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Appeal Petition No: P/282/2012 & P/303/2012.  
(Present T P Vivekanandan)

APPELLANT : Smt. Bindu Riya Alex,  
M/s Vega Ventures Pvt. Ltd., 'Mark Plaza',  
Kuravankonam, Kawadiar, Thiruvananthapuram-3.

*(Represented by)*  
Sri. K. Anandakuttan Nair,  
Thusharam, Kanakakunnu Lane, Thiruvananthapuram.

RESPONDENT : The Assistant Executive Engineer  
Electrical Sub division, KSEB,  
Kesavadasapuram, Thiruvananthapuram.

ORDER.

Background of the case: -

The appellant is the promoter and builder of the commercial complex, 'Mark Plaza', under Electrical Section, Kesavadasapuram. The KSEB extended 11 KV supply to the multi-storied building premises having more than 50 KVA load, after collecting the estimate amount required for the work. The works of 11 KV cable laying up to consumer premises, erection of a indoor Transformer and allied LT side works and terminal arrangements including metering panel is done by the appellant after paying the Supervision charges. A number of LT service connections were effected later, on collecting the OYEC charges (estimate costs) required for providing each service connection as approved by the Commission for providing WP service connections for LT consumers. But the work carried out by the Licensee for giving the supply was only, connecting the terminal connections of the meters, provided by the appellant. Hence the appellant prays to issue orders to refund such amounts collected by KSEB with interest, since the collection of OYEC amounts in such cases, were never authorized by any regulations created by the KSERC.

The appellant preferred a complaint before the CGRF (South), Kottarakara, pleading to refund the amount collected as OYEC with interest. The CGRF has found the collection of the OYEC as illegal and disposed of the complaint by directing KSEB to adjust the excess amount on the 10% of the supervision charges already remitted by the party for availing the electric supply. The Forum directed that the excess amount has to be refunded and may be adjusted from the next bill onwards pertaining to Con. Nos.14229 & 14503 vide Order No. CGRF/KTR/OP No.704/2012 dated 24.2.2012. In case of Con. Nos. 13182, 13183, 13184 and 13459, the CGRF declined to entertain the plea, vide order in OP No. 778/2012 dated 4.08.2012, as a WP was filed before the Hon High Court of Kerala by KSEB, against granting of the relief.

Aggrieved by the decision of CGRF, the appellant has submitted the appeal petitions before this Authority. The Complaint pertaining to Consumer Nos.14229 & 14503 is challenged in the

Appeal Petition No. P/282/2012 and that of Consumer Nos.13182, 13183, 13184 and 13459, in the Appeal Petition No. P/303/2012, filed by the consumer. It has been decided to hear both the Appeal Petitions together and issue order as combined one, since both Cases deals with the same issue and cause of action.

Arguments of the Appellant: -

The appellant has raised the following arguments in his appeal petition.

- (a).The licensee has collected expenses for LT electricity supply from the appellant as OYEC charges of Rs 9900/-, Rs 9900/-, Rs 9900/-, Rs. 36000/-, Rs. 13100/- and Rs 13100/-, for the Consumer Nos. 13182, 13183, 13184, 13459, 14229 and 14503 respectively, registered on appellant's name. But these amounts were the expenses for LT supply from Licensee's LT lines included in the cost estimate for distribution works approved by the KSERC during 2005. Since the Licensee has never supplied electricity from their LT lines and no expenditure has been incurred by the licensee on the above consumers, the collection of such amounts were illegal.
- (b). All the installations in the building were erected by the appellant as per statutes and also according to the provisions under Clause 13 of KSEB Terms and Conditions of Supply. The LT electricity is provided and maintained by the appellant in the entire part of the building complex as per statutes. The LT energy meter at independent units in the building were also provided by the appellant under Clause 13(2)(i). Therefore the licensee is not entitled to collect such amount.
- (c).The terminals of the meters were connected and sealed by the licensee for recovering the energy charges, which is an entitlement. The licensee is barred from collecting the cost of energy meter while providing electricity supply even if it is provided by the licensee. The cost expenses for supply of electricity are exclusive of meter. Therefore the licensee shall not collect any amount for connecting the terminal of the meter also.
- (d).The CGRF has issued its orders on two consumer numbers vide 14229 and 14503, that too are a wrong judgment. The CGRF never shall adjudicate a petition based on the orders of the Licensee. It shall adjudicate any complaint based on the provisions of the Electricity Act 2003 and rules formulated there under, Kerala Electricity Supply Code 2005 and the orders issued by the State Regulatory Commission from time to time which governs distribution of electricity. No distribution licensee is empowered to issue orders regulating distribution of electricity.
- (e). On the said grounds, the appellant sought for the reliefs to issue orders to return the amounts collected illegally along with the interest at the rate of 17.45%, which the appellant pay interest on the bank loan raised for the construction of the building.

