

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/020/2024
(Present A. Chandrakumaran Nair)
Dated: June-04-2024**

- Appellant : Sri. Bharath K. Patel, Managing Director,
K.P. Cars Private Limited, Suit No. 205,
2nd Floor, Pioneer Towers, Shanmugham Rd,
Ernakulam Dist-682031.
- Respondent : The Deputy Chief Engineer, Electrical Circle,
KSE Board Ltd, Ernakulam, Ernakulam (Dist.)
- The Executive Engineer, Electrical Division,
KSE Board Ltd., Thripunithura, Ernakulam.
- The Asst. Executive Engineer, Electrical Sub
Division, KSE Board Ltd., Thripunithura,
Ernakulam Dist.

ORDER

Background of the case

The appellant shri. Bharath K Patel is the Managing Director of K.P. Cars Pvt. Ltd., which operates an Audi Car showroom situated at Kundannoor, Ernakulam. The appellant had applied for a LT connection to the licensee and had paid Rs. 3,04,653/- on 03/04/2010 as the work deposit. Then the licensee informed that as the connected load is more, HT supply is to be availed and asked them to deposit Rs. 3,96,854/-. Then the total deposit made is Rs. 7,01,507/-. NHAI had objected for extending the line as OH line and hence the licensee has given an option that if the consumer wishes, they can extend the line as underground (UG) cable. The appellant along with other neighbouring consumers, the line was extended to their premises and a RMU with suitable number of feeders was installed. The licensee has charged Rs. 17,908/- as the supervision charges for the work executed by the appellant. The supervision charges have been adjusted from the deposit already made on 2017. The balance amount has not been refunded to the appellant. The appellant has filed petition to CGRF with a prayer to refund the amount with 14% compound interest and also claiming Rs. 14,00,000/- as compensation. The CGRF issued order dated 07/03/2024 stating that

the respondent has to refund the excess amount collected within one month. The respondent has refunded the amount of Rs. 6,83,599/- without any interest. The petition is filed to this authority as appeal to the CGRF order.

Arguments of the Appellant

The Complainant M/s. K.P Cars (P) Ltd runs the Audi, Kochi Showroom located in Kundanoor, Ernakulam, Kerala. For the purpose of running the showroom, the Complainant in the year 2009 requested the Respondents for an Over-Head Electronic Connection. Initially the connection was that of a Low-Tension (LT) Supply by drawing 75m 11 KV Over-Head (OH) line along the Aroor- Edapally Bypass Road for installing 100KVA transformer under OYEC basis. To this cause, the complainant remitted a sum of Rs. 3,04,653/- (Rupees) Three Lakh Four Thousand Six Hundred and Fifty-Three Only) as the cost of works and supervision charges vide RT No. 136735 dated 03.04.2010 at ELE Section Maradu as LEOYEC. However, after the site inspection conducted by the respondents, it was seen that the load requirement was above the application made by the complainant and hence a High Tension (HT) Supply of 117KVA was recommended by the Respondents.

After the issuance of the administrative sanction vide Letter No. AS No. 13/10-11 dated 15/05/2010 by the Respondents, they further issued a Demand Letter No. AE3/HT SOP/KpCar/10-11/1825 dated 20.05.2010 directing the complainant to remit another sum of Rs. 3,96,854/- (Rupees Three Lakh Ninety Six Thousand Eight Hundred and Fifty Four Only). The complainant thereby remitted the above amount vide RT No 163035 dated 10.06.2010 at ELE Section Marady Towards LEOYEC. The above payment was acknowledged by the Respondents.

Pursuant to this, the first Respondent requested the 3rd Respondent to accord technical sanction letter dated 26.07.2010 but however the 3rd Respondent replied on 01.10.2010 stating that the line extension work for availing power connection includes the permission of the National Highway Authority of India (NHAI) and that the NHAI through their letter dated 24.09.2010 objected to draw the proposed Overhead line and requested to change the proposal to Underground cable along the said route. Therefore, the 3rd Respondent vide Exhibit P6 dated 01.10.2010, directed the complainant to change its proposal and bear an additional cost along with paying 10 percent supervision charges. Thus, a major hurdle to the project was over by the year 2010 itself.

