

**STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION NO. P/209/2011.**

(Present: T.P. Vivekanandan)

Appellant : Mr. Mohammed Haji,  
'Scarlet', Nallalam,  
Kozhikode- Pin: 673027

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division, KSEB,  
Nadakkave, Kozhikode.

**ORDER.**

**Background of the Case: -**

The appellant is the owner of a five storied Building, named 'Hotel Whitelines', situated on the Kallai Road, Kozhikode, which is having a HT Electric connection (consumer code 16/1631) with a contract demand of 70 KVA. This connection was given to him in 1987 after installing a 150 KVA Indoor transformer in the premises exclusively for the building purpose. Prior to getting this HT service, the appellant had obtained two other LT connections in the same building;

- 1). For the SBT branch, working on the first floor of the building with a connected load of 6.65 KW (consumer No. 3438) and
- 2). For United India Insurance branch (UII) with a connected load of 8.27 KW, on the 2<sup>nd</sup> floor (Con. No. 3439).

Both the above connections are seen registered in the name of the appellant. Subsequently five more LT connections were given to the said building on the basis of the applications of the Rent holders or occupants. On a later date one of the connections was dismantled due to non-payment of electricity charges. While so, the appellant has submitted an application on 25.10.2009, for an additional load of 13.35 KW, for the SBT connection. Since the total load of the six connections including the additional load demand of 13.35 KW, comes to 56.55 KVA, the appellant was asked to install a separate Transformer in his building premise by KSEB. It was also asked to obtain sanction from Electrical Inspectorate of the Electrical Scheme for catering the revised Load demand. KSEB also intimated the appellant that the existing HT Cable of PILC make, installed by the consumer earlier, was very old and hence has to be replaced by him to supply the additional load. Aggrieved by this demand of separate Transformer and Cable, the appellant approached the CGRF by filing a Petition dated 8/3/2010 with a request to consider the application of SBT to give additional load of 13.35 KW from the same Transformer it feeds now. The CGRF after hearing the

Case dismissed the petition by their Order No.3080084/CGRF-KKD/2010-11 dated 22.2.2011 which was pronounced on 25.11.2010. Aggrieved by this order, the appellant has filed the Appeal Petition, before this Authority.

Arguments of the Appellant:-

The arguments of the appellant are based on the brief facts of the case which are narrated above. The main contentions in the Petition are the following;

The appellant argues that though the Connection No 3438, SBT, and No 3439, Ull, were in his name, it is used by the respective Establishments only. Also he is not the consumer of other six LT connections but the building owner only. Except the two connections, all others were obtained by the occupants directly. The appellant had submitted an application on 25.10.2009 for additional power allocation to the tune of 13.35 KW (existing load 6.65KW), thus totaling to 20 KW for SBT. He signed the application as being the registered owner of the connection and the request was made based on the demand of the tenant, SBT. He is willing to transfer the electric connection in the name of the tenant. But the respondent intimated him (appellant) that a transformer is to be installed for providing the additional load and he has to bear the expenses for it and also get the Electrical Inspectorate's sanction for the Scheme. KSEB further informed that the existing cable of PILC type was very old and has to be replaced by him.

The appellant submits that as per the agreement executed between Licensee and the consumer the cable should be replaced by the Board. The appellant objects the contention of respondent that the total connected load including the additional load requested is 56.53 KW. According to the appellant, he executed HT agreement for 70 KVA for the HT connections effected in the premises and from the date of service availed, the Max: Demand (MD) recorded was not even up to 40 KVA, but paying for 53 KVA as 75% of CD (contract demand) of 70 KVA. Though several applications were submitted to reduce the contract demand and to replace the HT PILC cable, the licensee has not responded.

