

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/020/2020  
(Present: A.S. Dasappan)  
Dated: 19<sup>th</sup> August 2020

Appellant : The Managing Director  
M/S. Vadhi Steels Pvt. Ltd, 13/180C,  
Anakuzhikkara, Kuttikattur. P.O,  
Kozhikode. 673008

Respondent : The Assistant Executive Engineer  
Electrical Sub Division,  
KSE Board Ltd, Kovoor,  
Kozhikode

### **ORDER**

#### **Background of the case:**

The appellant is a registered HT consumer under Electrical Section, Kovoor, Kozhikode Dist. bearing consumer No. 23/6930. The appellant had applied for power allocation to the tune of 700 kVA on 08-12-2010. It is stated that KSEB had completed the line work and issued notice for availing power on 23-07-2012. But it is reported that the works in the appellant's side has been completed only in 2014 and the appellant applied H.T. service connection to the Assistant Engineer, Electrical Section, Kovoor on 11-04-2014 after obtaining energization approval from Electrical Inspectorate. Hence the Deputy Chief Engineer, Electrical Circle, Kozhikode vide his letter dated 25/04/2014 demanded Rs.26,77,500/- towards unconnected minimum charges from 11/2012 to 03/2014 for the delay in availing the connection. The appellant availed electric connection after remitting the amount with protest.

Being aggrieved by the said demand, the appellant approached the CGRF, Kozhikode by filing petition on 22-11-2019 with request to waive the UCM charges and to refund the amount collected with interest. The CGRF had declined the request finding that the action taken by the respondent is in order.

Aggrieved against the order of CGRF in OP No. 109/2019-20 dated 14-02-2020, the appellant has submitted this appeal petition on 20-03-2020 with a plea to set aside the orders of CGRF and to refund the unconnected minimum charges remitted by the appellant, with interest.

**Arguments of the appellant:**

The Vadhi Steels Private Limited is an HT consumer with consumer number 23/6390 under Kovoov Electrical Section, KSEB Ltd. The appellant had obtained power feasibility letter on 4/02/2012 from KSEB. Works related were extending 20 metre of high-tension line, construction of a double pole structure and providing metering equipments. KSEB has collected an amount of Rs. 103729/- for the extension of the line and construction of the DP structure. However supply and installation of the metering equipment and fencing for the double support structure has been entrusted to the appellant's scope of works, thereby collecting only 10% of the cost as supervision charges. The Assistant Engineer Electrical Section, Kovoov, vide his letter dated 23 /07/ 2012, has directed appellant to avail the service connection and informed the readiness of KSEB to provide the power supply. They also informed appellant that if appellant fail to avail the service connection within the time frame, minimum charges as part of the Electricity Supply Code 2005 has to be paid. However, the appellant's side works has been completed only in 2014 and the appellant applied for service connection after obtaining energization approval from Electrical Inspectorate.

On receipt of the service connection request, Deputy Chief Engineer, Electrical Circle, Kozhikode vide their letter dated 25/04/2014 directed to pay Rs.26,77,500/- towards unconnected minimum charges from 11/2012 to 03/2014. The appellant has remitted the amount under protest in order to avail the service connection and claimed for refund of the charges vide letter dated 07/09/2015. The arguments taken in the letter were (1) KSEB side scope of works can be treated as completed against energization approval from Electrical Inspectorate and the line is energized. The appellant have also related this case with the order of State Electricity Ombudsman in appeal petition number P/039/2012. (2) Letter dated 03/01/2014 from the Director, KSEB stating that UCM charges are not collected from M/s East Avenue Tower based on the discussion carried out by the Board Chairman with Hon. Regulatory Commission. The content was the cost of infrastructure has been met by the consumer.

Since the appellant has not received any reply from KSEB, they have sent one more letter on 25/05/2019 where the appellant has included the letter dated 9/06/2015 from Hon. Regulatory Commission about collection of UCM charges. In reply to this letter, KSEB has denied the request for the refund of UCM charges on the following grounds. (1) Period during which the entire actions were done was governed by Kerala Electricity Supply Code 2005. (2) Letter dated 09/06/2015 of the Hon. Regulatory Commission attached in support of appellant's claim for refund refers to cases related to minimum guarantee

agreement and facts governed by Kerala Electricity Supply for 2014 which came into effect from 01/04/2014 and is not applicable to appellant's case. (3) The case discussed in the order of State Electricity Ombudsman in appeal petition P/309/2012 is different and cannot be applied to this case.

The Consumer Grievance Redressal Forum had dismissed the petition submitted by the appellant on the ground that the unconnected minimum charges have been demanded by KSEB based on regulation 10 of Kerala Electricity Supply for 2005. They also ordered that unconnected minimum charges are not specifically mentioned in the Electricity Act 2003 and it is a specified regulation in the Supply Code 2005 which is notified by the Hon. Regulatory Commission. Thus, the regulations relating to supply of electrical energy which was relevant at that time deals with unconnected minimum charges in section 10 and hence the appellant has liability to pay the sum as per regulations. The amount paid is not liable to be refunded as per law.

