

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/019/2016

(Present: V.V. Sathyarajan)

Dated: 30th June 2016

Appellant : Sri. Alex Thomas,
Managing Director,
B' Canti Homes (P) Ltd.,
Jawahar Nagar,
Thiruvananthapuram.

Respondent : The Assistant Executive Engineer
KSE Board Limited,
Electrical Sub Division,
Vellayambalam,
Thiruvananthapuram.

ORDER**Background of the case:**

The appellant, Sri Alex Thomas is the Managing Director of B' Canti Homes (P) Ltd, who is an applicant for HT power supply with a connected load of 315 kVA to the building B' Canti River Park Apartments which comes under the jurisdiction of Electrical Section, Vellayambalam. The respondent after collecting the estimate amount has extended 11 kV supply to the multi-storied building of the appellant. The works of 11 kV cable laying up to consumer premises, erection of an indoor transformer and allied LT side works and terminal arrangements including metering panel were carried out by the appellant after remitting the Supervision charges. Later, a number of LT service connections were effected after collecting the ECSC (Estimate Cost for Service Connection) charges for providing weather proof service connections for LT consumers as approved by the Commission.

The appellant preferred a complaint before the CGRF (South), Kottarakara, pleading to refund the amount collected as ECSC with interest. The CGRF has found that the licensee shall collect only the energisation charges as authorized by the KSEERC and the excess amount collected from the appellant shall be refunded. Not satisfied with the above order, the appellant

has approached this Authority with this appeal petition seeking relief with a plea to declare that collection of ECSC amounts while registering and allotting consumer numbers to 26 independent units at B' Canti River Park Apartment by the Assistant Engineer is illegal and issue orders to refund such amounts in full, as onetime payment with interest at double the bank rate with effect from 25-07-2014.

Arguments of the appellant:

The question of law involved in this dispute is whether, the Distribution Licensee could demand and collect ECSC amounts (formerly OYEC), which is the expenses for providing LT supply from the distributing mains of the licensee to where no LT electricity supply is provided by the licensee and where no expenses are incurred. Also whether the Consumer Grievance Redressal Forum (South) had acted judiciously while ordering to collect energisation charges and refund the balance amount, while such collection of amount was never authorized by the Hon'ble State Regulatory Commission during the period of this collection and ordering violating the settled position under the orders of the Hon'ble Electricity Ombudsman in appeals No P/282/2012, P/303/2012, P/311/2012 & P/321/2012 and order of the Hon'ble High Court of Kerala in WP(C).No. 28036 of 2012 (D) dated 18-02-2014 and similar other writ petitions.

This appeal is submitted before this Hon'ble Electricity Ombudsman for awarding such remedies and reliefs prayed in.

Appellant herein is the applicant for HT electricity supply to the building "B' Canti River Park Apartments" under the geographical jurisdiction of Electrical Section, Vellayambalam for a total load of 315 kVA. This appeal is filed in the capacity as a consumer defined under Clause 2(g) of KSERC (CGRF & Electricity Ombudsman) Regulations. The instant appeal is submitted directing against collection of unauthorized amounts from the appellant as ECSC, which is "estimate cost for service connection" (formerly OYEC), where such collection was not at all required. The ECSC amounts were collected, while assigning consumer numbers to different units in River Park Apartments". Consumer numbers were assigned for identifying independent units for collecting electricity charges under LT tariff for the electricity supplied at HT by the licensee. These amounts were demanded in person abruptly on collecting the security deposit. When asked the requirement of remitting this amount, it was simply told that these amounts are to be remitted; otherwise electricity supply could not be commenced. Thereby, this appellant was forced to remit the amounts.

The amounts collected were applicable expenses for electricity supply from the distributing mains of the licensee using weather proof wire and other required materials approved by the State Regulatory Commission under the

order in OP No. 30/2013 dated 28-02-2013. However no such requirement was there, since this appellant had provided at his expenses all electrical installations including an indoor HT/LT substation, connected electrical installations to distribute electricity in the building and energy meters to all independent units etc. The above were provided by this appellant as required under Clause 13 of KSEB Terms and Conditions of Supply and in compliance with Central Electricity Authority (M r S & E S) Regulations, which is also required under the above Regulation. The licensee has the only obligation of providing and maintaining HT electricity supply at the incoming terminal of the indoor HT/LT substation in the building. Also in this instant case, the licensee never supplied LT electricity and hence incurred any expenses for it and hence collection of estimate cost for service connection detailed hereunder is not at all authorised under Section 46 of Electricity Act, 2003. Thus the opposite party has caused grievance to the appellant and this appeal is submitted for such relief and remedies prayed in.