Thus, on 24.04.2012 the complainant got a proposal from one contractor and proceeded to lay off the underground cable and started the laying of underground cable by sharing the costs with nearby applicants. The complaint also entered into agreements with other applicants for this purpose. Even after installing all the equipment's and cables within the correct timeline, the respondents still refused to provide HT service

connection to the complainant which deeply affected the business of the company's commercial activity. Aggrieved by this the complainant made request in 2010 and thereafter for six years straight there has been nothing other than letters sent to and forth. At this juncture, the complainant again wrote to the Respondents in 2016 and reiterated its grievances vide Exhibit P10 letter which finally acted as a wake-up call. Pursuant to the issuance of Exhibit P10 letter, the 2nd Respondent wrote a letter to the 3 Respondent detailing the story and another letter to the Assistant Executive Engineer, Transmission Construction Sub-Division Kaloor was also issued seeking for a feasibility report.

At this juncture, the fourth respondent pointed out some minute correction which could have been made years ago, but nevertheless the complainant cleared the same. Soon after this the first Respondent started dragging the matter by raising flimsy doubts and asked for re-validated certificate as the validity of Energization Sanction had expired vide letter send by the 1st Respondent to the 3rd Respondent. It is to be noted that such an expiry was only because of the callous acts of all the Respondents combined and never a mistake from the part of the Complainant.

The 3rd Respondent replied on 28.02.2017 and the 4th Respondent additionally clarified the whole events to the first Respondent. Thus after 8 years, the Respondents accorded the administrative sanction and it was decided that Add On RMU was needed to be installed to the existing RMU that was already installed in the premises of the complainant. It is also to be noted that the Estimate report stated that an amount of Rs.7,29,488/- (Rupees Seven Lakh Twenty Nine Thousand Four Hundred and Eighty Eight Only) and supervision charges of Rs.1000 was already collected from the complainant and the same was communicated to the complainant. Finally on December 2017, the long wait of the complainant got over and the connection was live. However, the security amount paid by the complainant vide Exhibit P3 & P4 were not refunded and despite several request it stayed so. The complainant thereby issued letter stating this grievance and the second Respondent detailed the history of the issue and recommended for the refund.

On 25.11.2021, the complainant received another letter from the 1st Respondent stating that the request for refund of the complainant was forwarded to the chief engineer but no payment was made to them. At this point, the complainant's had to approach the Consumer Grievance Redressal Forum, Ernakulam seeking the following reliefs :

"(a) To direct the Respondents to release the refund deposited by the complainant in the year 2010 altogether with compound interest at the rate of 14% from the date of deposit.

(b) To direct the Respondents to pay a sum of Rs. 14,00,000/- (Rupees Fourteen Lakhs Only) as damages for the loss of business and cost incurred for alternative power generation using diesel generator from the year 2010 to 2018.

(C) To award exemplary costs in favour of the Complainant and against the Respondent".

The CGRF in its Order No. CGRF-CR/O.P No. 66/2023-24 dated 07.03.2024 dated held the following as the decisions:

- i. The Respondent need to refund the excess amount collected from the petitioner within one month from the date of the order.
- ii. No costs ordered.

This complainant has approached this Hon'ble Ombudsman being aggrieved by the above stated order.

The Code cannot go beyond the Act: The Kerala Electricity Supply Code 2014 is formulated in exercise of the powers conferred by Section 50 read with Section 181 of the Electricity Act, 2003. Any regulation which goes beyond Section 50 with Section 181 would be declared as ultra vires the Act. In Section 47 of the Electricity Act 2003, the legislature has given a distribution licensee the power to require security from an applicant for the payment to him of all monies which may become due to him for any electric line or electrical plant or electric meter that is to be provided for supplying electricity to a person and additionally, the legislature has directed that any money collected likewise, the licensee shall pay interest equivalent to the bank rate or more. Thus, when the Act directs the licensee to make payment of interest for security for the payment to him of all monies which may become due to him, the regulations which is made under the powers of the Act states otherwise, the rules or regulations become ultra vires.

