

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION NO. P/068/2016

(Present: V.V. Sathyarajan)

Dated: 23<sup>rd</sup> January 2017

Appellant : Federal House Construction  
Co-operative Society,  
Federal Gardens, Pulinchode,  
Aluva, Ernakulam.

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

**ORDER**

**Background of the case:**

The appellant is a co-operative society engaged in the construction of residential houses/apartments for officers of Federal Bank Ltd. and has applied for a power requirement of 600 kVA to 65 residential villas under the name and style 'Federal Village' at Ellorkara, Aluva under Electrical Section, Aluva North. The licensee has demanded a sum of Rs.14,52,000.00 computed @ Rs.2420.00/kVA as pro-rata transmission side development charges on per kVA basis from the appellant, towards proportionate cost for enhancing the capacity of Aluva Sub Station, vide letter No. DB3-7/Aluva/2012-13/1480 dated 16-01-2013 of Executive Engineer, Electrical Division, Aluva.

Against this demand, the appellant had filed WP (C) 2087/2013 and the Hon'ble High Court in its interim order dated 22-01-2013 directed KSEB to effect power connection without collecting per kVA development charges and in judgment dated 06-06-2016, it was directed the appellant to approach the CGRF and accordingly the Writ Petition was disposed of. So the appellant filed a petition before the CGRF which was disposed of vide Order No. 29/2016-17 dated 30-09-2016, with a direction that the demand raised by the respondent is correct and the appellant is bound to pay the same. Challenging the decision of the CGRF, the appellant approached this Authority by filing this appeal petition.

**Arguments of the appellant:**

The appellant was challenging the demand for pro-rata per kVA development charges demanded presumably for the development of the common transmission infrastructure. The licensee demanded a sum of Rs 14,52,000.00 computed at the rate of Rs. 2420.00 per kVA (for 600 kVA) as proportionate cost for enhancing the capacity of Aluva Sub Station through a letter No. DBE-7/Aluva/2012- 13/1480 dated 16-01-2013 of the Executive Engineer. This was in addition to meeting the costs on the distribution side, which the appellant had already paid.

On receipt of the above demand, the appellant had contacted the Assistant Engineer, and had informed him that as a prospective consumer, the complainant has no nexus with the Transmission Division, and also had informed him that the appellant is not required to pay any per kVA charges for enhancing the common transmission capacity of the Substation. The appellant had also brought to the notice of the Assistant Engineer that the Honourable High Court of Kerala had, in several similar cases stayed similar demands and had directed that application for power connection to be processed and connection given without insisting on the payment of any amount for the development of capacity on the Transmission side. The appellant also pointed out that the Kerala State Electricity Regulatory Commission (KSERC) had issued an order dated 23-05-2011 in Petition T.P.- 87/2011 had approved rates for transmission works for providing power in excess of 11 kV.

The respondent had also issued a circular dated 13-07-2011 directing the field units to follow the above order and to provide the consumers with an estimate prepared in accordance with the formula given therein. However the Assistant Engineer had expressed his helplessness and had informed that in the absence of specific court order in the appellant's case there is nothing that he could do to waive the per kVA demand made by the Transmission wing. This resulted in the filing of W.P.C. No. 2087 of 2013. The power connection was effected as directed in the interim order dated 22-01-2013 without collecting per kVA development charges. The Writ Petition has since been disposed directing the appellant to approach the CGRF in terms of KSERC order in relation to the matter. A true copy of Judgment dated 06-06-2016 in W.P.C. No. 2087 of 2013 was produced before CGRF. It was also contented by the appellant that the State Electricity Ombudsman in various appeals like Appeal Petition No. P/144/2015 and P/146/2015 against the order passed by the CGRF has held that the cost estimated should only be in accordance with the order dated 23-05-2011 in petition No. TP 87/2011. The CGRF has passed its orders on 30-09-2016 rejecting the complaint. After the order of the CGRF the appellant has received a demand notice directing to satisfying the per kVA charges.