This appellant has provided the required service line etc for HT electricity supply from the distributing main of the licensee to the indoor substation in the building under the supervision of the licensee. The licensee had collected Rs. 2,70,100.00 towards supervision charges for the above work . On this matter also this appellant has genuine complaint and separate complaint will be submitted on that matter.

1. The Executive Engineer, Electrical Division, Thiruvananthapuram sanctioned an estimate amounting to Rs. 29,71,000.00 for HT electricity supply to the building "B' Canti River Park Apartments". This appellant has elected to provide the service line etc under Clause 8(9) of Supply Code, 2005 and provided it accordingly. This appellant provided all electrical installations including an indoor HT/LT substation and energy meters to all independent units etc in the building as required under Clause 13 of KSEB Terms and Conditions of Supply. The licensee collected Rs. 2,70,100.00 towards 10% supervision charges for the work. True copy of the estimate for Rs. 29,71,000.00 and hence an estimate of supervision charges for Rs. 2,70,100.00 and administrative sanction to the work are produced and marked as Exhibit PI &P2 respectively.
2. The appellant provided 315 kVA HT/LT indoor substations. Also installed all electrical installations as required under statutes for distributing LT electricity to the independent units in the building. This appellant also provided the LT energy meters to all independent units in the building instead of requiring the licensee to provide premises meters. The Electrical Inspector issued energisation approval for the 315 kVA HT/LT indoor substation and all electrical installations in the building. This appellant submitted this energisation approval, applications and connected papers to the Assistant Engineer for

commencing HT electricity supply and for allocating consumer numbers to 26 independent units in the building. He collected application fee and then on 25-07-2014 collected security deposit and then allocated consumer numbers and along with it further collected amounts as ECSC totalling to Rs. 2,73,200.00.00 as detailed hereunder. The only work remaining to be done by the licensee before commencement of 11 kV electricity supply was sealing the terminals of the meters and for this no amount is realizable from this appellant. Thereby, it is without any valid reason, the licensee has collected ECSC amounts. Hence collection of these ECSC amounts was illegal. Statement of ECSC amounts collected from the appellant.

Sl. No.	Con. No.	Name	Amount Rs.	Date of Collection
1	16833	Alex Thomas	17,250	25-07-2014
2	16834	Alex Thomas	10,750	25-07-2014
3	16837	Alex Thomas	10,750	25-07-2014
4	16838	Alex Thomas	10,750	25-07-2014
5	16844	Alex Thomas	10,750	25-07-2014
6	16845	Alex Thomas	10,750	25-07-2014
7	16847	Alex Thomas	10,750	25-07-2014
8	16848	Alex Thomas	10,750	25-07-2014
9	16849	Alex Thomas	10,750	25-07-2014
10	16850	Alex Thomas	10,750	25-07-2014
11	16852	Alex Thomas	4,350	25-07-2014
12	16853	Alex Thomas	10,750	25-07-2014
13	16854	Alex Thomas	10,750	25-07-2014
14	16855	Alex Thomas	10,750	25-07-2014
15	16856	Alex Thomas	10,750	25-07-2014
16	16858	Alex Thomas	10,750	25-07-2014
17	16859	Alex Thomas	10,750	25-07-2014
18	16860	Alex Thomas	10,750	25-07-2014
19	16861	Alex Thomas	10,750	25-07-2014
20	16862	Alex Thomas	10,750	25-07-2014
21	16863	Alex Thomas	10,750	25-07-2014
22	16865	Alex Thomas	10,750	25-07-2014
23	16866	Alex Thomas	10,750	25-07-2014
24	16867	Alex Thomas	10,750	25-07-2014
25	16868	Alex Thomas	10,750	25-07-2014
26	16869	Alex Thomas	4,350	25-07-2014
Total			2,73,200	

This collection of amounts is violation of Section 46 of Electricity Act, 2003 and settled position under the orders of the Hon'ble Electricity Ombudsman in appeal No P/282/2012, P/303/2012, P/311/2012 & P/321/2012 and order of the Hon'ble High Court of Kerala in WP(C).No. 28036 of 2012 (D) dated 18-02-2014 and similar other Writ Petitions. On the above grounds and other to be urged during the hearing, this Hon'ble Electricity Ombudsman may award such reliefs and remedies prayed in.