There is unjust enrichment by the licensee: Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. `Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else. The doctrine of unjust enrichment', therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of `unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity. By retaining the amounts from 2010, the Licensee has unjustly enriched themselves under the expense of the complainant. In the leading case of Fibrosa v. Fairbairn, [1942] 2 All ER 122, Lord Wright stated the principle thus :

"...(A)ny civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."

Additionally, the complainant also incurred an expense of Rs.14,00,00/- (Rupees Fourteen Lakhs Only) as damages for the business loss incurred by generating power with the help of diesel generator. There is proof to the same as evidenced by Exhibit P24. This is purely caused by the callous attitude of the respondents and hence the Redressal Forum cannot overlook

on this serious grievance put forth by the complainant. Thus, on the lights of above arguments and in the interest of justice it is prayed that the order of the Hon'ble Consumer Grievance Redressal Forum in Complaint No. 66/2023-24 may be set aside to the extent it declares that no interest and damages are liable to be paid to the appellant

Arguments of the Respondent

The Consumer was intended to avail LT supply by installing a 100kVA transformer and the estimate was prepared. Accordingly, M/s K.P. Cars (P) Ltd., operates an Audi Car Showroom at Kundannoor, Ernakulam, owning a High Tension (HT) electricity connection with consumer number 1,355500052521 and LCN-12/8272. Initially, they requested a Low Tension (LT) electricity supply and paid Rs.3,04,653/ on 03/04/2010 as the Estimated Cost of Service Connection (ECSC). However, upon inspection by licensee's officials, it was found that the load requirement has exceeded the capacity for Low Tension supply. Consequently, the respondent recommended a High Tension (HT) Supply of 117KVA, for which the petitioner paid an additional ECSC of Rs.3,96,854/- on 10/06/2010. Due to the objection of NHAI, the work was not done and the amount was not refunded or adjusted anyway. A new administrative sanction was issued from the O/o The Deputy Chief Engineer, Electrical Circle, Ernakulam and a demand note was issued to M/s K. P. Cars. Pvt Ltd, (Letter No:AEE1/SOP/KP Cars/17-18/30 dtd. 15.04.2017 of The Deputy Chief Engineer, Electrical Circle, Ernakulam) in which they were directed to remit only Rs. 17908/- as supervisory charge. In the demand letter and estimate sanction it was mentioned that the amount of Rs. 17908/- may be adjusted from the amount already remitted by the applicant and adjusted accordingly. Balance LEOYEC amount of Rs. (304653+396854-17908) 683,599/- has been refunded to the applicant vide Cheque No. 632587 Dated 11.04.2024 of Executive Engineer, Electrical Division Tripunithura.

Section 47 says that (Power to require security):- "(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him, reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him -

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

Where any person has not given such security as is mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person,

within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter. If the person referred to in Sub section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues. (4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security. (5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter." In this case, the amount was not collected as a Security Deposit under Section 47 of the Electricity Act 2003 and therefore not subject to interest payment. The delay in providing the electric connection was due to the actions taken by the petitioner, such as initially opting for a Low Tension (LT) supply, later proceeding with laying cables on their own after NHAI objections and delay in obtaining necessary approvals from the Electrical Inspectorate.

Regulation 72 of The Kerala Electricity supply code 2014 deals with the Interest on security deposit.- it says that (1) The licensee shall pay to the consumer, interest on the security deposit furnished by him at the bank rate prevailing on the first of April of that year and it shall be payable annually with effect from date of such deposit. (2) The interest accrued during the financial year shall be adjusted in the energy bill of the consumer during the first quarter of the ensuing financial year. (3) If the adjustment of interest is delayed, interest at twice the bank rate shall be payable for the delayed period. In the case in hand the amount is not security deposit it is only LEOYC work deposit. So this will not come under the purview of Section 47 of the Act and Regulation 72 of the supply code.

