

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/061/2023
(Present A. Chandrakumaran Nair)
Dated: February-09-2024**

Appellant : Sri. Babu C George,
B.C.G Bungalow Annex,
Chandrathil, Ambedkar Road,
Vennala P.O., Kochi- 682028.

Respondent : Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Limited,
Vytila, Ernakulam (Dist.)

ORDER

Background of the case

The appellant is a consumer of the licensee (KSEBL) under Thrikkakkara Electrical Section. The appellant applied for the power supply to their new project BCG Residency opposite CEZ at Seaport Airport Road, Kakkanad, Ernakulam on 13/01/2013. The requirement of the power of the appellant was 900kVA along with three other applicant. The 11 kV line has to be drawn for a length of 1.8 km from the 66 kv substation, Kakkanad in which 1.65 km is a new line and 140 m of line duplication. The appellant has paid the proportional contribution for the work of Rs. 2,41,935/- The licensee has completed the works on 30/04/2013 and issued notice on 28/06/2013, to avail the power supply by 30/06/2013, if not the unconnected minimum charges will be levied at the rate of Rs.54,900/- per month. The appellant could avail the power supply as on 28/06/2015. As per the supply code 2005 regulation 10(1), the appellant is liable to pay the UCM charges. The supply code was revised and the same was come into force with effect from 01/04/2014, the UCM charges are not applicable as per the new supply code. Hence, the licensee charged the UCM charges from 01/07/2013 to 31/03/2014 (i.e., for 9 months) for Rs. 4,94,100/- The appellant contented this demand notice stating that this is not chargeable as per the Electricity Act 2003. They file petition to CGRF and CGRF issued order dated

18/10/2023 stating that the appellant is liable to pay the UCM charges for six months. Aggrieved by the decision of CGRF, this petition is filed to this authority.

Arguments of the Appellant

The complainant has availed commercial electricity connection with consumer number 1155574048501 with LT-VII A tariff from the Electrical Section, Thrikkakkara. The complainant is engaged in the business of constructing commercial and residential buildings and had completed the construction of his building named as 'BCG Residency Towers'. On 13.01.2013, the complainant along with three other applicants applied for the grant of power connection to the tune of 900KVA and for this, a feeder line had to be drawn from the 66KV Substation, Kakkanad. The respondent suggested the complainant to share the cost of works for granting power connection along with other applicants. The overhead 11 KV Line for 1.8 Kms (1.65 Kms for new line and 140 meter for line duplication) has to be drawn along with installation of three transformers to the tune of 630 KVA, 400 KVA and 160 KVA and the allied works has to be done.

The estimate for the work was sanctioned and the respondents permitted the complainant to pay the pro rata amount towards the estimate amount. The construction of Over Head Line and DP portion of the estimate was to be carried out by the Board and other works was to be executed by the applicants by a licensed contractor under the supervision of Board officials after obtaining necessary approvals. Accordingly an amount of Rs. 2,41,935/- was paid by the Complainant. The Electrical inspectorate had accorded approval for the scheme of electrification submitted by the complainant. Extension of scheme of approval from the Electrical Inspectorate was obtained. Thereafter the second respondent started to insist upon the payment of unconnected minimum charges under the OYEC (Own Your Electric Connection) Scheme which has become defunct after the enactment of the Electricity Act, 2003. The second respondent issued a communication to the complainant demanding unconnected minimum charges on 28.06.2013 and thereafter another communication was issued on 24.06.2014 demanding unconnected minimum charges. The issue of these demand notices by the respondents are illegal, arbitrary and without jurisdiction.

The entire cost for the work relating to the drawing of line, the setting up of metering equipment and all arrangements for metering, including the cost of the meter is being met by the petitioner. There is no cost incurred by the respondents and hence no charge could be levied in the nature of UCM. Further the communications issued by the respondents do not even state the basis for the UCM charges demanded and the basis for calculating such charges. Unconnected minimum charges are levied from an applicant of

electric energy by virtue of Regulation 10 of the Kerala Electricity Supply Code 2005. But the provisions of regulation 10 of Supply Code 2005 are not applicable in complainant's case. The supply code is a code for the distribution licensee and not for the consumer and it does not contemplate the demand of unconnected minimum charges from the consumers. The respondents are acting contrary to the provisions of the Electricity Act, 2003, the Supply Code 2005 and the KSEB Terms and Conditions of Supply 2005 and the Supply code 2014.