Nature of relief sought from the Ombudsman

1. To call for the documents and to hold and declare that collection of ECSC amounts while registering and allotting consumer numbers to 26 independent units at B' Canti River Park Apartment by the Assistant Engineer is illegal and issue orders to refund such amounts in full, as onetime payment with interest at double the bank rate with effect from 25-07-2014.
2. To pay the cost and expenses of the petition which the Hon'ble Forum may find it adequate.
3. Such other relief the appellant prays for, during the course of appeal.

Arguments of the respondent:

The respondent raised the following contentions.

The statement of the appellant that, the demand and collection of ECSC amount is without authority, since no expenses incurred by the licensee and, the order of the CGRF (South) to collect the energisation charges and refund of ECSC is against order of KSERC, Electricity Ombudsman and Honourable High Court, is misconceived hence denied. The Honourable CGRF (South) after elaborately considering matter rightly held that the licensee is empowered to realise the energisation charges as authorised by KSERC and also directed that the excess amount collected from the petitioner shall be refundable. Thus there is nothing wrong in the order dated 29-01-2016 in OP. No 1560/2015. Further the earlier order of the CGRF (South) in several OPs holding that the licensee is eligible to collect Supervision charges while providing electric connection at LT side. The supervision charges @ 10% are provided in Regulation 8 (9) of the Electricity Supply Code, 2005. Thus the order of the Honourable CGRF (South) is legal and correct one requires no interference.

In the above circumstances the Honourable Electricity Ombudsman may be pleased to dismiss the appeal / representation filed by the appellant with costs of the respondent.

Analysis and Findings: -

The hearing of the case was conducted on 22-06-2016, in the Court Hall of CGRF, Kottarakkara, and the appellant was represented by his representative, Sri. Anandakuttan Nair, and the respondent by Sri. Ansalam J., the Assistant Executive Engineer, Electrical Sub Division, Vellayambalam and they have argued the case, mainly on the lines stated above. On examining the appeal petition and argument note filed by the appellant, the statement of facts and argument note of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings leading to the decisions thereof.

The main issue raised in this appeal is whether the collection of ECSC charges for providing individual weather proof service connections in the case of high-rise building when the appellant has completed all the LT side terminal arrangements including the metering panel at his own cost and after remitting supervision charges and the licensee has not incurred any amount for providing these connections, is in order or not.

On going through the records it can be seen that the respondent has collected 'ECSC charges', from the consumer or the occupier, for giving each and every individual connection in the multi-storied building, 'B' Canti River Park Apartment'. According to the respondent, the amounts of ECSC charges were the rates for giving the 'LT electric service connections' to the consumers, from the licensee's electric lines and is included in the 'cost estimate for distribution works', approved by the State Regulatory Commission and hence it is authorized. But according to the appellant, all the electric line works and electrical installations up to LT metering panel of the building, like laying of UG cable from the nearest 11 kV RMU to the indoor transformer, erection of transformer and its incoming side control panels and LT side terminal arrangements including the metering panels, were carried out by him after paying the estimate costs and supervision charges, as demanded by the respondent.

Moreover, the appellant points out that all the LT side energy meters required for the independent consumers in the said building were also provided by the appellant at his cost, as per the provisions under Clause 13(i) and 13 (2) (i) of KSE Board Terms and Conditions of Supply. The appellant submits that, since he has paid full costs for the whole work needed for taking the electric supply and no additional works remain to be executed by the respondent, other than just giving the 'connection' to the meters, already installed in the metering panel and seal it, which are obligatory on the part of the respondent. Hence the respondent is not at all entitled to collect any other amounts under the pretext of ECSC or so, to provide the service connections.

But the respondent denies this argument by insisting the provisions under Section 46 of Electricity Act, 2003, which allows the licensee to charge the consumer, **any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply**. As per the statement of the respondent, licensee has collected earlier, only the basic charges required for the works up to the meter board from the appellant. The respondent argues that to carry out the balance work of providing the service connection to various consumers, the estimated costs as approved by the Hon'ble Commission, similar to that for giving the Weather Proof Service Connection to other consumers, has also to be paid by the consumers of the multi-storied building.

