

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/039/2017

(Present: A.S. Dasappan)

Dated: 29th June 2017

- Appellant : M/s Hamsaveni Carbides
Door No. VIII/799, NIDA,
Kanjikode, Palakkad.
- Respondent : 1. The Special Officer (Revenue)
Vydhyuthibhavanam, KSEBL,
Pattom, Thiruvananthapuram.
2. The Deputy Chief Engineer,
Electrical Circle, KSEBL,
Palakkad.

ORDER

Background of the case:

M/s Hamsaveni Carbides is a HT consumer (Consumer No. HTB-5/5075) with a contract demand of 500 kVA under Electrical Section, Kanjikode, Palakkad and is represented by Sri. K. A. Abdul Jabbar, Manager. M/s Hamsaveni Carbides was engaged in the manufacture of calcium carbide, which is classified as power intensive unit. Since the consumer has defaulted in paying electricity charges, the connection was disconnected on 11-10-2002. Later, the service connection to the Firm was dismantled on 30-05-2003, as the appellant failed to clear the dues within a period of six months, as per law. The Government grants the benefits of waiver minimum demand charges during the period of disconnection and dismantlement. By pursuing the concessions granted by the State Government for closed industries, the appellant applied for reconnection. The respondent demanded to the appellant to pay the distribution and transmission cost for a new 22 kV feeder and also to pay the proportionate cost for enhancing capacity of 220 kV substation, Kanjikode. The appellant was directed to pay the cost of drawing new feeder in the distribution side

and the cost of installing a circuit breaker and a feeder bay inside the substation in the transmission side amounting to Rs. 7,07,562/- and Rs. 14,00,000/- respectively. A sum of Rs. 11,00,000/- was also demanded by the transmission wing towards the proportionate cost for enhancement of the substation capacity. Aggrieved by the above demands, the appellant approached the Hon'ble High Court of Kerala, by filing a writ petition in W.P.C. No.31193/2012 seeking to quash the above demands raised by the respondent. The appellant has a case in this writ petition that no such amount is payable. The Hon'ble Court held that the remedy of the appellant is to challenge the demand by approaching the Forum provided for raising such complaints. The Writ Petition was dismissed without prejudice to the petitioner to approach the Consumer Grievance Redressal Forum as provided under the Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005.

Accordingly the appellant filed a petition before the CGRF. The CGRF has decided that the complaint itself is not maintainable, as the Forum found that the rates and quantum of works in the estimates are in order and accordingly dismissed the Petition. This appeal petition is filed as the appellant is aggrieved by the order dated 18-01-2017 of CGRF, Kozhikode in OP No. 60/2015-16 on the issue stated above among other things.

Arguments of the appellant

The appellant was challenging the demands for estimate based on actual- construction of 22 kV line for supply of power, estimate for providing connection by constructing an exclusive 22 kV feeder outlet, estimate for enhancing the capacity of 220 kV substation Kanjikode at 22 kV level and estimate for construction of 2 transformer bays of 110/220 kV, 25 MVA transformer in existing substation,

The Licensee demanded a sum of Rs. 14,00,000/- for actual construction of 22 kV line, an amount of Rs. 8,00,00,000/- for enhancing the power at the substation and Rs. 6,92,69,000/- towards the construction of 2 transformers in existing substation. A true copy of estimate dated nil for Rs. 14,00,000/- for actual construction of 22 kV line was annexed thereto as Exhibit C4. A true copy of estimate dated nil for Rs. 8,00,00,000/- for enhancing the capacity of 220 kV substation at Kanjikode was annexed thereto as Exhibit C5. A true copy of estimate dated nil for Rs. 6,92,69,000/- prepared by the 1st respondent for construction of 2 transformers bays was annexed thereto as Exhibit C6.

The appellant restarted its operations pursuant to certain concessions announced by the State Government for closed industrial units which restart their operations. The KSEB had adopted the Government Order. The concessions included waiver of MD charges during the period of disconnection / dismantling. The demands made by the respondents were

contrary to the orders/ directions of the Regulatory Commission and Orders of the Government.

On receipt of Exhibits C3, C4, C5 and C6 the appellant had contacted the Assistant Engineer, and had informed him that as a prospective consumer, the appellant has no nexus with the above demands, and also had informed him that the appellant is not required to pay any of the charges including the estimate for enhancing the transmission capacity of the Sub- Station. 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 approving rates for transmission works for providing power in excess of 11 kV. A true copy of order in TP-87/2011 dated 23-05-2011 was annexed therein as Exhibit C2. However the Assistant Engineer had expressed his helplessness and had said that in the absence of specific court order in the appellant's case there is nothing that he could do to waive the demands made by the respondents.