Regulation 58 of the supply code is not applicable in this case. It says that (1) If any person after applying for supply of electricity with the licensee withdraws his application or refuses to take supply, the application shall stand lapsed and the applicant shall be informed accordingly. (2) The amount of security paid if any with interest at bank rate as on the date of furnishing such deposit and the unspent portion of the amount paid towards expenditure for providing electric line or electric plant shall be refunded by the licensee to the applicant: Provided that the installation or part thereof constructed out of the amount deposited by the applicant shall, on withdrawal of the application by the applicant, become the property of the licensee and the applicant shall have no claim whatsoever on such assets; Provided further hat, the licensee shall as soon as may be, take steps to utilise such assets which shall be accounted as the assets created out of contribution by consumers. In this case applicant does not withdraw the

application. The proposed Installation was not done from the amount deposited by the applicant.

Regulation 83. Payment of expenditure as per demand note.- "(1) The applicant shall make the payment within fifteen days of receipt of demand note, failing which the application shall stand lapsed and the applicant shall be informed accordingly in writing under acknowledgement: (1) Provided that the licensee may grant enlargement of time to the applicant for payment of charges in case the applicant submits within fifteen days of the receipt of demand note, a written request for such enlargement of time. (2) On actual execution of the works, if it is found that additional items of works in excess of those provided in the demand note, are required to give connection to the applicant, the expenditure for such items of additional work at the rates in the cost data approved by the Commission shall be remitted by the applicant. (3) On actual execution of the works, if it is found that certain items of works as provided in the demand note, are not required to give connection to the applicant, the expenditure for such items of works at the rates in the cost data approved by the Commission shall be refunded to the applicant by the licensee."

Sub-Regulation 3 of Regulation 83 pertains to the refund of ECSC charges collected from an applicant. However, this Regulation does not stipulate any provision regarding the payment of interest to the consumers when refunding the excess amount collected as ECSC charges. Therefore, the petitioner cannot claim interest on the amount paid as ECSC. The regulation keeps silent about the interest portion. The Electricity Act 2003 and The Kerala Electricity supply code 2014 not stipulate to give interest for the LEOYC amount or the work deposit amount. There was no delay from the part of KSEBL related to this work, So not entitled to any compensation. The licensee is bound to abide by the statutes .The act and law do not permit the consumer to make an unlawful gain. None of the grounds raised in the complaint are tenable and the complainant is not entitled for any reliefs. Considering the above facts, I may request this Honourable forum to accept the contentions raised through this statement of facts and dismiss the above complaint.

Additional Statements filed by the Respondent

Despite commencing the work on 24.04.2012, the complainant showed severe laxity in completing the work. The complainant only energized the connection in 2017 i.e., after a long delay of over 5 years. It is also submitted that the during from 2012, up until 2017, the complainant had not raised a request to refund the amount collected as ECSC. Upon energization, the complainant requested a refund of the amount collected as ECSC. Upon receiving the request of the complainant, the process for the release of the ECSC was initiated. However, due to administrative exigencies,

the amount couldn't be released expeditiously to the complainant. It was at this juncture; that the complainant approached the CGRF.

Non-applicability of Regulation 72 of the Supply Code: Regulation 72 of the Supply Code deals with interest on Security Deposit. As per the provision, the licensee is obligated to pay interest on the security deposit of the consumer. This instant case does not deal with Security Deposit. The licensee usually collects a security deposit from consumers at two instances:

- i. When electricity is supplied, and
- ii. When an electric line, electrical plant, or electric meter is provided to supply electricity.

In this case, when ECSC was collected from the complainant, the licensee had not supplied electricity or provided any electric line/plant/meter for the use of the complainant. In fact, as per the HT agreement dated 21.10.2017 entered between the complainant and the licensee for the supply of electricity, an amount of Rs. 2,79,600/- was already furnished as the security deposit. In the present case, the amount furnished as ESCS was not a security deposit but rather a work deposit issued under Regulation 83 of the Supply Code.

Security Deposit v/s Work Deposit: The purpose of a security deposit and work deposit are starkly different. The object of collecting the security deposit is to ensure that timely payment is received or that the supplied apparatuses are returned without damage. However, the object of a work deposit is different. A work deposit is an amount that will be incurred by the licensee in effecting a work, such as effecting LT/HT connection to a consumer. The security deposit will usually be returned to the consumer upon termination of the agreement but the work deposit is the capital for carrying out a required work. The provision for interest on security deposit exists because the licensee is just a "temporary custodian" of the money and does in no way use the money for any other purpose.