1. Even though KSEB Ltd has stated that their part of works was completed, they didn't energize the line and not obtained sanction from Electrical Inspectorate to energize the line in order to provide power supply to the unit. Hence the notice dated 23/07/2012 served under clause 10 of Supply Code 2005 has no sanctity on that date and have the effect only from the actual date of energization approval given by the Electrical Inspectorate. Assuming that the line works were completed by KSEB as given in their notice dated 23/07/2012, they failed to charge the line after getting the approval from Electrical Inspectorate, for that, KSEB Ltd need not wait for the completion of works on appellant's part. Hence there is no merit in demanding the unconnected minimum charges.
2. Letter from Hon. Kerala State Electricity Regulatory Commission dated 09/06/2015 is very clear that licensees cannot collect UCM charges in the absence of a minimum guarantee agreement. The commission also explained that neither Electricity Act 2003 nor the Kerala State Electricity Supply Code 2014 provide for MG scheme or for collection of UCM charges. Section 46 of the Act authorises the licensee to realize reasonable expenditure incurred by it in providing any electric line or electrical plant for the purpose of giving supply to a consumer. Therefore, there is no legal sanctity to continue with the erstwhile minimum guarantee scheme which was introduced prior to the enactment of Electricity Act 2003 and for the collection of UCM charges in the absence of an agreement to the contrary. When minimum guarantee scheme was in vogue, unconnected minimum charges could be collected by the licensee only as per the terms of the minimum guarantee agreement. If there is no such agreement, unconnected minimum charges cannot be collected even when such scheme was in vogue.
3. Letter from the Director (Distribution & Generation-Electrical) dated 03/01/2014 also agrees in principle that UCM charges cannot be realized when the investment of the infrastructure is met by the consumer on the

contrary in the absence of a minimum guarantee agreement. This stand was taken based on the discussion the Board Chairman had with Hon. Regulatory Commission. It is submitted that the above decision is taken when Kerala Electricity Supply Code 2005, was in force and clause 10 of the regulation was not at all considered just because this clause is contradictory to all other acts and regulations. It is also submitted that KSEB has collected details of other consumers affected with UCM charges where cost of infrastructure is met by the consumers. KSEB also intended to move a petition before the Hon. Regulatory Commission seeking permission for not levying UCM charges in such cases. The outcome of the move is not known till now.

4. The CGRF has relied unilaterally upon clause 10 of the Electricity Supply Code 2005 to approve the unconnected minimum charges collected by KSEB. The Forum considered that this is a specified regulation in the Supply Code 2005. The Forum also not observed that there was no MG scheme after the enactment of Electricity Act 2003 and hence also for the period for Electricity Supply Code 2005.

Relief sought for:

To set aside the order of CGRF and to refund the unconnected minimum charges collected with applicable interest by KSEB Ltd.

**Arguments of the respondent:**

The appellant applied for power allocation of 700 kVA on 08-12-2010. The said application was processed and the works including HT line extension, erection of DP etc, were completed accordingly. The Licensee, K.S.E.B. Ltd. was then informed vide letter dt 23-07-2012 that the works were completed and that the appellant could take necessary action to avail the supply within three months from the date of the letter. The appellant did not avail the supply within the stipulated time and the service connection agreement for supply was executed by the appellant only on 11-04-2014.

Through the above letter the appellant was also informed that if the service connection was not availed within the time frame, fixed charges/minimum charges as per Regulation 10 of Kerala Electricity Supply Code, 2005 would be charged.

At the time when the appellant applied for power allocation and the subsequent processing of the application was made, the provisions that governed all those processes were as per Kerala Electricity Supply Code, 2005. Till the Kerala Electricity Supply Code, 2014 came into being as on 01-04-2014, Supply Code 2005 continued to be in force. As per Regulation 10 (1) of Supply Code 2005 "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 & EHT consumers". As per Regulation 10 (2) of the said code "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". Here as mentioned above the work on the part of KSEB was completed as on 23-07-2012 and the matter informed to the appellant.

Since the appellant's installations were not ready to receive supply within the stipulated time frame as noted in the letter dt 23-07-2012, an amount of Rs.26,77,500/- for seventeen completed months from 11/2012 was charged towards Unconnected Minimum Charges as per Regulations 10 (1) and 10 (2) of Kerala Electricity Supply Code, 2005. The amount was remitted in full by the appellant through instalments.

