

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/006/2017

(Present: V.V. Sathyarajan)

Dated: 24<sup>th</sup> April 2017

Appellant : Sri. Eldho Elias  
 Kizhakadath,  
 Thengode P.O.,  
 Ernakulam

Respondent : (1) The Deputy Chief Engineer,  
 Electrical Circle,  
 KSE Board Limited,  
 Ernakulam

(2) The Special Officer (Revenue),  
 KSE Board Limited,  
 Vydhyuthibhavanam, Pattom,  
 Thiruvananthapuram

**ORDER**

**Background of the case:**

The appellant, Sri Eldho Elias, constructed a building in the name and style, "Elias Square" under the jurisdiction of Electrical Section, Palarivattom. The appellant has applied for HT supply of power requirement of 250 kVA for commercial purpose on 07-12-2012. In order to effect the supply from 110 kV Substation, Kaloor, additional 10 MVA transformer is to be erected. So, the respondent has demanded a sum of Rs. 3,37,500.00 on per kVA basis @ Rs. 1,350.00/kVA as pro-rata transmission side development charges from the appellant.

Against this demand, the appellant had filed WP (C) 6344/2013 and the Hon'ble High Court in its interim order directed the licensee to effect service connection without collecting pro-rata transmission development charges and it was also directed the appellant to approach the CGRF and dispose of the Writ Petition accordingly. Therefore, the appellant filed a petition before the CGRF which was disposed of vide Order No. 80/2016-17 dated 21-12-2016,

with a finding 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 had constructed a building in the name and style "Elias Square" at Palarivattom, Ernakulam and is aggrieved against the illegal demand of transmission charges by the respondent when the appellant had applied for power connection to his commercial building. In addition to meeting the cost of work on the distribution side, the licensee also demanded a sum of Rs 3,37,500.00 computed at the rate approximately of Rs. 1,350.00 per kVA (for 250 kVA) as development charges on the transmission side.

On receipt of letter No AE1/HTSOP/Eldho/2012-13/63 dated 27-02-2013 from the Deputy Chief Engineer, the appellant had contacted the Assistant Engineer and had informed him that as a prospective consumer, the appellant has no nexus with the Transmission Division, and also had informed him that the appellant is not required to pay any amount for work on the Transmission Wing for enhancing the transmission capacity of the Substation. The appellant had also brought to the notice of the Assistant Engineer that the Honourable High Court had, in several similar cases, stayed such 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 No. T.P. 87/2011 approving rates for transmission works for providing power in excess of 11 kV. The respondent had issued a circular 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 said that in the absence of specific Court Order in the case, there is nothing that he could do to waive the demand made by the Transmission Wing.

This resulted in the filing of WP(C) No. 6344 of 2013 and subsequent in W.A. No. 1362 of 2016. The power connection was effected as directed in the interim order without collecting per kVA development charges. The Writ Appeal has since been disposed directing the appellant to approach the CGRF in terms of KSERC order in relation to the matter. The certified copy of the Judgment was received by the appellant on 29-08-2016. Therefore the appeal filed on 27-09-2016 was within the period as directed by the Honourable High Court. Subsequent to the filing of WP(C) No. 6344 of 2013 the appellant had received a demand notice from the respondent to satisfy the illegal demand made within 15 days of the intimation. It was also stated that if the demand had not

satisfied, the power supply of the appellant will be disconnected. The respondent had submitted a statement of facts dated 28-10-2016. The appellant has submitted an argument note in reply dated 17-11-2016. After the order of the CGRF the appellant has received a demand notice directing to satisfy 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 on 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 demand any amount as pro-rata transmission side development charges on per kVA basis from the appellant.
5. For that the appellant is entitled to receive an estimate prepared as stipulated 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.
6. For that the licensee is misusing its monopoly position to harass and threaten the appellant into meeting illegal demand.
7. For that there could not have been any expansion work done at the Substation specifically for giving power connection to the appellant as the Substation had sufficient capacity at the point of time. The KSEB Limited submitted documents as a part of appellant's reply dated 18-11-2016 would conclusively establish that no work was undertaken at the Substation specifically for the purpose of giving connection to the appellant. More importantly in the said documents will also establish that there has not been any capacity expansion in the Substation during the relevant period.
8. For that the licensee cannot make any unlawful gain at the expense of the appellant.
9. 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 KSERC orders.

- 10 For that the respondent being a body under the State cannot act illegally or unfairly.
- 11 For that it is evident that the respondent has not specifically done any work in the Substation for providing electricity to the appellant. The respondent has no authority to make any kind of demand to the appellant.
- 12 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:

1. To quash demand dated 23-06-2016 and the order dated 21-12-2016 of CGRF.
2. To declare that the respondent is not entitled to make any demand.
3. 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.
4. To grant costs of these proceedings to the appellant, interim order. The Ombudsman may impose a stay and also stay the operation of order of CGRF pending for disposal.

**Arguments of the respondent:**

The respondent argued that the complaint is not maintainable either in law or on facts. The appellant, Sri Eldho Elias applied for HT supply of power to the extent of 250 kVA on 07-12-2012 for commercial purpose under Electrical Section, Palarivattom. The required load to the consumer is fed from 110 kV Substation, Kaloor. The cost incurred in effecting this HT supply was Rs. 3,37,500.00 in addition to the supervision charges of party work. Section 46 of the Electricity Act, 2003 enables the Distribution Licensee to recover reasonable expenditure in providing supply.

It is submitted that in the order dated 23-05-2011 in Petition No.TP-87/2011, the Kerala State Electricity Regulatory Commission observed that 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. It is further submitted that, once the work is completed, then the estimate amount is finalized as per the actual and then intimated to the beneficiary. In the said order the State Commission ordered that on completion of work, the licensee shall prepare an evaluation statement of the work, based on the actual

quantities, within 3 months from the completion/energisation of the works and hand over the same to the beneficiary under acknowledgement.

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. Also, as per Clause 36 of Supply code, if due to technical reasons, the extension or upgradation or both to be undertaken by the licensee as per this Regulation is more than the requirement of such consumer, the expenditure for such extension or up gradation or both to be realised from the consumer shall be limited to the proportionate expenditure. In order to effect the supply from 110 kV Substation, Kaloor, additional one number 10 MVA transformer was erected and the charges per kVA works to Rs.1,350.00 per kVA.

It is submitted that there is skewness in power distribution in centres like Ernakulam due to the heavy concentration of Industries, Industrial Parks, IT Parks, Commercial hubs, upcoming Townships etc. Since many number of prospective consumers applied for electric connection with low end connected load, the same is allowed and loads have been met from the existing infrastructure. This necessitates construction of new substations/ upgradation of the existing one or capacity enhancement of transformers etc. In the most prudent way, the KSEB Limited arrived at the cost incurred towards such capacity based on the cost data approved by the State Commission and thereby levied the cost on per kVA basis. It is settled position that expenditure incurred in enhancing the transmission capacity can be realized from the consumers. The demand raised by the Board was challenged in W.P. (C) No. 6344/2013 and subsequent in WA No. 1362/2016, but the Hon'ble High Court by judgment dated 27-07-2016 directed the petitioner to approach Consumer Grievance Redressal Forum within one month, if he has any complaint regarding the quantum of work and the rates on the basis of which the demand is made. Accordingly the complaint is filed.

It may be noted that the Division Bench of Hon'ble High Court in WA No. 900/2013 and connected cases upheld that levy and collection of transmission side development charges are legal. Those among the appellants who have not paid the amounts demanded by the Board were allowed two months time to pay the same. Also, in similar cases, the Hon'ble Consumer Grievance Redressal Forum, in Complaint Nos. 32/16-17 & 40/16-17, have observed that the demands raised by the KSEBL are in order and the petitions were dismissed on 30-09-2016.

Though Sri. Eldho Elias, Elias Square, Palarivattom filed a complaint before the Consumer Grievance Redressal Forum; the Forum observed that the demand raised by the KSEBL is in order and the petition was dismissed on 21-12-2016. Notice was issued to the consumer to remit the amount within 15

days on 05-01-2017, but they have approached Hon'ble State Electricity Ombudsman.

The grounds and relief claimed by the appellant is not correct and hence denied. In the light of settled position, the demand raised by Board is as per law and the petitioner is bound to remit the same. The Hon'ble State Electricity Ombudsman may direct the appellant to remit the amount immediately. Hence the petition of the appellant may be dismissed with cost.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 07-03-2017. Advocate Sri Ziyad Rahman, was present for the appellant's side and Sri Sukumaran, Accounts Officer, Special Officer (Revenue) KSE Board Ltd., Vydhyuthibhavanam and Smt. K. Rajshree, Executive Engineer, Electrical Circle, Ernakulam 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. 3,37,500.00 computed @ of Rs. 1,350.00 per kVA for 250 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/SCCode/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 as 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.

Meanwhile, 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 Hon'ble 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 Hon'ble 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 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 substation.



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 argued 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, licensee 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 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.

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. 1,350.00 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.

Since the work is already completed and energized, the respondent shall prepare an evaluation statement of the work based on actual quantities. 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. 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.

### **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 No. CGRF-CR/Comp. 80/2016-17 dated 21-12-2016 is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/006/2017/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Eldho Elias, Kizhakadath, Thengode P.O., Ernakulam
2. The Deputy Chief Engineer, Electrical Circle, KSE Board Limited, Ernakulam
3. The Special Officer (Revenue), KSE Board Limited, Vydhyuthibhavanam, Pattom, 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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.