According to Section 47 of the Electricity Act 2003, dealing with the distribution of electricity does not provide for levy of any charges other than in respect of electricity supplies, cost of providing plant, line, security deposit etc. There is no provision to levy any charge for electricity not supplied. There is also no other statutory provision that enables the respondents to demand UCM. The Electricity Act, 2003 does not contemplate any supply of power under OYEC (Own Your Electricity Connection). Being aggrieved by the actions of the respondents the complainant had approached the Honourable High Court of Kerala by filing W.P.(C) 29518 of 2014 and the Honourable Court by judgment dated 06.07.2023 directed the complainant to approach CGRF for redressing the grievances. Hence the complainant approached the CGRF.

Arguments of the Respondent

The petitioner Sri Babu C George, 5th floor, BCG Estate, N.H Bypass Road, Palarivattom P.O, Kochi - 682025 applied for SOP to their project BCG Residency Tower, Opp. CSEZ, Sea port Airport Road, Kakkanad. The requirement of the applicant was power connection for 900 KVA along with three other applicants. The quantum of works involved was the construction of overhead 11 KV line for 1.8 KM (1.65 new line and 140 m line duplication) has to be drawn from 66 KV Substation Kakkanad along with installation of three transformers having capacity of 630 KVA, 400 KVA and 160 KVA. The construction of overhead line and DP Portion has to be carried out by the Board and other allied works under the scope of the party. The split up details of total amount to be paid by four applicants to the KSEB is issued. Thereby Rs 2,41,935/- was remitted by the petitioner by Demand Draft dated 10/11/2011.

After the completion of works on 30/04/2013 KSEB issued a notice on 28/06/2013 as per regulation 10(1) of Supply Code 2005 in which stated that work under scope of KSEB has been completed on 30/04/2013 and requested to avail service connections on or before 30/06/2013, otherwise UCM may levied at the rate of Rs. 54,900/- per month from 01/07/2013 onwards. Regulation 10 (1) of Supply Code 2005 stated that, "*where the Licensee has completed the work required for providing supply of electricity to an applicant but the installation of the applicant is not ready to receive supply, the Licensee shall serve a notice on the applicant to take supply within sixty*

days of service of the notice in the case of LT consumers and 90 days in the case of HT and EHT consumers".

Regulation 10 (2) of Supply Code 2005 stated that, "If after service of notice the applicant fails to take supply of electricity, the Licensee may charge fixed/minimum charges as per the tariff in force for completed months after expiry of notice till the applicant avail supply". There was no response from petitioner for the above, so Assistant Engineer, Electrical Section Thrikkakara has issued UCM demand notice to the petitioner on 24/06/2014 for Rs. 4,94,100/- from the period 30/06/2013 to 31/03/2014 as per regulation 10(2) of Supply Code 2005.

UCM charged as per the tariff order in force during the period. The calculation is as follows

Commercial Tariff	421 KW x 120	= 50520.00
Domestic Tariff	73 (3 Phase)x 120/2	= 4380.00
Total		= 54900.00

For the period for 30/06/2013 to 31/03/2014

(9 months) Total 9 x 54900= 494100/-

The reply of allegation of petitioner is the issue of demand notice to the petitioner under UCM is legal and as per regulation 10 (1) and (2) of Supply Code 2005. The KSEB did not act contrary to the provision of Electricity Act 2005. The provision of regulation 10 of Supply Code 2005 is applicable in this case. UCM is charged on 24/06/2014 as per regulation 10(2) of Supply Code 2005.

The communication on 24/06/2014 of respondent (KSEB) to the petitioner was clearly mentioned the UCM charges demanded, and its calculation details. In this case, as per Regulation 10(2) of Supply Code 2005, respondent (KSEB) have statutory provision to demand UCM to the petitioner. Thrikkakara is a fast growing area and number of applications for providing supply of energy under LEOYEC received during that period was enormous. When the petitioner applied for this huge quantum of power, the power was given to them after providing new infrastructure and the requested power was earmarked for them. Subsequently another consumer in that area approaches KSEB for power during that time, KSEB was forced to construct further infrastructure to give the power whereas the infrastructure and the power earmarked for the petitioner remains unutilized. Hence it is legitimate to charge the UCM charges to the petitioner.

