, there is a machine room over the terrace floor again heights to 2.5 Metre. But the machine room can be exempted and hence the height is arrived as 18.65 Metre.

The respondent also argued that the measurement was taken at site by a Commission appointed by the CGRF in the presence of appellant and the same was duly accepted by the appellant. As per Clause 32 of Kerala Municipality Building Rules, the terrace floor may not be included in height if it comprises only staircase towers and lift room. But it consists of a roofed area comprising of 37.33 M<sup>2</sup> dwelling area which can be used for other functions. Hence in addition to 15.95 Metre the height of 2.7 Metre of terrace floor thus totalling to a height of 18.65 Metre. Any multi-storeyed building more than 16 Metre height comes under the category of High Rise building in Kerala Municipality Building Rules.

As per Rule 110 of the Kerala Municipality Building Rules 1999, "High rise building means a building having a height of 16 metres or more". The appellant has produced the approval from the Department of Electrical Inspectorate and Occupancy Certificate along with the drawing sketch of building showing total area of 946.32 m<sup>2</sup> from ground floor to 5th terrace floor. The building has also got No objection Certificate from the Fire and Rescue Services in which the height of the building is clearly stated as 15.95 metres.

On going through the relevant records submitted from either side it can be seen that the height of the building is 15.95 Metre. Whereas the respondent contented that the terrace floor having roofed area of 37.33 M<sup>2</sup> can be used for dwelling purpose in future. At the very outset this contention cannot be relied for the simple reason that this is only an assumption. Whereas the Rule 32 of the Kerala Municipality Building Rules grants certain exemptions which read as follows:

*"Provided further that appurtenant roof structures like staircase tower over head tanks, air conditioning rooms, lift rooms, cellular telecommunication equipment or tower structures, cabin rooms, chimneys, parapet walls and similar roof structures other than pent houses shall not be included in the height of the building for the purpose of this rule: Provided also that architectural features serving no other function except that of decoration shall not be included in the height of the building for the purpose of this rule."*

From the above, it is clear that the roof structures mentioned in the Rule and similar roof structures other than pent houses shall not be included in the height of the building. The main argument of the respondent that there is a roofed portion in the terrace floor with a plinth area of 33.33M<sup>2</sup> which can be used as a dwelling place in future cannot be accepted as a valid ground in adding the total height of the building which is against the substance of Rule 32. Since there is no pent house in the terrace building, and similar roof structures other than pent houses shall not be included for considering the height of the building, the appellant's building cannot be treated under the category of High Rise building.

### **Decision**

As per Rule 32 of the Kerala Municipality Building Rules similar roof structures other than pent houses shall not be included for the purpose of considering the height of the building. Since the terrace building is not having a

pent house the appellant's argument that this area can be used as a dwelling place in future cannot be justified. Hence the respondent is directed to issue feasibility for enhancing the connected load of 70 kW without insisting the formalities of High Rise building category.

Having concluded and decided as above it is ordered accordingly. The appeal petition is found having some merits and is admitted. The order dated 18-01-2016 of CGRF in OP No. 1577/2015 is set aside. No order as to costs.

## **ELECTRICITY OMBUDSMAN**

P/005/2016/ \_\_\_\_\_ Dated: \_\_\_\_\_

Delivered to:

1. Smt. C.P Maggie, Hotel Prince Palace, Palayam, Thiruvananthapuram
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Puthenchantha, Thiruvananthapuram District

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, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.