The appellant argues that, SBT could not install the ATM counter, due to the failure to sanction the additional load by KSEB. Due to this the Bank is trying to shift its operation from this building. The total load required by the bank is 20 KW including additional load of 13.35 KW which can be given from the present Transformer as it has the capacity to provide the additional load needed. The SBT is an independent consumer and if its connected load exceeds 50 KVA, then only the question of a separate Transformer will arise. Here the respondent took the connected load of all LT connections which were given to the consumers in the building, for arriving at the total load which comes above 50 KVA and demanded the additional Transformer. According to the appellant the responsibility for installing a transformer will come only when the load of an individual party is more than 50 KVA. In all other cases, it is the responsibility of the Board to enhance the capacity of the existing Transformer or to install a new one for providing the additional load to consumer.

Another point of the appellant is that the tenant of consumer No9778 with connected load of 9.685 KW was vacated and now a Bank is willing to take that portion but they want an additional load of 6 KW. Consumer No 3439 has a connected load of 8275 watts and needs an additional load of 2965 watts. The appellant submits that it is the responsibility of the Licensee to provide

the additional load to consumers whose connected load is below 50 KW without insisting separate Transformer as they are all independent consumers.

Another argument raised by the appellant is that renting of immovable property is a taxable service as per Service Tax Act. There is no provision in the Rent Control Act or Service Tax Act or any other Acts that the house owner has to provide transformer at his own expenses in cases of additional load requirement of various consumers in the same building. As per Rent Control Act such a provision is against rules and as per the said Act every tenant is an independent consumer. The house owner has no control or responsibility over such connections.

The other point is that the existing LT consumers are functioning under separate Building Nos allotted and they are independent consumers having each separate Consumer numbers. It is permissible to use LT as well as HT multiple service connections at the same time.

In the Argument Note dated 23.02.2012, the appellant has stressed the following points;

- a). The SBT got separate electric connection, prior to the HT service connection effected, to the Building which houses the SBT premises. The SBT is a tenant and has taken the connection and hence the owner is not the consumer.
- b). B.O. No 510/2010 dated 24.2.2010 is applicable only for the services effected after that date and has no retrospective effect. No such rules exist in Service Tax Act, Rent Control Act or in the Electricity Act to provide Transformer by the Owner for tenants occupying under different building Nos of High Rise, even if their connected Load increases above 50 KVA. The owner has no control over Tenant's electric connections as they are independent consumers.
- c). Vide B.O. No 1993/2010 dated 30.7.2010, many consumers got their unauthorized additional load regularized without any penal charges. Hence, had the consumers indulged in such unlawful practices, they might have got their additional load regularized without making any payment. But the consumers, who have applied as per rules for additional load, were not allowed the request, which is injustice.
- d). There is inequality in giving connection and providing additional load to different consumers occupying small buildings and high rise buildings which is against the fundamental principle of the Indian Constitution and is against Law under the principle of Procedural discrimination.

The reliefs which the Appellant sought are;

1. To sanction the additional load of 13 KW to SBT (consumer no.3438) from the existing transformer.
2. To sanction additional load to other consumers occupied in the same building, if requested by them.
3. To allow sale of energy of the unused portion from the HT connection No.16/1631 of the appellant to the SBT as an alternative, if it is not feasible to sanction the additional load from the existing transformer due to any technical problems.
4. To grant such other reliefs as are deemed fit and proper in the interest of justice, and which may be prayed hereafter.

Arguments of Respondent: -

The respondent has furnished the statement of facts against the averments raised in the Appeal petition. The main contentions of the respondent are the following;

The appellant had submitted an application on 25.10.2009 for power allocation to the extent of 20 KW (existing connected load of 6.65KW+ additional load of 13.35KW) for SBT Palayam Branch working in the building. It was replied vide letter dated 2.11.2009, that the total connected load of all the LT consumers including the required additional load, comes to more than 50 KVA, hence as per rules, a separate Transformer is to be installed at the expense of the consumer to cater the load demanded. Further, it was informed that as the building belongs to 'High Rise' type, indoor type Transformer is required. Since an indoor Transformer already exists in the building for the HT service connection, it was advised that the HT Panel shall be modified for accommodating the new transformer. Also he was advised to obtain the necessary approval from Electrical inspectorate for the new Electric scheme of Supply. This was done as per Clause 5-1(c) and 4(1) of the KSEB Terms and Conditions of Supply, 2005.