The main objection raised by the appellant against the UCM charges is that KSEBL had not obtained sanction from the Electrical Inspectorate to energise the line to provide supply to the appellant's unit. This contention doesn't hold much water because the appellant himself admitted that he had completed the electrical work of his plant only by 24-04-2014. The appellant submitted their scheme for approval before the Chief Electrical Inspectorate on 14-02-2014 and the Chief Electrical Inspectorate approved the scheme on 18-03-2014. The plant at the premises of the appellant was energized on 03-04-2014 only. This means that the appellant had not managed to get their plant ready to receive supply from KSEBL within the time frame stipulated by Supply Code, 2005 which was the prevailing code then. As per Regulation 53 of Supply Code 2005 & 2014 "The installation in the premises of HT and EHT consumers shall be energised only after getting the energisation approval from the Electrical Inspector." Besides the above energisation of KSEB line is a subject between KSEBL and the Electrical Inspectorate and the appellant doesn't have any role to play there. The appellant can justify his contention that that KSEB didn't get necessary sanction from the Electrical Inspectorate for energisation only if there delay on the part of KSEBL to provide supply to the appellant due to such failure. KSEBL had informed the appellant that KSEBL was ready to supply electricity as on 23-07-2012 and that appellant had at his disposal 90 days to complete unfinished work if any at his premises. The appellant didn't complete the work of their plant within the specified time and hence had to be charged with UCM. Therefore, it is submitted that the argument of the appellant with respect to energisation doesn't have any merit and liable to be rejected.

Another argument of the appellant is that as per letter dt 09-06-2015 of Kerala State Electricity Regulatory Commission, KSEBL cannot realise UCM charges without a minimum guarantee agreement. Here the appellant is trying to mislead this Ombudsman because the UCM referred to by the Commission is related to Minimum Guarantee Agreement. The Minimum Guarantee Scheme referred to by the Commission was introduced by KSEB for providing electric

connection faster to un-electrified areas and it doesn't have any applicability to the case on hand. The Supply Code, 2005 cannot be dissociated from Electricity Act, 2003. Supply Code 2005 was framed by the State Electricity Regulatory Commission in exercise of powers conferred on it by Sections 181 and 50 of the Electricity Act.

**Analysis and Findings: -**

An online hearing of the case was conducted on 14-07-2020, at 12.30 PM as per prior information to both the appellant and respondent and with willingness of them. Sri C. Cheriyan represented the appellant in the hearing and Sri. Prasad Kuttan, Assistant Executive Engineer, Electrical Sub Division, Koor for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

According to appellant, the notice dated 23/07/2012 served under clause 10 of Supply Code 2005 has no sanctity on that date and have the effect only from the actual date of energization approval given by the Electrical Inspectorate. The appellant put forward another argument that the Hon. Kerala State Electricity Regulatory Commission, in the letter dated 09/06/2015, has clearly stated that licensees cannot collect UCM charges in the absence of a minimum guarantee agreement. The commission also explained that neither Electricity Act 2003 nor the Kerala State Electricity Supply Code 2014 provide for MG scheme or for collection of UCM charges. There is no legal sanctity to continue with the erstwhile minimum guarantee scheme which was introduced prior to the enactment of Electricity Act 2003 and for the collection of UCM charges in the absence of an agreement to the contrary. If there is no such agreement, unconnected minimum charges cannot be collected even when such scheme was in vogue. Thirdly the KSEBL agrees in principle that UCM charges cannot be realized when the investment of the infrastructure is met by the consumer on the contrary in the absence of a minimum guarantee agreement.

On the other hand the respondent argued that the appellant failed to avail the supply even after receipt of notice under Regulation 10(2) of Supply Code, 2005 reads as *"if after serving the notice the applicant fails to take supply of electricity, the licensee may be charged fixed charge as per the tariff in force for completed months after expiry of notice till the applicant avail supply"*. Hence the appellant is liable and bound to pay the unconnected minimum charges for the delay in availing the connection. Regulation 10 of Supply Code, 2005 deals with the delay on the part of applicant to take supply. Regulation 10(1) reads as *"whereas 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 the supply, the licensee shall serve a notice on applicant to take supply"*

*within sixty days of service of notice in the case of LT Consumer and 90 days in the case of HT & EHT Consumers”.*

Another argument of the respondent is that the UCM referred to by the Commission is related to Minimum Guarantee Agreement. The Minimum Guarantee Scheme was introduced by KSEB for providing electric connection faster to un-electrified areas and it doesn't have any applicability to the case on hand. The CGRF has also admitted this argument of the respondent and accordingly dismissed the petition filed by the appellant.

As per the provisions of Electricity Act, 2003, and Regulations made there under the licensee can realise only the following charges.

1. Fixed charges in addition to the charge for actual electricity supply.
2. A rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensees.