Applicability of Regulation 83: As per Regulation 83, consumers shall make payment as per the demand note for executing work with the licensee. This provision is squarely applicable in this case. The complainant who was desirous of effecting the electricity connection to his premises applied initially for an LT connection and then for an HT connection as per the cost data approved by the commission. Since the amount collected from the complainant was not used, it was remitted back as per the order of the CGRF without interest. Since sub-regulation (3) provides for a refund without interest, the same has also been released by the complainant.

Jurisdiction of the Ombudsman: Regulation 1 of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2023 (the per "Regulations") deals with the application of the Regulations. As Sub Regulation (4), the Regulations must be construed harmoniously with the Supply Code and the

Electricity Act. It is also mentioned that in case of any inconsistency with the Supply Code, the Supply Code shall prevail. This places the Supply Code as the governing law of the Ombudsman and that he shall not go beyond the same. Additionally, the primary relief sought by the complainant before the Ombudsman pertains to the question of interest on the work deposit. According to Regulation 83(3) of the Supply Code, there is no provision for the payment of interest on the refund of the amount deposited under this Regulation. The Ombudsman's authority is derived from these Regulations, and he is obligated to operate within the framework they establish. The Supply Code, which takes precedence over other regulations, explicitly excludes the obligation to pay interest on such deposits. Therefore, the Ombudsman is bound by these rules and cannot issue an order directing the board to pay interest, as doing so would contravene the explicit provisions of the Supply Code. This legal framework ensures that all decisions made by the Ombudsman are consistent with the established regulations, maintaining the integrity and predictability of the regulatory system. The exclusion of interest payments on refunds, as stipulated in the Supply Code, reflects a deliberate policy choice intended to govern financial transactions and refunds within this context. Consequently, even if other aspects of the complainant's case were considered, the specific request for interest on the work deposit cannot be accommodated within the bounds of the current regulatory structure. Therefore, the complainant's demand for interest is not only belated but also lacks a legal basis under the applicable regulations. The Ombudsman, acting within the constraints of his authority, is unable to grant the requested relief. This limitation underscores the importance of adhering to the regulatory framework, which aims to provide clarity and fairness in the administration of such matters. Thus, the claim for interest on the work deposit is untenable both due to the excessive delay in filing and the clear stipulations of the governing regulations.

Analysis and findings

The hearing of this appeal petition was conducted on 28/05/2024 at 11:00 a.m. in the office of State Electricity Ombudsman, D.H. Road & Foreshore Road Junction, Near Gandhi Square, Ernakulam. The appellant's representative Adv. Sri. Mehnaz P. Mohammed and the respondents Adv. Sri. Souradh C. Valson, Sri. Tito V. William, The Nodal Officer and Sri. Biju P.R., Asst. Executive Engineer, Thripunithura Electrical Sub Division attended the hearing.

M/s K.P. Cars decided to have a showroom for the Audi Cars in Kundannoor, Ernakulam. The appellant have submitted the application to the licensee for an LT power connection. The licensee had prepared an estimate for 3,04,653/- and asked to pay as deposit for the work of extending the power line to their premises and the appellant made the payment. Then another estimate was prepared for Rs. 3,96,854/- stating that the service connection is to be in HT as the connected load is higher and asked the applicant to pay.