The claim of the consumer that he has placed request for reducing the contract demand of the HT service connection is not true. Also this has no relation to the need for a separate transformer for the additional load and regularization of unauthorized load of the LT service connections. The claim that KSEB is bound to provide the transformer for meeting the additional load of SBT, the occupier, is not sustainable. Moreover the electric connection of SBT is registered in the name of the petitioner. Further, for calculating the total connected load, to decide the requirement of a Transformer, all the connected load of the LT consumers of the High rise Building (except cellular towers) has to be taken as per existing rules. The total connected load of all LT consumers comes to 49.195 KW, which is more than 50 KVA (including the additional load requested). Once the total power demand of High rise building crosses 50 KVA (45KW), a separate Transformer is needed as per rules cited above. The consumer No 3439, M/s UII, belonging to the same building, has availed an unauthorized additional load of 3 KW.

The existing HT PILC cable is sufficient for the present Load requirement and it was directed to replace the PILC cable (as PILC cable is not used nowadays) and the Electric supply tapping is to be made from the location of nearby RMU of 11 KV network of KSEB. For laying new cable (XLPE type), the work can be done by the applicant, after remitting the supervision charges with KSEB. As the existing cable is defect free as of now, there is no need to replace the same to meet the present load condition.

The LT supply to the building is presently fed from the Imperial Transformer (250KVA). The total connected load of the building, other than that of the HT service, comes to above 50KVA including the additional Load demanded by the consumer. The said building, coming under, 'High rise' type requires a separate indoor Transformer, to be installed along with modification of the existing HT panel. Moreover the metering panel of the LT metering cubicle of the consumers is also in a bad condition and need rectification work. This was also intimated to the appellant.

The respondent argues that there is no distinction between Consumers as 'old' and 'new' and 'everybody' is equal before the Electricity Acts, Rules and Regulations framed from time to time. As per Clause 8(5) of Electricity Supply Code, 2005, it is stipulated that the owner/occupier is bound to provide the Transformer if the Load Demand of a High Rise building exceeds 50 KVA. The notice to this effect was given as per this Rule only.

**Analysis and Findings: -**

The first Hearing of the case was done at IB, Kozhikode on 23.2.2012 and Sri. Mohammed Haji, the appellant, was present and the opposite side was represented by Sri. Jayakumar, the Assistant Exe. Engineer (AEE). They argued the case on the lines stated above. The second hearing was done in my Chamber at Kochi on 28.6.2012. The appellant informed his inability to travel to attend the hearing scheduled due to sick and was granted leave of absence. He forwarded an argument note for consideration which was accepted and the respondent, AEE, appeared for the hearing. On perusal of the Appeal Petition, the counter statement of the respondent, the averments raised in the Hearings, the argument note of the appellant and the facts and circumstances of the case, I come to the following conclusions, leading to the decisions thereof.

The appellant is the owner of a High rise building named, 'Hotel Whitelines'. He had applied for a HT Electric connection for the building on 9.11.1984 and executed agreement for a Contract demand (Power) of 70 KVA and remitted the required fees and was given connection in 11/1987. Meanwhile the appellant had obtained 2 Nos LT connections in the same building, one for SBT Palayam branch with a connected load of 6.65 KW, on the first floor (consumer No. 3438) and the other for United India Insurance Company (UII) branch with a connected load of 8.27 KW on the second floor (consumer No3439), in 1986. Later, five more LT connections were given to the said building in the name of the occupants (rent holders) of the building. These connections were said to be taken after the installation of indoor Transformer meant for HT service in the building by the appellant. Subsequently, one service was dismantled due to non-payment of electricity charges and another connection was not using as of now, but still it is a Live service. The details of live 4 LT connections, in the name of the occupants, are the following.