Regulation 32 of the Kerala Electricity Supply Code, 2014 relates to **'recovery of expenditure'**. The above provision is an elaboration of Section 46 of the Electricity Act, 2003, which states that the State Commission may, by Regulation 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 respondent has demanded the ECSC charges for giving the connection, merely relying on the order of the Hon'ble Commission, approving the 'estimate rate for distribution works', which consist of providing weather proof service connections from OH lines and UG cables.

In all these cases the licensee is incurring cost of Weather Proof wire, GI wire, Insulation tape, screws etc to fix the service line up to the meter board and the meter. But no such expenses is incurred in providing the electric connection of a multi-storied building, by the licensee, where the metering panels including the meter are fixed by the owner, after paying the Supervision charges, for the cost of the work carried out by the appellant. The only work remaining is, just to make the end connections to the meter and seal it, thus energizing the supply to the individual consumers.

The respondent has not an argument that they incurred any additional costs, to provide the individual connections to various consumers of the building, after completion of the electrical installation works from Indoor Transformer to the Terminal arrangements of the metering panel of the building, done by the consumer. Hence the collection of ECSC charges to provide independent connections to various consumers of a multi-storied building cannot be justified, when the Licensee has already collected the costs of estimate and/or the supervision charges from the owner, to bring the HT/LT electric supply up to the metering panel and is not incurring any expenditure to do the balance work.

As per regulation 49 (5) of the Supply Code, 2014, **"The development authority or the promoter or the builder or the developer or such other person, as the case may be, who constructs such colony or complex or**

high rise building under the clauses (a), (b) and (c) of sub regulation (1) above, shall, at his cost, construct the required internal distribution network, including the service line, transformer, switchgear etc., as per the detailed scheme approved by the Electrical Inspector, for receiving power from the licensee and for distributing it and shall handover such internal distribution network up to and including the metering point to the licensee before commencement of supply of electricity.”

(6) The security deposit and other charges if any payable by the individual consumer therein shall be borne by each of them at the time of applying for separate electricity connection”.

The collection of excess amount by way of ‘ECSC charges’, for providing individual service connections to various consumers of the multi-storied building of the appellant, was found as arbitrary by the CGRF and hence the respondent was ordered to refund the excess amount so collected within a period of 2 months with 6% interest from the date of remittance of the amount. The respondent does not dispute the fact that they have collected the estimated cost of works and supervision charges, as the case may be, to bring the electric supply up to the metering panel of the multi-storied building, B' Canti River Park Apartment’, of the appellant earlier. Now again demanding a sum for energizing supply of electricity to various consumers of the same building, under the pretext of Hon’ble KSERC order earmarked for giving weather proof service connections, when no additional materials were required by the licensee for giving the said electric connections, is not found reasonable and hence not justifiable.

The Section 46 of Electricity Act, clearly says that only the **“expenses reasonably incurred for providing any electric line or plant used for the purpose of giving that supply”**, should be collected from the consumer. Regulation 33 of the Kerala Electricity Supply Code, 2014 relates to “Approval of Cost data by the Commission’ which reads as (1) The Licensee shall submit once in a year, a proposal to the Commission for approval of the cost data of the rates of materials and work at which the expenditure as per Section 46 of the Act is to be recovered by the licensee”.

The appellant requests to refund the excess amount collected with double the bank rate of interest. Here the bank rate means the rate at which the Reserve Bank of India is prepared to buy or rediscount bills of exchange under the RBI Act, 1934. The provision under ‘Electricity Supply Code, 2014, allows interest at the bank rate as on the date of remittance of such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque. Here in this case, the excess amount shall be refunded with interest as on date of remittance as per provisions in Supply Code, 2014.

Decision

From the analysis done and the findings and conclusions arrived at which are detailed above it is decided to take the following decisions.

The collection of charges for providing independent service connections to various apartments of the high-rise building of the appellant was found as arbitrary and the respondent is directed to refund the amount so collected along with interest at the bank rate as on the date of remittance as per provisions in Supply Code, 2014. This shall be done at any rate within 30 days from the date of receipt of this order.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant is allowed to the extent as ordered. The order of CGRF in OP No 1560/2015 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/019/2016/_____ Dated:_____

Delivered to:

1. Sri. Alex Thomas, Managing Director, B' Canti Homes (P) Ltd., Jawahar Nagar, Thiruvananthapuram.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Vellayambalam, Thiruvananthapuram.

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.