1. For that the CGRF has not examined the facts, the legal grounds raised and have not considered the documents produced by the appellant.
2. For that the CGRF has not relied on relevant matters and has relied on irrelevant matter to arrive at the conclusions o the impugned order.
3. For that the CGRF has not applied its mind. The order passed by the CGRF is a non speaking order.
4. For that the licensee is prohibited from demanding any amount as pro-rata transmission side development charges on per kVA basis from the appellant.
5. For that the demand for per kVA charges is not according to the stipulations contained in KSERC's order in T.P. No. 87/2011 or KSEBL's circular dated 13-7-2011.
6. For that the appellant is entitled to receive an estimate prepared as stipulated by KSERC & KSEBL, in case, and only in case, if any work had been carried out in the Substation specifically for the purpose of giving power connection to the appellant. The respondent has no such case.
7. For that the licensee is misusing its monopoly position to harass and threaten the appellant into meeting illegal demand.
8. For that there could not have been any expansion work done at the Sub Station specifically for giving power connection to the appellant as the Sub Station had sufficient capacity at the point in time.
9. For that the licensee cannot make any unlawful gain at the expense of the appellant.
10. For that the respondent cannot act in contravention of the license granted by the Regulatory Commission, the provisions of the Electricity Act 2003, the Code or specific orders of the KSERC. In this case the licensee is in gross violation of Kerala State Electricity Regulatory Commission orders.
11. For that the respondent being a body under the State cannot act illegally or unfairly.
12. For that in document No 5 the State Electricity Ombudsman in similar cases had directed the respondent that the demand for transmission charges shall be in accordance with KSERC order in TP. 87 of 2011. No estimate had been provided by the KSEB in such cases. The CGRF being a lower authority is bound to follow the order of Ombudsman passed in similar matters.

13. For the above and the other grounds to be urged at the hearing of the case, the Ombudsman may be pleased to grant the appellant the following reliefs:

Nature of relief sought for from the Ombudsman Setting aside the impugned order of the CGRF and holding that:

1. To quash the illegal demand and to declare that the respondent is not entitled to make any demand except as stipulated in TP 87/2011 of KSERC and the circular dated 13-07-2011 of KSEBL.

2. To pass such other appropriate orders or directions that this Forum may deem fit and proper to grant on the facts and in the circumstances of the case and in the interest of justice.

**Arguments of the respondent:**

The Kerala State Electricity Board Limited is a deemed distribution licensee under Section 14 of the Electricity Act, 2003. It is statutory bound, under Section 43, to provide electric supply on request to any person who requires supply subject to the provisions of the Act and Rules and Regulations thereon. Having a statutory duty to supply power on request within the time frame specified by the State Electricity Regulatory Commission every distribution licensee is empowered with under Section 46 a statutory right to collect from a person who requires supply, the reasonable expenses incurred by it for providing any electric line or electric plant used for the purpose of giving that supply. Section 46 is complementary to Section 43 of the Act. The Kerala State Electricity Regulatory Commission in exercise of its obligations under Section 86 of the Act and Regulation 7 (3) the Supply Code, 2005 Kerala State Electricity Regulatory Commission approved the schedule of rates for computing the expense incurred by the Kerala State Electricity Board Limited.

The Hon'ble High Court of Kerala in a common judgment dated 30-06-2014 in WA No. 900 of 2013 and connected cases has held that, the Kerala State Electricity Board Limited is entitled to collect the transmission side development charges. The appellant applied for power to the tune of 600 kVA. The transmission charges to be remitted by the appellant were 2,420.00 kVA. Total transmission cost (estimate) thus was 14,52,000.00 and the appellant was asked to remit it. The above demand was the part of the expense incurred by the Kerala State Electricity Board Limited for providing electric supply to the appellant.

The right of the Kerala State Electricity Board Limited to collect transmission charges from an applicant for electric supply is now a settled

position, which enabled the Board to demand transmission charges, if the Board incurred expenses in transmission side for providing supply.

The appellant approached the Hon'ble High court of Kerala by filing WP(C) No. 2087/2013. The Hon'ble High Court by an interim order dated 22-01-2013 directed the Kerala State Electricity Board Limited to provide supply without insisting for the amount demanded towards transmission development charges. The above WP was disposed of only on 06-06-2016 directing the petitioner therein to approach the Consumer Grievance Redressal Forum. While the above WP was pending before the Hon'ble High Court of Kerala, a group of Writ Appeal challenging the decision of the Single Bench of the High Court against demand of transmission development charges were, allowed by the Hon'ble High Court holding that Kerala State Electricity Board Limited is entitled under Section 46 of the Act (WA No.900/2013 and connected cases).

It may please be noted that the cost of installation of 10 MVA transformer was prepared and sanction prior to the order of the Hon'ble Kerala State Electricity Regulatory Commission in TP 87/2011. Hence, the allegation that the estimate was not prepared in line with the order of the Kerala State Electricity Regulatory Commission does not merit consideration. The averments of the appellant are baseless and incorrect.