Then the total amount deposited by them is Rs. 7,01,507/-. Then licensee has not explained why this two estimate is prepared? Whether second estimate is the additional amount for HT connection or not? There was no answer from the licensee for these questions. The payment was made during the year 2010. The licensee realized that the extension of OH line is not feasible due to objection of NHAI and written a letter to the applicant on 01/10/2010 stating that the extension of HT line is to be on underground cable and then additional cost is to be incurred and the appellant has to inform their willingness. Otherwise, the appellant could execute the work on paying 10% of the estimate cost as supervision charges. The appellant has made the proper reply to this letter only on 20/08/2016, no other correspondences on accepting this option before 2016. However, they decided to execute the work on cost sharing basis along with two of the neighbouring consumers. The line and RMU was energized on July 2016. The appellant have been availed an LT power connection and was managing with LT power connection. The connection to the appellant was energized on 31/10/2017. The RMU is situated in the premises of K.P. Cars Ltd and the appellant have executed an add on panel to RMU, laying of 15m of HT cable and SITC of metering panel. The estimate for this work was prepared for Rs. 7,29,488/- and the party is asked to remit Rs. 17,908/- as the supervision charges. The party has requested the licensee to adjust this amount from the work deposit already made during 2010. This have been adjusted during 2017. Then the balance to be refunded as Rs. 6,83,599/-. The power was connected to the appellant on 31/10/2017 with contract demand 68 kVA and connected load 110.3kw. The appellant have paid Rs. 2,79,600/- as security deposit.

In the case in hand, the main complaint is the licensee has kept Rs. 6,83,599 which has been deposited by the appellant as the deposit for the work. The Section 46 of the Electricity Act 2003 empowered the licensee to recover the reasonable expenses for providing the line for extending the connection.

Section 46 *“The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of living that supply.”*

The regulation 32 of the Supply Code 2014 detailed about the recovery of expenditure.

32(1) *“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”.

32(2) *“The expenditure charged by the licensee shall be based on the cost data approved by the Commission and published by the licensee effective for the period mentioned therein”.*

32(3) *“The licensee shall not include the cost of meter while preparing the estimate of the expenditure to be recovered from the consumer under subregulation (1) above”.*

And also regulation 83 of the Supply Code- 2014 describes procedure as below

83(1) *“The applicant shall make the payment within fifteen days of receipt of demand note, failing which the application shall stand lapsed and the applicant shall be informed accordingly in writing under acknowledgement:*

Provided that the licensee may grant enlargement of time to the applicant for payment of charges in case the applicant submits with in fifteen days of the receipt of demand note, a written request for such enlargement of time.”

83(2) *“On actual execution of the works, if it is found that additional items of works in excess of those provided in the demand note, are required to give connection to the applicant, the expenditure for such items of additional work at the rates in the cost data approved by the Commission shall be remitted by the applicant.”*

83(3) *“On actual execution of the works, if it is found that certain items of works as provided in the demand note, are not required to give connection to the applicant, the expenditure for such items of works at the rates in the cost data approved by the Commission shall be refunded to the applicant by the licensee.”*

This regulation 83(3) clearly spelt out that if the amount collected on demand note is higher than the actual amount the balance is to be refunded to the appellant. Here the amount collected was Rs. 7,01,507/- and incurred is Rs.17,908/-, the balance Rs. 6,83,599/- would have refunded then and there.

The appellant’s demand is the interest for the amount and then the question is that from which time onwards the interest is applicable? The licensee is contenting the applicability of the interest on work deposit. The interest is applicable only on security deposit as per regulation 72 of Supply Code-2014.

72(1) *“The licensee shall pay to the consumer, interest on the security deposit furnished by him at the bank rate prevailing on the first of April of that year and it shall be payable annually with effect from date of such deposit”.*

72(2) *“The interest accrued during the financial year shall be adjusted in the energy bill of the consumer during the first quarter of the ensuing financial year”.*

72(3) *“If the adjustment of interest is delayed, interest at twice the bank rate shall be payable for the delayed period”.*

Here it is mentioned that if the adjustment of interest is delayed interest at twice the bank rate shall be payable for the delayed period. This means that any payment due to the consumer is delayed interest at the bank rate is applicable. Here the interest on security deposit is a delayed payment.

The regulation 20(5) of the KSERC (Renewable Energy and Net Metering) Regulation 2020, describes as follows.

“The licensee shall pay to the Prosumer for the net electricity, balance in his amount at the end of the settlement period, at the Average Power Purchase Cost (APPC) approved by the Commission”.

Provided that in case of delay in payment of the net amount due to the prosumer beyond 30 days from the settlement date, the licensee shall pay interest to the prosumer at the FBIL rate + 200 base points prevailing on 1st April of the settlement year”.