This resulted in the filing of W.P.C. No. 6134/09 and W.A. No. 1876/13 and in R.P. No. 442/16. The Review Petition has been disposed directing the appellant to approach the CGRF against the illegal demands and in terms of KSERC order in relation to the matter. A true copy of Order dated 27-07-2015 in RP. No. 442/15 in W.A. No. 1876/13 was produced therewith as Exhibit C1.

The CGRF has not examined the facts; the legal grounds raised and have not considered the documents produced by the appellant. The order passed by the CGRF is a non speaking order. The Licensee is prohibited from demand any amount as pro-rata transmission side development charges on per kVA basis from the appellant. The Exhibits C3, C4, C5 and C6 in Annexure A1 are not according to the stipulations contained in Exhibit C2 in Annexure A1. For that the appellant is entitled to receive an estimate prepared as stipulated under Exhibit C2 Annexure A1. The rates and percentages could not be in excess of those notified prescribed by the Regulatory Commission. The Exhibit C5 in Annexure A1 has to be made 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 licensee is misusing its monopoly position to harass and threaten the appellant into meeting illegal demand. 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 in time. Even if there was any expansion, it was only as a part of the normal expansion/ development of the transmission infrastructure.

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 specific orders of the KSERC. In this case the licensee is in gross violation of Kerala State Electricity Regulatory Commission orders. It is evident as per Exhibits C8, C9, C10, C11, and C12 in Annexure 3 that no work at all has been carried out in the substation for providing power to the appellant.

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

1. To declare that the respondent is not entitled to make any demand except as stipulated in Exhibit C2 in Annexure A1.
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.
3. To order refund of amounts illegally collected, together with interest.
4. To grant costs of these proceedings to the appellant.

Arguments of the respondent:

1. It is grossly incorrect to say that the appellant was ever asked by these respondents to remit Rs. 8 crores or Rs. 6.92 crores as alleged. The Appellant ought to have produced proof of such a demand when it makes such a claim. The appellant is trying to extract undue sympathy from this Hon'ble Authority by making such a wild claim.
2. It is submitted that the appellant was an HT consumer of these respondents under Electrical section, Kanjikode, Palakkad with a contract demand of 500 kVA. The appellant was being fed from the 22 kV Gash feeder from the 220 kV Kanjikode substation. The Appellant produced Calcium carbide and is power intensive. The appellant unit was disconnected on 11-10-2002 for non- payment of electricity bills. KSEB waited for six months as per law and when the appellant failed to clear the dues, dismantled the HT connection of the appellant on 30-05-2003. By virtue of dismantling, the appellant ceased to be a consumer of the respondents. The appellant lost all its claims on the 500 kVA of power, previously kept reserved for the appellant upon dismantling. This power was thereafter issued to other applicants who requested for power from the Gasha feeder. This stand of the respondents has been upheld by the Hon'ble High Court of Kerala in WPC 22771 /2009 filed by the Appellant herein. The Hon'ble Court in order dated 02-12-2014 observed that "whenever a reconnection is

given to a dismantled connection, it amounts to a new connection and the rules regulating the new connection apply". (Exhibit R1)

3. The appellant did not make any effort to either clear the arrear or to restart the unit. This is amply evidenced by the admission of the appellant in WP(C) 18153/07 that it had asked the respondents to dismantle the electric connection on 15-11-2001 as it did not require the HT power supply any more. As a result, the respondents were forced to take revenue recovery proceedings against the appellant to recover the arrear due from the appellant towards the respondents. The amount recoverable from the appellant as on 07-06-2007 stood at Rs. 1,23,56,137/-.
4. When the appellant put the industrial land allotted to the idle, the Industries Department resumed this land on 03-09-2008. When the land was so resumed, the appellant made representations before the Industries Dept and the resumption was cancelled on 08-01-2009. A copy of the order No: 1/66/94/08.01.2009 of the GM, DIC, Palakkad is produced herewith as Exhibit R-2, which tells the entire story. From this exhibit, it is amply evident that the appellant was not in possession of the land for the period between 03-09-2008 and 08-01-2009, and therefore, the appellant could not have re-opened its factory before 31-12-2008, even if it wanted to.
5. In the meanwhile, the Government of Kerala announced certain benefits for reopening of industries that are lying closed down on or before 31-12-2008. The respondents adopted this order on 30-08-2008. It could be seen that the main stipulation in this order is that the industry must reopen on or before 31-12-2008 for availing the concessions offered therein. As stated above, the appellant was not in any position to reopen the factory before 31-12-2008 as it did not have land in its possession. Still the appellant made an application to the respondents under the scheme. The respondents were however, unaware of Exhibit R-1 order at that time. Further, the appellant filed WP(C) 36490 of 2008R) in the Hon'ble High court of Kerala hiding the fact of Exhibit R-1 order, alleging that the appellant is denied due benefits by the respondents. It is pertinent here to note that whereas the appellant has always put the industries department in the respondent list in all other cases filed by it before the Hon'ble High court of Kerala, it conveniently omitted the industries department from the respondent list in this particular writ petition alone, since otherwise the industries department would have appeared before the court and disclosed the existence of Exhibit R-1 order before the court, which would have instantly disqualified the appellant from claiming any benefit under Exhibit R-2. Since at that time, the respondents were unaware of Exhibit R-1 order, the respondents undertook before the court on 09-01-2009 that a decision in the matter will be taken within a week. (Exhibit R-3(a). The events that thereafter led to the appellant