- |    |                    |                                   |                                |
|----|--------------------|-----------------------------------|--------------------------------|
| 1. | Consumer no.13274- | sanctioned connected load 7.34KW- | registered consumer M.P.Dileep |
| 2. | „ 10353            | „ 7.3 KW                          | „ „ M.Riyas                    |
| 3. | „ 10354            | „ 0.94KW                          | „ „ T.I.Simsy                  |
| 4. | „ 9778             | „ 9.685KW                         | „ „ P.M. Madhu                 |

It is also noted that consumer No 3439, United India Insurance, is using 3 KW as unauthorized load in addition to sanctioned load. Thus the total connected load of the building comes to 43.185 KW (48 KVA at 0.9 Power factor) including SBT and UII electric connections.

While being so, the appellant applied for an additional load of 13.35 KW for the SBT premises, as the connection stands registered in his (appellant's) name. In responding to the application, the respondent insisted the installation of a separate indoor transformer as the total connected load of LT consumers in the building had exceeded 50KVA including the additional load requested. The respondent has pointed out the provisions of clause 5-1(c) and 4 (1) of KSEB Terms and Conditions of Supply, 2005, to substantiate their direction to the consumer for the additional load.

Clause 5-1(c) reads as follows;

*“The cost estimates for LT consumers shall include the cost of service line and terminal arrangements at the premises of the applicant but shall not include the cost of the meter if connected load is less than 50 KVA. For loads of 50 KVA and above, connection shall be effected only after installation of separate transformer of adequate capacity, the cost of which shall be recovered from the consumer. In such cases the consumer shall provide the space for erecting such transformer.”*

Further Clause 4(1) reads as follows;

*“Subject to the conditions under clause 8 of the Code, the Commission authorizes the Board under Section 46 of the Act, to recover in advance from the owner or occupier of any premises requiring supply the expenses reasonably incurred by the Board for providing any electric line or electric plant required specifically for the purpose of giving such supply. The cost estimates for LT consumers shall include the cost of service line and terminal arrangements at the premises of the applicant but shall not include the cost of meter. For loads of 50 KVA and above, connection shall be effected only after installation of separate transformer of adequate capacity, the cost of which shall be recovered from the consumer. In such cases the consumer shall provide the space for erecting such transformer:”*

The appellant’s main argument is that it is the responsibility of the licensee to provide additional load to consumers whose connected load is below 50 KVA without insisting separate transformer as they are independent consumers. For the purpose of settling this issue, I think it is appropriate to extract Regulation 8(5) of the Kerala Electricity Supply Code, 2005, which is as follows;

Regulation 8 (5): - *“Electrical connection to multi-storied (high rise) buildings:- Subject to sub-clause 1,2,3 and 4 in case of multi-storied buildings having connected load below 50 KVA, Licensee shall provide service connection from the LT line. For loads 50 KVA and above, connection shall be effected only after installation of separate transformer of adequate capacity by the owner/ occupier irrespective of the category of consumer.”*

From the above it is very clear that, in case of High rise buildings whose connected load is 50 KVA and above, installation of a separate transformer of suitable capacity is a legally binding one. The Regulation 8(5) is very specific and deals with ‘High rise’ building’s total connected load only. It is not correct the averment of the appellant that the connected load of individual consumers (who occupy in the High rise building on lease or otherwise), should exceed 50KVA, for insisting the condition of installing a separate transformer. Whenever an individual consumer, the owner, the occupier requires or the total load demand of a High rise building exceeds (clubbing the individual consumer loads), more than 50 KVA, then the owner/occupier has to provide a spare transformer for meeting his power demand. Here, both the owner and the occupier (SBT) has to be treated as one since the electric connection for SBT is registered in the name of the appellant himself and that is why the appellant has applied for the additional load, being the consumer instead of in SBT’s name. In the case of High rise buildings, the entire power loads of that building, whether it exceeds 50 KVA or not, is the main criteria for deciding the necessity for an exclusive Transformer for that building.

Also Clause 7 of the Supply Code authorizes the Licensee, to recover the expenditure reasonably incurred by them, for providing fresh Electric Supply or additional power to a consumer.