Nature reliefs sought for are follows: -

- (i)To issue orders directing the Asst. Engineer to refund the OYEC amounts collected from Con. Nos. 13182, 13183, 13184, 13459, 14229 and 14503, as one time payment.
- (ii)To order to pay interest at the rate of 17.45% on the collected amounts as onetime payment.
- (iii)To issue orders to pay the cost and expenses of the petitions.

The Arguments of the Respondent; -

The respondent has submitted a statement of fact opposing the contentions raised by the appellant. The main contentions of the respondent are;

- (a). The total connected load in the appellant's premises was above 50 KVA. As per Clause 8 (5) of the Electricity Supply Code, 2005, if the connected load of the building exceeds 50 KVA, separate transformer is to be installed at consumers' premises, for which the cost shall be borne by the applicant. In the instant case, the appellant installed an indoor transformer at her premises

and separate LT connections were availed by the appellant as per rules. The KSERC vide orders KSERC/Supply Code/2/140/5/1031dt 26/7/2005 (Ext. R1) and KSERC/IV/Supply Code/2009/dt. 28/8/2009 (Ext. R2), has approved charges for effecting service connections and based on this approved rates, the KSEB had collected the charges for providing the said service connections.

(b). As per Clause 13(2)(1) of the T & C of Supply, 2005, the meters for individual consumers shall be purchased and installed by the consumer/promoter at his own cost. The respondent submits that Ext. R1 & R2 orders does not give any exemption in remitting the approved charges by consumer even though the appellant had purchased energy meters at her own cost.

(c).The Clause 46 of IE Act 2003 allows the licensee to charge the expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving supply. Here, the UG cable portion & transformer installed will come under this clause. The service connection portion does not cover any electrical overhead line or electrical plant. Therefore the petitioner's contentions in this regard are not correct.

(d).The contention that the premise is supplied with HT supply and that the obligation of the licensee to supply energy ends at the incoming terminal of HTSFU is false and misleading. As per Regulation 1 (m) of the T & C of Supply and Regulation 4 (2) (a) of the Supply Code 2005, the service connections effected to the premise of the consumer belongs to LT category. As per Regulation 13(1) (i) of the T&C of Supply 2005, indoor installations are provided in the premise considering safety aspects and space constraints. Installing a separate transformer at consumer's premises and allied works are mandatory for effecting service connection under LT category because the total connected load exceeds 50 KVA.

(e). Only basic charges for providing connection as approved by the Commission were collected, though it was collected under the name OYEC and LE OYEC which are coined for referring the charges of providing supply. The charges approved by the Commission depend on the connected load of the consumer. The petitioner might have mistaken the term weatherproof service due to the absence of weather proof service line.

(f). As per Regulation 8 (9) of the Electricity Supply Code 2005 and also in Board order dated 24/2/2010, the applicant does not require the licensee to provide electric line or electric plant, but choose to provide them himself, he shall pay 10% of the expense as supervision charges to the licensee. The UG cable and transformer installation come under this rule. The CGRF while delivering the order to refund the charges for service connection realized from consumer Nos. 14229 & 14503, have not considered this aspect. The charges approved by the Commission for effecting service connection as per Ext. R1 & R2 are only applicable here.

#### ANALYSIS AND FINDINGS: -

The hearing of the case was done on 26.03.2013, in my Chamber at Edappally, Kochi, and the appellant was represented by his representative, Sri. Anandakuttan Nair, and the respondent by Smt. A. Beena, the Asst. Executive Engineer, Electrical Sub Division, Kesavadasapuram and they have argued the case, mainly on the lines stated above.

On examining the Appeal Petition and argument note filed by the appellant, the statement of facts and argument note of the Respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings leading to

the decisions thereof.

The appellant has raised mainly two contentions.

- 1) To return the OYEC amount collected against Con. Nos. 13182, 13183, 13184, 13459, 14229 and 14503 as one time payment
- 2) To pay interest at the rate of 17.45% on the collected amount as onetime payment.

The respondent has collected 'OYEC charges', from the consumer or the occupier, for giving each and every individual connections in the Multi storied Building, 'Mark Plaza'. According to the respondent, the amounts of OYEC charges were the rates for giving the 'LT electric service connections' to the consumers, from the Licensee's Electric Lines and is included in the 'cost estimate for distribution works', approved by the State Regulatory Commission and hence it is authorized. But according to the appellant, all the Electric Line works and electrical installations up to LT metering Panel of the building, like laying of UG Cable from the nearest 11 KV RMU to the Indoor Transformer, erection of Transformer and its incoming side control panels and LT side terminal arrangements including the metering panels, were carried out by her after paying the estimate costs and supervision charges, as demanded by KSEB. Moreover, the appellant points out that all the LT side energy meters required for the independent consumers in the said building were also provided by the appellant at her cost, as per the provisions under Clause 13(i) and 13 (2) (i) of KSE Board Terms and Conditions of Supply. The appellant submits that, since she has paid full costs for the whole work needed for taking the electric supply and no additional works remain to be executed by the KSEB, other than just giving the 'connection' to the meters, already installed in the metering panel and seal it, which are obligatory on the part of KSEB, the Licensee is not at all entitled to collect any further amounts under the pretext of OYEC or so, to provide the electric service connections.