Analysis and findings

The hearing of the appeal petition was conducted on 30/01/2024 at 11:30 am in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The appellant has

attended through his nominee Sri. Manu Joseph. The respondent has not attended the hearing. The letter for hearing had sent on 08/01/2024 and reminded over phone from the Ombudsman's office at several occasions. Later the respondent attended the office submitted his statements in writing.

The appellant constructed a building of 6 floor which includes commercial as well as domestic spaces. The construction work was started around 2010 and completed around 2014. The power demand projected for this building was around 900 kVA. The appellant has applied for the power connection along with other three consumers. The licensee proposed to draw an HT line (11kV) around 1.8 km from 66 kV substation, Kakkanad and to install three transformer for giving connection to various consumers. The The licensee demanded the proportional amount of Rs. 2,41,935/- and same has been paid by the appellant. The appellant has completed this works around 30/04/2013 and intimated the appellant to avail the power supply by 30/06/2013. The licensee also intimated the appellant that if the power supply is not availed by 30/06/2013, the unconnected minimum charges as per the regulation 10 of the Kerala Electricity Supply Code 2005.

The appellant had completed the building construction around 2014 and availed power supply on completing the electrical installation works only on 28/06/2015. The regulation 10 of the Kerala Electricity Supply Code 2005 deals with the delay on the part of applicant to take supply.

10(1) "where the Licensee has completed the work required for providing supply of electricity to an applicant but the installation of the applicant is not ready to receive supply, the Licensee shall serve a notice on the applicant to take supply within sixty days of service of the notice in the case of LT consumers and 90 days in the case of HT and EHT consumers".

10(2) "If after service of notice the applicant fails to take supply of electricity, the Licensee may charge fixed/minimum charges as per the tariff in force for completed months after expiry of notice till the applicant avail supply".

The section 50 of the Electricity Act states about the authority of Regulatory Commission to make Electricity Supply Code.

50 "The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnection supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters".

The section 181 of the Electricity Act stipulate about the power of State commissions to make regulations.

181(1) *“The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.”*

These sections are clearly states about the power of state commissions to make regulations and Electricity Supply Code. According the Kerala State Electricity Regulatory Commission has formulated the State Electricity Supply Code 2005 which is a regulation applicable to the licensees and consumers within the state of Kerala.

Kerala State Electricity Regulatory Commission had revised the supply code which was effective from 01/04/2014 and that regulation was named as Kerala Electricity supply code 2014. This authorises the licensee to charge the unconnected minimum charges only during the currency of the Electricity Supply Code 2005 which is up to 31/03/2014.

Here in this case in hand, the licensee could charge the UCM only after 90 days of issue of notice. The notice was issued on 28/06/2013 and hence the charge is applicable only from 28/09/2013. The UCM chargeable is only from 28/09/2013 to 31/03/2014.

The appellant has mentioned that there is no provision in the act for charging such charges from the consumer. The Act by Section 181(1) authorises the State Commission to formulate regulations and also as per Section 50 of the Act authorise the State Commission to make Electricity Supply Code. Accordingly, the Kerala State Electricity Regulatory Commission had formed the Electricity Supply Code 2005, which was effective up to 31/03/2014. The supply code is the regulation which authorises the licensee to charge the UCM. Then the contention of the appellant that the Electricity Act is not having provision is not correct and hence rejected.

The appellant has filed the petition to Hon'ble High Court of Kerala WP(c) 19518/2014 and pronounced the judgement dated 06/07/2023 directing the petitioner to approach Hon'ble CGRF for redressing the grievances. This petition was considered by Ombudsman as an appeal to the CGRF order.

In view of the above the appellant is liable to pay the UCM charges from 28/09/2013 to 31/03/2014.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. I hereby agree with the decisions of the CGRF dated 18/10/2023.
2. No order for any other cost.

ELECTRICITY OMBUDSMAN

No. P/061/2023/_____ dated: 09/02/2024.

Delivered to:

1. Sri. Babu C George, B.C.G Bungalow Annex, Chandrathil, Ambedkar Road, Vennala P.O., Kochi- 682028.
2. Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Vyttila, Ernakulam (Dist.)

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, Consumer Grievance Redressal Forum, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503.