securing HT connection originated thus from patent concealing of relevant facts by the appellant before the Hon'ble High court.

6. When the appellant approached the respondents for HT connection during February 2009, the 22 kV GASHA feeder, which is the only feeder in the vicinity of the appellant premises and to which the appellant was previously connected prior to its dismantling, was fully loaded to the brim and was hence incapacitated to carry the appellant load additionally. Also, the 220 kV Kanjikode substation from which the 22 kV GASHA feeder originated was also loaded fully in the 22 kV side, and hence was not in a position to carry the appellant load additionally. Also, because the 220 kV substation was unable to carry additional loads, the respondents were unable to supply power to applicants from this substation and hence, applications as early as the year 2005 were pending before the respondents. There were already 23 such applications pending and hence, the appellant joined the queue as the 24th person only. Therefore, if the appellant has to be connected superseding all the other 23, a special order to this effect was needed. Also the appellant unit is power intensive and there was an order barring electric connection to power intensive unit at that time in view of the precarious power situation. In view of all the above, four things were needed to give connection to the appellant. (1) enhancement of capacity of feeder (2) enhancement of capacity of substation (3) special order allotting out of turn priority to the appellant and (4) special order allowing power connection to power intensive unit. The respondents therefore, took up the matter with the full board, and the full board of KSEB issued a special order for the appellant on 19-02-2009, a copy of which is herewith produced as Exhibit R-4. Upon perusal of the Exhibit R-3, it could be seen that the basic intention behind this order is to give power connection to the appellant.
7. Accordingly, the respondents worked out a scheme, by which the appellant will be burdened the least. The 22 kV Gasha feeder originates from the substation and after travelling about 1.4 Km branches into two. Therefore, the entire load has to be carried by the feeder conductor up to the branching point and after branching, the load splits into two. Hence augmentation is needed only for the initial portion up to the branching point. 22 kV cable was proposed for initial 100 metres as there are too many feeders behind the substation. 1.3 KM OH was proposed in the portion thereafter. The metering structure at the time of dismantling was at the rear side of the factory, which was proposed to be shifted to the front side as per KSEB terms and conditions of supply 2005. A service line was to be drawn from the new metering structure to the existing structure. The estimate for the above works was worked out to Rs. 13,50,493.00 and a letter was issued to the appellant by the respondents on 21-02-2009, asking it to remit the above amount. The cost for the substation was sought to be remitted in the transmission wing, as per the advice of the Deputy Chief Engineer, Transmission Circle, Palakkad. Instead of remitting the cost as above,

the Appellant approached the Hon'ble High court of Kerala with WP(C) 6134/2009.

8. These respondents filed counter statement in the Hon'ble High court, stating that the appellant has to remit cost as under.

(1) cost in distribution side for drawing feeder	: Rs. 13,50,493/=
(2) cost in transmission side for feeder bay	: Rs. 14,00,000/=
(3) cost in transmission side for pro-rata enhancement cost	: Rs. 11,00,000/=
(4) Additional security deposit	: Rs. 20,00,000/=
Total	: Rs. 58,50,493/=

The Hon'ble High court, after due consideration of facts and law issued an interim order on 03.04.2009, asking the appeal to remit Rs. 36,00,493/= and balance in instalments and these respondents were directed to issue power connection within two months of payment of the above amount.