The counsel of the appellant submitted the copies of the certain orders of Hon’ble Supreme Court. On examination, it is seen to be connected with income tax and SGST which is not applicable to this case.

The argument note submitted by the Counsel of the licensee discussed about the Jurisdiction of the Ombudsman.

“The regulation 1(4) of KSERC (CGRF & Ombudsman) Regulation 2023, the regulation must be construed harmoniously with the Supply Code and the Electricity Act. It is also mentioned that in case of any inconsistency with the Supply Code, the Supply Code shall prevail. This places the Supply Code as the governing of the Ombudsman are consistent with the established regulations maintaining the integrity and predictability of the regulatory system”.

The same regulation mentioned above i.e., the KSERC (CGRF & Ombudsman) Regulation 2023 regulation

39(2) *“The representation shall be disposed of either through settlement by agreement or through proceedings held by the Electricity Ombudsman after hearing the parties”.*

39(3) *“The Electricity Ombudsman shall be guided by such factors, which in the opinion of the Electricity Ombudsman are necessary in the interest of justice, and shall ensure transparency while exercising its powers and discharging its functions”.*

39(4) *“Subject to the foregoing provisions and the need to observe the rules of natural justice, the Electricity Ombudsman may specify its own procedures”.*

and also as per 44(1) *“Where the representation is not settled by agreement under regulation 41, the Electricity Ombudsman shall pass a speaking order with detailed reasoning that he thinks fair under the facts, rules, regulations and circumstances of the representation”.*

This regulations clearly spell's about the factors which guide the Ombudsman while taking decisions. This is vividly state that rules of natural justice and also fair under facts, rules regulations and circumstances of representation. On considering the natural justice, the amount held by the licensee on years together has to attract interest.

Further, the power charges or any other charges payable to licensee attracts interest beyond the due date. Then the consumer also eligible to get the interest on the amount held by the licensee without any reason.

Though the amount is deposited by the licensee during the year 2010, the clear picture of the work to be executed, who will execute etc were known only during 2016. The licensee has issued a letter to the appellant on 2010, itself offering the option of executing the work by the consumer itself. The acceptance of this option was never communicated and hence the refund of the amount also. This is confirmed by the AEE in his letter dated 28/02/2017 to Executive Engineer. As per the records available the refund request is submitted only on 06/12/2019 and subsequently on 10/11/2020. The supervision charge Rs. 17,908/- was adjusted from the amount and then the balance Rs. 6,83,599/- was due to the appellant as per the letter dated 15/04/2017. Then the effective date of interest payable will be from 15/04/2017.

Then the second demand of the appellant is for the payment of compensation of Rs. 14,00,000/-. It is noted that there was an LT connection given by the licensee for this premise and was not disconnected till the HT service connection was energised. The details of LT service connection was;

1. Consumer no. 1155508026359
2. Date of connection: 13/12/2011
3. Tariff: LT VII A
4. Date of dismantling: 20/11/2017

It is clear that the LT connection dismantled on 20/11/2017 only which is after the energization of HT supply on 31/10/2017. The appellant was managing the power requirement through the LT connection given by the licensee. Then the argument of the appellant that he was forced to run DG set for running the showroom was not the fact and hence not maintainable.

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. The appellant is eligible for the interest at the bank rate prevailing on 1st of April of every year for the delayed refund of work deposit.
2. The period for the eligibility of interest for the delayed refund of deposit is from 15/04/2017 to 11/04/2024.
3. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/020/2024/_____ dated: 04/06/2024.

Delivered to:

1. Sri. Bharath K. Patel, Managing Director, K.P. Cars Private Limited, Suit No. 205, 2nd Floor, Pioneer Towers, Shanmugham Rd, Ernakulam Dist-682031.
2. The Deputy Chief Engineer, Electrical Circle, KSE Board Ltd, Ernakulam, Ernakulam (Dist.)
3. The Executive Engineer, Electrical Division, KSE Board Ltd., Thripunithura, Ernakulam Dist.
4. The Asst. Executive Engineer, Electrical Sub Division, KSE Board Ltd., Thripunithura, 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.