Regulation 7 of the Electricity Supply Code, 2005, reads as follows;

*“Power to recover expenditure: - Subject to the conditions under clause 8, the commission authorizes the Licensee under Section 46 of the Act, to recover from the owner or occupier of any premises requiring supply the expenses reasonably incurred by the Licensee for providing any electric line or electric plant required specifically for the purpose of giving such supply.....”.*

According to the respondent, the existing HT PILC cable is sufficient for the present load requirement and consumer was asked to change the cable to higher capacity for catering the

additional load requested. This direction is also found to be in order as per the Regulation 7 noted above and also as per clause 26 of KSEB T & C of Supply, 2005, where it is stated that the party has to bear the cost of works required to cater the additional load. Hence the consumer is liable to bear the cost of cable also, if the existing cable is of lower capacity size and additional/new cable is required to supply the extra power load demanded.

The appellant has challenged the wisdom of KSEB, in taking the total connected load of all individual consumers of the building, for deciding the need for installing a separate transformer. He submits that the two Electric Connections namely the SBT and the United India Insurance (UII) were obtained earlier to the date of effecting the HT connection to the Building. It is true that if the Power demand is less than 50 KVA, Electric connections are released from KSEB's Transformer and once demand exceeds 50 KVA a separate Transformer is required as per rules quoted above. If one or more LT service connection is required in a High rise building, then the total load has to be limited to 50 KVA, to get the connection from the Licensee's transformer. If the connected load of individual consumer or the total load of all consumers, in a High rise building exceeds 50 KVA, then a separate transformer of sufficient capacity has to be installed.

The appellant argues that the consumer No 9778 (a tenant), with connected load of 9.685 KW has vacated and the present connected load (after deducting 9.685 KW) of individual consumers is 33.5 KW only. Hence he has requested to sanction the additional load of 13.35 KW to consumer No. 3438, the SBT. But it is noted that the consumer No. 9778 is not a dismantled service and still kept Live and can be put to use at any time. If the appellant requests for dismantling the said service, the respondent has to consider the additional load demanded by SBT in the new situation and act accordingly. Hence the demand of the appellant is not found tenable.

The appellant has another argument that renting of immovable property is a taxable service as per Service Tax Act and there is no provision in the Rent Control Act or Service Tax Act or any other Acts that the house owner has to provide transformer at his own expenses in cases of additional load requirement of various consumers in the same building. The provisions in the Service Tax Act or Rent Control Act have no relevance in sanctioning electricity connections to consumers. The Electricity Act and subsequent Regulations constituted in exercise of powers conferred under Electricity Act is only applicable for the generation, transmission, distribution, trading and use of electricity. It is also to be remembered here that, normally the lease holders or the occupiers of a building take the connection in their name, with the 'consent' of the real owner only after executing consent agreement in stamp paper and depositing additional Cash deposit. These constitute the facilities provided by the Rules framed under the Act to ease the release of connections to applicants. The appellant cannot disown the responsibility of observing the rules made under Clause 8(5) for taking the electric connections in a High rise building, even if he has delegated the power of taking the electric connection to a third party. The owner or the occupier has to incur the reasonable cost, for the additional load including the transformer, if any.

Another argument raised by the appellant is that, the Board has regularized the unauthorized additional load (UAL) of so many consumers without penalizing them as per BO No. 1993/2010 dated 30.7.2010 and by not doing any unlawful things he has been victimized. I find by the said order, the Board has introduced a onetime Voluntary Disclosure Scheme for regularizing the UAL of consumers subject to certain conditions. Actually the consumers were given an opportunity to

regularize their unauthorized additional load without paying any penalty and make 'KSEB system load' accounted properly. It is not meant for regularizing the load without observing rules of system constraints like the capacity of the Electric Line/ transformer etc. This is clearly mentioned in the order as;

*Item (5) "...If any augmentation is required for regularizing the load, estimate for the same shall be prepared and notice shall be issued to the consumer with in 15 days, positively. 6). Consumer Shall be liable to bear the cost for augmentation and 8). Consumers shall not be penalized for UAL during this period".* Hence I find no merit in the argument of the appellant. No consumer has any right to use or enhance their connected load unauthorizely. Similarly, regarding the request for reduction of load (CD) for the HT service, the respondent denies the receipt any request for the same from the appellant and the appellant has not produced any documents to support his claim.