The Section 45 of Electricity Act, 2003 deals with power to recover charges by the distribution licensee for supply of electricity. As per Section 46 of Electricity Act, any expenses reasonably incurred in providing any electric line or electrical plant used for giving the supply. Section 47 of Electricity Act stipulates the power to require security. According to this Section distribution licensee is empowered to recover security deposit as determined by Regulations. There is no provision in the Electricity Act 2003 enabling the respondent to collect UCM charges. If there is conflict between the statute and the subordinate legislation the statute prevails over the legislation. As per Section 181 of the Electricity Act 2003, the state commissions make regulations consistent with the Electricity Act and the rules generally to carry out the provisions of the Act. Since the provisions under regulation 10 of the Supply Code 2005 is not in consistent with the provisions of Electricity Act, 2003, the same provisions are not included in the Supply Code 2014 and the Kerala State Electricity Regulatory Commission, in its letter No. 151/Com.Ex/2015/KSERC/758 dated 09-06-2015, has issued some clarifications in this regard.

The spirit of a demand under Regulation 10 for the delay beyond the stipulated time mentioned therein is not for any work carried out therein by licensee, but for the quantum of power that is being reserved for the consumer for which the licensee is entitled to recover the due minimum/fixed charges. The appellant is bound to remit monthly demand charges corresponding to the actual maximum demand or 75% of the Contract Demand whichever is higher. Hence monthly demand charges corresponding to 75% of the Contract Demand is the minimum guaranteed revenue to KSE Board. Here, the respondent failed to furnish any capacity idling or any electrical plant erected exclusively for the use of appellant consequent to the power allocation. As per BO (FB)(Genl) No.

510/2010 (DPCII/AE/T&C of Supply 02/2009) dated Tvm 24-02-2010, formalities of power allocation were dispensed with.

On receipt of application from prospective consumers having power requirement above 10 kVA has to remit advance amount (prescribed for LT, HT/EHT consumers respectively) to ensure the genuineness of the request. The amount shall be adjusted without interest in the estimated amount to be paid by the applicant. This advance amount shall not be refunded in case applicant withdraws the application. Hence, there is no provision for allocation of power envisaged in the Supply Code 2005 or KSE Board Terms and Conditions of Supply, 2005 approved by KSERC. Therefore, the argument of the respondent that the power reserved for the appellant for which the licensee has charged the minimum / fixed charges cannot be accepted.

The Kerala State Electricity Regulatory Commission, in its letter No. 151/Com.Ex/2015/KSERC/758 dated 09-06-2015, has issued some clarifications regarding the collection of Unconnected Minimum Charges (UCM) by KSEB Ltd. It reads "*Neither the Electricity Act, 2003 nor the Kerala Electricity Supply Code, 2014 provide for MG scheme or for collection of UCM charges. Section 46 of the Act authorizes the licensee to realize reasonable expenditure incurred by it in providing any electric line or electric plant for the purpose of giving supply to a consumer. The Commission has approved the cost data for recovery of reasonable expenditure by the licensee. Therefore there is no legal sanctity to continue with the erstwhile MG scheme which was introduced prior to the enactment of Electricity Act, 2003 and for the collection of UCM charges in the absence of an agreement to the contrary. When MG scheme was in vogue, UCM charges could be collected by the licensee only as per the terms of the MG agreement. If there is no such agreement, UCM charges cannot be collected, even when such scheme was in vogue*".

As per Regulation 9(1) of Supply Code, 2005 reads thus "*If any person after applying for supply of Electricity with the Licensee withdraws his application or refuses to take supply the amount of security paid under Clause 14 shall be refunded to him. Amount paid for providing electric line or electric plant shall not be refunded if the Licensee has commenced the work*". Here in this case the respondent had completed all the works required for providing supply to the appellant on 23-07-2012 but the appellant had submitted application for availing supply on 11-04-2014. In this case, the appellant has remitted an amount of Rs. 103729/- for the extension of the line and construction of the DP structure. As the appellant failed to avail supply within the stipulated time limit, the amount remitted by the appellant shall not be refunded as per the Regulation 9 (1) mentioned above. Further, there is no argument for the respondent that the power reserved for the appellant for which the licensee has charged the



minimum/fixed charges. In such a situation it is highly irregular to issue such a huge bill towards the unconnected minimum charges.

**Decision:**

In view of the above discussions it is found that there is no ground for collecting an amount of Rs. 26,77,500/- towards the UCM charges from the appellant. Since the appellant had already remitted the amount, the respondent is directed to refund the amount with interest at any rate within a period of 30 days from the date of receipt of this order. Having concluded and decided as above it is ordered accordingly. The Order issued by CGRF, Northern Region, Kozhikode, in petition No.109/2019-20 dated: 14-02-2020 is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/020/2020 dated \_\_\_\_\_.

Delivered to:

1. The Managing Director, M/S. Vadhi Steels Pvt. Ltd, 13/180C, Anakuzhikkara, Kuttikattur. P.O, Kozhikode, 673008
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Kovoov, Kozhikode

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, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode