

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/106/2019
(Present: A.S. Dasappan)
Dated: 2nd March 2020

Appellant : Sri. Arun David,
Managing Partner,
M/s Kothamangalam Aggregates
Prestressed Concrete Industries,
Ayroorpadam P.O., Kothamangalam

Respondent : The Assistant Executive Engineer
Electrical Sub Division, KSEBL,
Kothamangalam,
Ernakulam

ORDER

Background of the Case:

Service connection bearing Consumer No. 1156008021977 was given in respect of Sri Arun David, Managing Partner, M/s Kothamangalam Aggregates Prestressed Concrete Industries, Ayroorpadam P.O, Kothamangalam under Electrical Section, Kothamangalam No. 1. The sanctioned load of the premises was 45KW whereas the consumer was based on demand-based tariff with Contract demand of 30 kVA. The appellant remitted under protest Rs.5,82,411/- towards the cost of installation of 100 kVA transformer for 105 kW additional power as part of expansion of his industry with Contract demand of 100 kVA. Against the demand, the appellant had approached the CGRF, Ernakulam by filing a petition No. OP No. 39/2019-20. The Forum dismissed the petition vide order dated 29-11-2019. Aggrieved against this, the appellant has submitted this appeal petition before this Authority on 31-12-2019.

Arguments of the appellant:

The appellant is a consumer of KSEB since 1999 with the above mentioned consumer number and the supply was drawn from a transformer which the appellant have installed in minimum guarantee scheme. The transformer installed was initially 100 kVA and later was upgraded to 160 kVA. The appellant's request for additional 60 kVA power

could have been given from the regular line by upgrading the 160 kVA transformer to 250 kVA transformer without charging any amount to the consumer as per the prevailing directions of the Kerala State Electricity Regulatory Commission.

It is clear from the clause (35) in Chapter III (General Conditions of supply of electricity page-15) of Kerala State Electricity Regulatory Commission Notification No.215/DD/T& D(Rev)2014/KSERC dated 31/01/2014 notification that the expenditure for extension or up gradation or both of the distribution system to be borne by the Licensee, i.e., KSEB Ltd. But without considering this fact, the Assistant Engineer, KSEB, Kothamangalam has issued a demand notice and accordingly the appellant has paid an amount of Rs. 5,82,411/- towards the cost of installation of 100 kVA transformer under protest.

The appellant had raised a complaint with the Consumer Grievance Redressal Forum and the Forum has denied the claim. Hence this appeal is to issue necessary orders to refund the said amount or adjust the amount in future bills.

Arguments of the respondent:

On 07.11.2018 the appellant applied for 105 kW additional power as part of expansion of his industry with Contract demand of 100 kVA. Total connected load coming to the tune of 150kW. Subsequently, the Assistant Engineer, Electrical Section, Kothamangalam No. 1 prepared an estimate amounting to Rs.5,82,411/- and intimated the appellant. The work involves drawing 120 metre HT service connection OH line & installing I No. 100 kVA transformer for meeting his requirement since the presently feeding 160 kVA Pole casting Transformer will not cater the additional load requested by the appellant.

Earlier the power supply to the premises was feeding from 160 kVA Pole casting Transformer in which the total connected load including the load of appellant was 150 kW.

As per regulation 35 of Kerala Electricity Supply Code 2014, the expenditure for extension or upgradation or both of the distribution system need not be borne by the consumer.

Further the Hon'ble Kerala State Electricity Regulatory Commission Ordered in its Suo moto proceedings No. 001/ Com.Ex. /KSERC /2012 dated 03.05.2016 to not realize the cost of the transformer from the applicants, if required, for giving a low tension supply up to 100 kVA, even if it is erected exclusively for giving that supply, since the transformer is not to be taken as the plant in the low tension service line.

Aggrieved by this Suo moto proceedings, KSEB Ltd filed a writ petition before the Hon'ble High Court of Kerala, and allowed interim stay on the matter by the interim order dated 29.07.2016 in WP(C) No.25347/2016(P). Accordingly KSEB Ltd is free to collect the expenditure

for extension or upgradation or both of the distribution system for providing electricity to an intending consumer.

Analysis and Findings:

The hearing of the case was conducted on 25-02-2020 in my chamber at Edappally and Sri. Arun David represented the appellant's side and Sri Gopi N.K., Assistant Executive Engineer, Electrical Sub Division, Kothamangalam represented the respondent's side. On examining the petition, the counter statement of the respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The appellant has averred that the Board is responsible for ensuring that its distribution system is upgraded, extended and strengthened so as to meet the demand for electricity in its area of supply. The Kerala State Electricity Regulatory Commission Order No. 001/Com.Ex/KSERC/2012 dated 03.05.2016 specifically states that the cost of the transformer for giving a low tension supply up to 100 kVA should not be realized from the applicant even if it is erected exclusively for giving that supply. The said order also specifies that the expenditure reasonably incurred by the licensee for conversion of a single-phase low-tension service to a three-phase low tension service line can be recovered from the consumer if the same is on the specific request from the consumer.

In reply to this, the respondent has stated that against the order of Hon'ble Kerala State Electricity Regulatory Commission, KSEBL approached Hon'ble High Court of Kerala with a writ petition no. WP (C) 25347/2016 and the Court by its order dated 29/7/2016 stayed the proceedings of the Hon'ble Kerala State Electricity Regulatory Commission.

Let me examine the relevant provisions in the Regulations 35, 36 and 37 of the Kerala Electricity Supply Code 2014.

Regulation 35 deals with Expenditure for extension or up-gradation or both of the distribution system to be borne by the licensee –

The expenditure for extension or up-gradation or both of the distribution system up to and including the distributing main, for meeting the demand of new consumers and the additional demand of existing consumers shall normally be borne by the distribution licensee and this expenditure shall be recovered from the consumers through tariff as approved by the Commission.

Here Regulation 36 and 37 are also relevant and reads as under:

36. Expenditure for extension or up-gradation or both of the distribution system to be borne by the consumer -

The expenditure for extension or up-gradation or both of the distribution system undertaken exclusively for giving new service connection to any person or a collective body of persons or a developer or a builder, or for enhancing the load demand of a consumer or a collective body of consumers or a developer or a builder, shall be borne by the respective applicant or consumer or collective body of consumers or developer or builder, as the case may be, in the following cases:-

- (i) for meeting the demand of an applicant with a contract demand above one megawatt (MW);
- (ii) for meeting the additional demand of existing consumers, if the aggregate demand including the additional demand applied for, is above one megawatt (MW);
- (iii) for meeting the demand of the domestic or commercial or industrial complex or colony constructed by a developer or a builder with a demand above one megawatt (MW);
- (iv) for meeting the demand of a high rise building irrespective of its demand;
- (v) for meeting the demand of power intensive unit irrespective of its demand; and
- (vi) for meeting the demand of a consumer requesting for dedicated feeder or protected load status irrespective of its demand:

Provided that, if due to technical reasons, the extension or up-gradation 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 realized from the consumer shall be limited to the proportionate expenditure.

37. Expenditure for service line, plant etc., for providing supply.

(1) The consumer shall bear the expenditure for the service line or of the plant or of both, provided exclusively for him by the licensee.

(2) The expenditure for line and plant mentioned in sub regulation (1) above shall be determined as per the cost data approved by the Commission.

Regulation 32 speaks of expenditure reasonably incurred by the licensee for providing from the distributing main, any electric line or electric plant required exclusively for the purpose of giving that supply and the licensee is entitled to recover the expenditure from the owner or lawful occupier of the requiring supply. Regulation 37 says the consumer shall bear the expenditure for the service line or of the plant or of both, provided exclusively for him by the licensee. The respondent's version is that the proposed 11 kV line and transformer is required exclusively for meeting the appellant's load requirements. The respondent has acted on the basis of these regulations and issued demand notice to the appellant for providing supply.

The appellant's arguments depend on Regulations 35 and 36 of the Supply Code 2014. As per regulation 35, the expenditure for extension or

upgradation or both of the distribution system up to and including the distribution main for meeting the demand of new consumers and the additional demand of the existing consumers shall normally be borne by the distribution licensee.

As per Clause 36 of the Supply Code the expenditure for extension or up gradation or both of the distribution system under taken exclusively for giving new service connection to any person or a collective body of persons if the power requirements of the applicant with a contract demand above 1MW is to be met by the applicant. In the present case the demand for the power requirement is less than 1MW and the appellant has requested the benefit of regulations 35, 36 and 37 of the Supply Code 2014.

The respondent has contended that the distribution licensee is empowered to recover the expenditure incurred for providing supply as per Reg.32 of Kerala Electricity Supply Code 2014 which reads as follows.

“The licensee may recover from the owner or lawful occupier of any premises requiring supply, the expenditure reasonably incurred by the licensee for providing from the distributing main, any electric line or electrical plant required exclusively for the purpose of giving that supply:

- Provided that, the licensee shall not be entitled to recover such expenditure if such expenditure is incurred under any scheme approved by the Commission:
- Provided further that, the licensee may exempt any person requiring connection from the payment of expenditure if the State Government directs the licensee to provide new electric connection to any category of consumers and pays in advance to the licensee, the expenditure at the rates in the cost data approved by the Commission”. Further it is stated that the proposed 11 kV line and transformer is required exclusively for meeting appellant’s load requirements.

In this case the appellant had remitted the entire expenses for the installation of 11 kV line and transformer under protest and the request of the appellant is to refund the amount as per the provisions contained in the regulations 35,36 and 37 of Kerala Electricity Supply Code 2014 and order of Kerala State Electricity Regulatory Commission vide No. 001/Com.Ex/KSERC/2012 dated 03-05-2016. But the Hon. High Court of Kerala allowed an interim stay order in WP (C) No.25347/2016 (P) filed by KSEBL against the Commission’s order.

Decision

In view of the above discussions, it is directed the respondent to dispose the subject on the basis of the final decision of the Hon’ble High Court of Kerala in the Writ Petition No. 25347/2016 (P). The respondent will consider the request for refund on the basis of the disposal of the writ petition filed by them. The appeal filed by the appellant is disposed of

accordingly. Having concluded and decided as above it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/106/2019/ _____ /Dated: _____

Delivered to:

1. Sri. Arun David, Managing Partner, M/s Kothamangalam Aggregates Prestressed Concrete Industries, Ayroorpadam P.O., Kothamangalam
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Kothamangalam, Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.