9. The appellant preferred a writ appeal no: 925/2009 against this interim order. The Hon'ble High court issued an order in the writ appeal on 08.04.2009 (Exhibit R-6). The Hon'ble court ordered that the connection shall be issued upon the appellant paying Rs. 16 Lakhs, within two weeks from the date of such payment and that the appellant is liable for payments as directed in the interim order. Upon receipt of this order, these respondents filed a review petition no. 432/2009 seeking clarification. The Hon'ble Court ordered in this review petition on 09.06.2009 that the balance Rs. 42 Lakhs has to be paid in 60 equal instalments and directed to issue connection to the appellant on @ before 30.06.2009. (Exhibit R-7).
10. It is submitted that immediately upon receiving the Exhibit R-4 order, these respondents started to collect the materials for carrying out the works for effecting connection to the appellant, as these respondents hold the order of the Hon'ble High court in highest esteem. The time frame awarded by the court was critical and therefore, works had to be carried out on war footing basis. 22 kV cable could not be procured in the short period of time available and therefore, it was decided to construct OH line instead of cable by rearranging existing feeders and drawing the new feeder as second circuit on existing single circuit line. The work was tendered immediately upon receipt of, carried on war footing for about two months and completed on 27-06-2009 and service connection effected the same day. After actual execution, an as-executed estimate was prepared and it was found that the cost of constructing the feeder has come down to Rs. 7,07,562/-. The proceedings under WP(C) 6134/2009 was still continuing in the Hon'ble High court. The fact of reduction in cost upon actual execution was immediately submitted before the Hon'ble High Court and the total demand was reduced from Rs. 58,50,493/- to Rs. 52,07,562/-.

11. The Hon'ble court issued its order in WP(C) 6134/2009 on 30.11.2012, holding that these respondents are not entitled to recover the cost of works from the appellant (Exhibit R-8). These respondents filed a Writ Appeal No. 1876/2013 against this order. The Hon'ble High Court, after due consideration, issued its order in writ appeal no: 1876/2013 on 05-02-2014, setting aside the order of the single judge in WP(C) 6134/2009 and holding that these respondents have statutory right to claim the cost for works in advance from the appellant (Exhibit R-9). The "appellant, in this appeal is also, is seen to have claimed that it is not liable for the works. As such, now, with the order in WA 1876/2013 upholding the stand taken by the respondents, the matter has attained finality that these respondents have statutory right to claim the cost of works enlisted in Exhibit R-3, as stated by these respondents before the Hon'ble High Court of Kerala in WP(C) 6134/2009, and the appellant has no right to say that it is not liable for such costs. Every other order quoted by the appellant in this appeal, which precede the order in WA 1876/2013 have faded into irrelevance, because the order in WA 1876/2013 binds both the appellant and these respondents alike. Therefore, the appellant is estopped from claiming that it is not liable for the works enlisted in Exhibit R-3 and as stated by these respondents before the Hon'ble High Court of Kerala in WP(C) 6134/2009.
12. The order of the Hon'ble High Court of Kerala in RP 442/2015 on 24-07-2015 does allow the appellant to challenge the rates, quantum of work etc enlisted in Exhibit R-3. Accordingly, when the appellant approached the CGRF by way of OP No: 60/2015-16, the CGRF provided the appellant with every opportunity to thoroughly examine the quantum and rates of the works carried out. It is further to be noted that the actions of these respondents have always been very transparent as evidenced by the suo moto reduction of demand from Rs. 13,50,493/- to Rs. 7,07,562/- for drawal of the 22 kV line when the quantum of work was revised from the estimated quantity. All works enlisted to be carried out as part of the demand have been completed now. The estimate for drawl of the 22 kV line was revised downwards from Rs. 13,50,493/- to Rs.7,07,562/- after completion of the work as stated above and has already been reported by these respondents. Since the work of installation of the feeder bay could not be completed within the time frame provided by the Hon'ble High court, the connection was issued to the appellant on temporary basis from the feeder bay of the Gasha feeder by paralleling the newly drawn 22 kV feeder with the existing Gasha feeder bay. The work of the new feeder bay was thereafter completed and the newly constructed 22 kV feeder was connected to this new feeder bay and the new feeder was named as "Periyar feeder". The appellant connection was changed to the "Periyar feeder". Presently, the appellant is connected to the Periyar feeder. The other works in the transmission wing of installing 2 Nos. of 110 kV/22 kV, 25 MVA transformers (Totalling 50 MVA) has also been completed

and the substation capacity has been enhanced from 75 MVA to 125 MVA in 22 kV level and there is no variation in quantum from the original estimate as far as this work is concerned. Therefore, that estimate remains the same without any variation. The CGRF has considered all these factors and issued its order on 18.01.2017, dismissing the petition no: OP no: 60/2015-16.