But the respondent denies this argument by insisting the provisions under Section 46 of IE Act 2003, which allows the licensee to charge the consumer, *any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply*. As per the statement of the respondent, KSEB has collected earlier, only the basic charges required for the works up to the meter board from the consumer. To carry out the balance work of, providing the electric service connection to various consumers, the estimated costs as approved by the Hon Commission, similar to that for giving the WP Service connection to other consumers, has also to be paid by the consumers of the Multi-storied building, the respondent argues.

Reg.7 of the Kerala Electricity Supply Code, 2005 relates to ' Power to recover expenditure'. The above provision is an elaboration of Sec.46 of the Indian Electricity Act 2003, which states

that the State Commission may, by regulation authorize a distribution Licensee to charge from a person requiring supply of electricity in pursuance of Sec. 43, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. The KSEB has demanded the OYEC charges for giving the connection, merely relying on the order of the Hon Commission, approving the 'estimate rate for distribution works', which consist of providing WP service connections from OH lines and UG cables. In all these cases the Licensee is incurring cost of WP wire, GI wire, Insulation tape, screws etc to fix the Service line up to the meter board and the meter. But no such expenses is incurred in providing the electric connection of a multi-storied building, by the Licensee, where the Metering panels including the Meter are fixed by the owner, after paying the Supervision charges, for the cost of the work carried out by the party. The only work remaining is, just to make the end connections to the meter and seal it, thus energizing the supply to the individual consumers.

The respondent has not an argument that they incurred any additional costs, to provide the individual connections to various consumers of the building, after completion of the Electric Installation works from Indoor Transformer to the Terminal arrangements of the metering panel of the building, done by the consumer. Hence I am of the view that collection of OYEC charges to provide independent connections to various consumers of a multi-storied building is not at all justifiable, when the Licensee has already collected the costs of estimate and/or the supervision charges from the owner, to bring the HT/ LT electric supply up to the metering panel and is not incurring any expenditure to do the balance work.

The appellant argues that he is paying interest on the bank loan, raised for the construction of the building, at 17.45% per annum and requests to refund the excess amount collected with that rate of interest. There is not acceptable because, the provision under 'Electricity Supply Code, 2005, allows interest at twice the bank rate only for the refund of excess amount collected by the Licensee. Here the bank rate means the rate at which the Reserve Bank of India is prepared to buy or rediscount bills of exchange under the RBI Act, 1934.

**DECISION: -**

From the analysis done and the Findings and conclusions arrived at, which are detailed above, I take the following decisions.

The collection of excess amount by way of 'OYEC charges', for providing individual electric connections to various consumers of the multi-storied building of the appellant, was found as arbitrary by the CGRF and the KSEB was ordered to refund the amount so collected.

The respondent does not dispute the fact that they have collected the estimated cost of works and supervision charges, as the case may be, to bring the electric supply up to the metering panel

of the Multi-storied building, Mark Plaza, of the appellant earlier. Now again demanding a sum for energizing supply of electricity to various consumers of the same building, under the pretext of Hon KSERC order earmarked for giving WP service connections, is not found reasonable and hence not justifiable. No additional materials were required by the licensee for giving the said electric connections in this case. The IE Act 46 clearly says that only the “expenses reasonably incurred for providing any electric line or plant used for the purpose of giving that supply”, should be collected from the consumer. Asking any additional amount under any manner is unjust and illegal. Hence the respondent is directed to refund the OYEC charges collected for providing the electric service connection to Consumer Nos. 13182, 13183, 13184, 13459, 14229 and 14503 (of the Multi-storied building, Mark Plaza), with interest at twice the bank rate, from the date of collection of OYEC amount to the day of payment, within 60 days of this order.

The related CGRF orders, in the Petitions filed before the CGRF, Kottarakkara, and numbered as OP No 704/2012 (judgment dated 24.2.2012) and OP No.778/2012 (judgment dated 4.8.2012) are set aside.

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

Dated the 6<sup>th</sup> of June, 2013,

Electricity Ombudsman.

Ref. No. P/ 282/ 2012 & P/ 303/ 2012/ 1778/ Dated 06.06.2013.

Forwarded to :       1. Smt. Bindu Riya Alex,  
                                  M/s Vega Ventures Pvt. Ltd.,  
                                  Mark Plaza, Kuravankonam, Kawadiar,  
                                  Thiruvananthapuram. Pin-695003.

                                  2. The Assistant Executive Engineer  
                                  Electrical Sub division, KSEB, Kesavadasapuram,  
                                  Thiruvananthapuram. Pin- 695004.

Copy to: -       (1). The Secretary, Kerala State Electricity Regulatory Commission,  
                                  KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.

                                  (2). The Secretary, KSE Board,  
                                  Vydyuthi Bhavanam, Pattom, Thiruvananthapuram-4.

                                  (3). The Chairperson, Consumer Grievance Redressal Forum,  
                                  KSEBoard, Vydyuthi Bhavanam, Kottarakkara.