It is held by the Division Bench of the Hon'ble High Court of Kerala in WA No. 900/2013 and connected cases that the Kerala State Electricity Board Limited is entitled to demand and collect transmission development charges. The decision of the Hon'ble High Court in the above judgment is now the rule of the land unless it is reversed by the Apex Court. The cost estimate of the transformer was prepared before the pronouncement of the order of the Hon'ble Kerala State Electricity Regulatory Commission in TP No.87/2011. Hence the averment that the estimate was not prepared in accordance with the above order is meaningless.

The decision of the Division Bench of the Hon'ble High Court of Kerala in WA No.900/2013 and connected cases is the rule of the land, as per which demand of transmission charges is legal. Demand of transmission development charges was made based on an estimate prepared prior to the order TP. 87/2011 of KSERC. It is submitted that Section 46 of the Electricity Act, 2003 provides power to distribution licensees to demand and collect reasonable expense incurred by it, from an applicant requiring electric connection, for giving such supply. The Hon'ble High Court of Kerala in WA No.900/2013 and connected cases has held that Kerala State Electricity Board Limited is entitled to collect transmission charges incurred by the Board from an applicant who required electric supply. The estimate for the installation of the 10 MVA transformer was prepared and sanctioned prior to the prior to the order TP. 87/2011 of KSERC. Hence there is no meaning in saying that estimate was

prepared not in accordance with the terms prescribed in the order TP. 87/2011 of KSERC. The demand was prepared as per the then rules in vogue and hence legally correct and sustainable. The Kerala State Electricity Board Limited acted only as per the provisions of law and hence no illegality in the demand for transmission development charges.

The appellant approached Hon'ble CGRF vide appellant No.29/2016-17 and the Hon'ble forum has dismissed the petition and upheld the bill issued by the KSEBL on the ground that Division Bench of Hon'ble High Court in Writ Appeal No. 900/2013 and connected cases has upheld collection of transmission development charges by KSEBL.

The appellant deserves no relief as sought for in the complaint as the demand is legally correct and sustainable. The complaint is liable to be dismissed. Hence, it is humbly prayed that the complaint may be dismissed directing the appellant to remit the amount demanded with interest.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 08-12-2016. Advocate Sri Ziyad Rahman, was present for the appellant's side and Smt. Jessy Rose Chacko, Assistant Executive Engineer, Electrical Sub Division, Aluva represented the respondent's side. Both sides have presented their arguments on the lines as stated above. 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.

The instant appeal has been filed against the demand issued for a sum of Rs. 14,52,000.00 computed @ of Rs. 2,420.00 per kVA for 600 kVA as development charges on the transmission works and is not in consonance with the order dated 22-01-2015 in OP No. 22/2011 of the Commission. 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. 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.

**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.**

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. 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. *A copy of the estimate thus prepared should be handed over to the beneficiary under acknowledgement. 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.*

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.

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.

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.

The Hon'ble KSERC 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.

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. 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. 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. 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.

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.

According to statutory provisions and facts it is clear that distribution licensee can recover the expenditure specifically incurred for giving connectivity to a consumer.

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.

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. 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.

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. 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.

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. 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.

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.

The documents produced by the respondent reveals that demand raised towards the transmission side development charges is not in accordance with the directions issued by the Commission in TP 87/2011. Admittedly, the respondent issued demand for the transmission development charge @ of Rs. 2420.00 per kVA on pro-rata basis even without furnishing any relevant documents. In the above circumstances, the respondent is directed to prepare an estimate in accordance with the cost data approved by the Commission on the basis of actual quantities required for the capacity enhancement of substation for giving supply to the appellant.

### **Decision**

In view of the above discussions the respondent is hereby directed to prepare a revised demand on the estimate cost of work for the capacity enhancement necessitated for giving supply to the appellant at any rate within a period of 30 days from the date of receipt of this order and the appellant shall remit the same within one month, failing which the licensee shall be entitled to recover the same. Excess remittances if any made by the appellant shall be refunded by adjustment in the monthly current charges/direct refund within a period of 3 months. The appeal filed by the appellant is admitted to the extent as ordered above.

Having concluded and decided as above it is ordered accordingly. The order of CGRF-CR/Comp. No. 29/2016-17/332 dated 30-09-201 is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/068/2016/\_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Federal House Construction Co-operative Society, Federal Gardens, Pulinchode, Aluva, Ernakulam.

2. The Asst. Executive Engineer, Electrical Sub Division, KSE Board Limited Aluva, 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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.