Regarding the third prayer of the appellant, as per rules, a consumer has no right to resale the energy without license issued by the Hon: KSERC. This being the rule, the relief sought is not maintainable. However the SBT Connection can be clubbed with the HT service, after delinking the LT service and getting the Scheme approved from the Electrical Inspectorate.

However the respondent was directed to allow the maximum load to consumer, SBT, with in the limit possible, using the present conditions and the present transformer and it is noted that the respondent has issued notice for releasing additional load of 12 KW out of 13.35 KW demanded.

No agreement copy was produced by the appellant, as claimed by him to the effect that the respondent shall replace the damaged power cables, installed by the consumers, in future.

The allegation of inequality in providing electric connection to a small and big building by the appellant is also found having no merit as the Rules and Regulations of Electric supply are framed after giving wide publicity and conducting public hearings and once it is finalized, it has to be obeyed as such till it is repealed or modified.

The averment of the appellant that his maximum demand is below 40 KVA and has applied for reduction in the Contract Demand of the HT service has no relevance in this Case because it relates to a HT service having an independent transformer of 150 KVA capacity installed by the appellant for his building. The present dispute is on the LT service connections availed from KSEB transformer. It is possible to club with the HT service connection but the appellant wants resale of energy to SBT which is inadmissible as per Law.

DECISION: -

In this case, it is noted that the appellant is the owner of the High rise building having a HT connection No 16/1631 and he is also the registered consumer of the LT connection, consumer No. 3438 (SBT) in dispute, that requires additional load, situated un the same building. From the analysis done and the conclusions arrived at I take the following decisions on the reliefs sought above by the appellant, namely;

1). Already action taken by the respondent, upon direction, to release the maximum possible Load i.e. 12 KW load out of 13.35 KW requested, from the existing KSEB system (Transformer).

Further, for additional electric load (Power) demanded, the consumer is bound to act as per the Regulations made under Electricity Supply Code, 2005, i.e. under clause 8(5), which requires the installation of an exclusive transformer, in case for a High rise building, if the individual or the



combined load of individual consumers taken together, of the building exceeds 50 KVA. That being a specific rule, the contentions of the appellant does not deserve merit and therefore he is found liable to provide an exclusive transformer for meeting his additional load demand.

Hence in this case the consumer may opt either;

a). Conversion of his LT connection No 3438 (SBT) to HT service, by clubbing with the existing HT connection No.16/1631, given for the same building (Hotel Whitelines) after terminating the LT Service (and the new scheme approved by the Electrical Inspector), as there is spare capacity for the existing Indoor transformer of the High rise building.

OR

b). the consumer has to take steps for installing a separate Transformer of suitable capacity, for catering the power load in excess of 50 KVA for the LT service connections of the High rise building.

2). It is not possible to issue order for other consumers in advance, anticipating that the other consumers may also require extra or additional load, in future. The consumer has to approach the Licensee, as and when and according to their need for increase or decrease of load in future and may take appropriate action as per law, if he has any genuine grievances on the same. Here, the relief is seen sought without any specific case or cause of action and hence found not maintainable.

3). As per Indian Electricity Act, 2003, only those who are granted License by the appropriate Commission is authorised to engage in the business of sale of electrical energy. As the request for sale of energy by a consumer is not permitted by Law, the request for resale of energy is declined.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the consumer, Mr Mohammed Haji, Hotel Whitelines, is decided as above and stands disposed of. No order on costs.

Dated the 25<sup>th</sup> of September, 2012.

Electricity Ombudsman.

Forwarded to: -

1. Mr. Mohammed Haji,  
'Scarlet', Nallalam,  
Kozhikode- Pin: 673027.
2. The Assistant Executive Engineer,  
Electrical Sub Division, KSEB, Nadakkave,  
Kozhikode. Pin: 673032.

Copy to: -

- (1). The Secretary, Kerala state Electricity Regulatory Commission,  
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard,  
Vydyuthibhavanam, KSEBoard, Pattom, Thiruvananthapuram-4
- (3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEBoard, Vudyuthibhavanam, Gandhi Road, Kozhikode.