13. It is incorrect to state that the respondents cannot claim transmission side development charges from the appellant. The appellant is estopped from claiming so by virtue of the order in WA 1876/2013. Further, this illegal position of the appellant has again been decisively struck down by the Hon'ble High Court of Kerala in WA 1042/2013 OB 30.06-2014 (Exhibit R-10). The question considered by the court in this writ petition is whether persons availing supply in 11 kV have to remit charges for enhancement of substations. It is held that "In this context, we cannot also ignore the reality that if the writ petitioners are held absolved from this liability, the ultimate financial burden to bear the development charges incurred by the Board for giving supply to such bulk consumers, the number of which is increasing steadily in this power starved State, will ultimately fall on the ordinary consumers of the Board, in as much as the cost incurred by the Board to develop infrastructure and to supply electricity to bulk consumers will also get loaded into the tariff fixed by it" (Para 21). "For all these reasons, we are unable to sustain the conclusion of the learned Single Judge that the appellants are not entitled to realize transmission side development charges" (Para 26). It is submitted that whenever the appellant or any other person approach the respondents with a particular quantum of requirement of power, say 500 kVA, it will not be physically and technically possible to enhance the substation capacity to exactly that quantum. Therefore, enhancement is done to a technically feasible and practical quantum. In this case, 50000 kVA was proposed as there is pending requirement above 25000 kVA. The respondents have incurred the entire expenditure for such expansion and when the application for power to the extent of say 500 kVA, is received from any person, such person is asked to remit the pro-rata cost of expansion to the extent of 500 kVA. Therefore, the person seeking power to the extent of 500 kVA is paying only the amount required to enhance the substation capacity by 500 kVA and not for 50000 kVA. This is the most justified model and therefore, there is no illegality in claiming pro-rata transmission side development charges from the appellant. As rightly held by the Court, the beneficiary of the expansion is the industrialists in the area alone, and if such cost is not claimed from the beneficiaries, the cost will get reflected in the tariff, forcing all other consumers over the entire state, who have not been benefited by the work, to bear the expenditure.
14. The contention that the respondents are misusing the monopolistic position to harass and threaten the appellant is per se wrong. There has been no threat from the respondents as alleged. The matter has

undergone judicial scrutiny many times over as described above and hereunder, and the Hon'ble high court has upheld the position taken by the respondents. It is unfortunate that the appellant shows such scant respect to law and the orders of the Hon'ble High Court of Kerala. The appellant is repeating the allegations and lies over and over.

15. It is also submitted that the demand charges to the tune of Rs.16,20,000/- was waived during the closure period and the consumer has admitted the same in OP No. 60/2015-16 filed before the Hon'ble CGRF, Kozhikode. The consumer availed the concessions as per Government Order and Board Order during the reopening time.
16. In view of the facts and circumstances stated herein, it could be seen that there is no merit in the appeal and it is prayed that the appeal be dismissed with cost.

Analysis and Findings: -

The hearing of the case was conducted on 08-06-2017, in the Court Hall of CGRF, Kozhikode and Sri. Ziyad Rehman, advocate represented the appellant was present and the respondent's side was represented by Sri P.V. Sreeram, Assistant Executive Engineer, Electrical Sub Division, Kanjikode and Sri. K Mohanan Accounts Officer and Sri Sanesh, Superintendent, Office of Special Officer (Revenue), and Sri Vipin N, Nodal Officer (Litigation) KSEBL, Palakkad and they have argued the case, mainly on the lines stated above.

On examining the Petition and argument notes filed by the appellant, the statement of facts of the Respondent, perusing the documents and considering all the facts and circumstances of the case, this Forum comes to the following findings and conclusions leading to the decisions.

The main contentions of the appellant which are to be considered in this appeal petition are the following:

The Licensee is prohibited from demand any amount as pro-rata transmission side development charges on per kVA basis from the appellant. The demands made by the respondent are not according to the stipulations contained in Order dated 23-05-2011 in Petition No. T.P. 87/2011. The appellant is entitled to receive an estimate prepared as stipulated under the above order. The rates and percentages could not be in excess of those notified/prescribed by the Regulatory Commission. 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. Even if there was any expansion, it was only as a part of the normal expansion/ development of the transmission infrastructure.

No work at all has been carried out in the substation for providing power to the appellant.

As per the version of the respondent, when the appellant approached the respondents for HT connection during February 2009, the 22 kV GASHA feeder, which is the only feeder in the vicinity of the appellant premises and to which the appellant was previously connected prior to its dismantling, was fully loaded to the brim and was hence incapacitated to carry the appellant load additionally. Also, the 220 kV Kanjikode substation from which the 22 kV Gasha feeder originated was also loaded fully in the 22 kV side, and hence was not in a position to carry the appellant load additionally. Hence enhancement of capacity of feeder and enhancement of capacity of substation are required for effecting connection to the appellant. The 22 kV Gasha feeder originates from the substation and after travelling about 1.4 Km branches into two. Therefore, the entire load has to be carried by the feeder conductor up to the branching point and after branching, the load splits into two. Hence augmentation is needed only for the initial portion up to the branching point. 22 kV cable was proposed for initial 100 metres as there are too many feeders behind the substation. 1.3 KM OH was proposed in the portion thereafter.

Further the respondent has submitted that the Hon'ble High Court, after due consideration, issued its order in writ appeal No: 1876/2013 on 05-02-2014, setting aside the order of the single judge in WP(C) 6134/2009 and holding that these respondents have statutory right to claim the cost for works in advance from the appellant. The estimate for drawl of the 22 kV line was revised downwards from Rs. 13,50,493/- to Rs. 7,07,562/- after completion of the work. The other works in the transmission wing of installing 2 Nos. of 110 kV/22 kV, 25 MVA transformers (Totalling 50 MVA) has also been completed and the substation capacity has been enhanced from 75 MVA to 125 MVA in 22 kV level and there is no variation in quantum from the original estimate as far as this work is concerned. Therefore, that estimate remains the same without any variation. The CGRF has considered all these factors and issued its order on 18.01.2017, dismissing the petition no: OP no: 60/2015-16.

The Hon'ble High Court of Kerala in RP 442/2015 on 24-07-2015 allows the appellant to challenge the rates, quantum of work and accordingly the appellant approached the CGRF with a petition which was disposed after considering all the factors and issued its order on 18-01-2017, dismissing the petition no: OP no: 60/2015-16.

Hence the point to be decided in this case is as to whether the demand of Rs. 7,07,562/-, Rs. 14,00,000/- and Rs. 11,00,000/- for drawing new feeder in the distribution side and for installing a circuit breaker and a feeder bay inside the substation in the transmission side and the proportionate cost for enhancement of the substation capacity respectively was justifiable and reasonable for providing 500 kVA load to the premises of the appellant?

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.

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. 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 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.

Sl. No.	Description	Amount (Provisional)
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	

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.

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.

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.

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.

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.

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.

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.

Meanwhile the Hon'ble KSEERC 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.

But it may be noted that various consumers filed writ petitions before the Hon'ble 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.

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 is not having 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.

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.

The respondent has not seen handed over a copy of the estimate prepared observing the cost of works based on the prevailing 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.

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.

The cost as per the estimate for the construction of the entire capital work is not levied from any individual applicant 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.

Cost of works in the distribution sector for which specific rates are not given shall be fixed at as follows:

- I
 - a) Cost of materials as per cost data
 - b) Centage charge 16% of (a)
 - c) Transportation charge, if any
 - d) Labour Charges

Total cost of work [(a) + (b) + (c) + (d)]

- II Supervision charge 10% of I (c) + (d)

Since the connection was 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

From the analysis done and the findings and conclusions arrived at, which are detailed above, I take the following decisions.

The final accounts of each work, for which amount has been collected by KSEB to provide the electric supply to the appellant, may be prepared and the actual cost estimate be arrived at, incorporating the revisions as ordered above by this Forum, within three months of this order and the same shall be communicated appellant. The excess amount if any shall be refunded with interest.

The Order No. OP 60/201-16 dated 18-01-2017, of CGRF Kozhikode, stands modified to this extent.

Having decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is disposed of with the said decisions taken and issued. No order as to costs.

ELECTRICITY OMBUDSMAN

P/039/2017/_____ /Dated:_____

Delivered to:

1. M/S Hamsaveni Carbides, Door No. Viii/799, NIDA, Kanjikode, Palakkad.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kanjikode, Palakkad.
3. The Special Officer (Revenue), Vydhyuthibhavanam, KSEBL, Pattom, Thiruvananthapuram.
4. The Deputy Chief Engineer, Electrical Circle, KSEBL, Palakkad.

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, Kozhikode.