

STATE ELECTRICITY OMBUDSMAN

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Review Petition on the Appeal Petition No. P/ 205/ 2011.

(Present: T.P. Vivekanandan)

Review APPELLANT : Mr. Biju M. Nizam,

Flat No. 52, TC 2/3031/ (12),

Dallys Apartments, Chalakuzhy Road, Pattom P.O.

Thiruvananthapuram. PIN 695004.

(Represented by)

Sri.K.Anandakuttan Nair, "Thusharam"

Kanakakunnu lane, Thiruvananthapuram.Pin-695033.

Review RESPONDENT : The Assistant Executive Engineer,

Electrical Sub Division, KSEB, Kesavadasapuram,

Pattom P O, Thiruvananthapuram. PIN 695004.

(Represented by)

Sri B Sakthidharan Nair, Board's Advocate,

City Chambers, Vanchiyoor, Thiruvananthapuram-35.

ORDER.

Background of the case

The appellant who is a builder and promoter of the building "Dallys Apartments" had applied for 11 KV supply with LT service connection for various independent units in the building. An indoor transformer and other electrical installations were erected by him, as per the scheme approved by the Electrical Inspector. He had remitted Rs.926111/= for availing the electric connections, under cost estimate scheme for the work, as directed by KSEB. It is alleged that the actual amount of expenditure incurred was not revealed to the appellant in spite of his repeated requests and the appellant had approached the KSEB with a request for refunding the excess amount collected from him. As no action was taken by KSEB, the appellant filed a complaint before the CGRF, Southern Region, Kottarakkara. The appellant alleged that the licensee did not implement the orders in

letter and spirit within the time frame stipulated by the CGRF. Aggrieved by this, the appellant has filed an appeal petition before this Forum. This Forum, after hearing both sides has pronounced the order on 19th March 2012, on the Appeal Petition filed.

The Review Petitioner/Appellant has approached this Forum with a Petition dated 5.4.2012, with the plea to Review the decision taken on the Appeal Petition.

Arguments of the Review petitioner: -

The review petitioner submits that new and important matter of evidence has been discovered by him, which could not be presented earlier.

(1). As per the order, of estimate amount collected is Rs. 9,26,811/- and the amount as per the revised estimate is Rs. 4,38,719/-. The difference of that amounts as per order is Rs.4, 38, 719/- and the interest is 49,834/-. But the actual difference of the above amounts are Rs. 4,88,092/- and Rs. 49,905.74 respectively. The total amount arrived at as per order as refund is Rs. 5,96,175/-, but the actual amount should be Rs. 5,96,946.74. Moreover interest on supply arrangement by providing AB switch is not given which is included in the original estimate.

(2).The revised estimate as per the order is Rs. 4,38,719/ and it is not known how this amount is derived.

(3). In the order it is stated that "hence calculation of 10% of the entire cost value of work including cost of materials supplied by the consumer, as the supervision charges, payable to KSEB is as justifiable". This lacks natural justice, logic and violates law and is an error in judgment and violation of Clause 8(9) of Supply Code due to following reasons. Moreover, there is no regulation or order to find out and state so.

(4). No. KSERC/Supply Code/2/140/2005/1238 dated 26-10-2005 is stated to be the basis for making such a statement. This order is only applicable to the estimates not covered under the cost estimates already approved vide order No.KSERC/Supply Code /2/140/2005/1031 dated 26-7-2005 for distribution works of KSEB. It is not applicable to the cases where material for electricity supply is provided by the applicant under Clause 8(9) of Supply Code and electricity supply to the appellant. In the same order, KSEB it was specifically directed by the Commission to KSEB to submit the cost estimate for the remaining items under Clause 30 of Supply Code. But it was never done by KSEB, which cost estimate is applicable for electricity supply to the appellant.

(5). Electricity was supplied to 'Dallys apartments' under Clause 8 (5) of Supply Code subject to Clause 8(2) and 8(9) in which extension of 11 kV electric line only is needed. Clause 30(e) of the Supply Code has mandated the licensee to submit estimate amount for extension of line HT/EHT within one month coming into effect of Supply Code. No cost estimates for HT/EHT was approved by the State Regulatory Commission while the estimate amount was collected from the appellant. Non-compliance of the order of Commission by licensee shall be taken as a ploy to collect amount from the appellant based on arbitrary estimates.

(6). The cost data for estimate for HT/EHT works were approved by the Commission vide order dated 30.11.2010. Since electricity was supplied at 11kV under clause 8(5) of supply code subject to 8(2) & 8(9), it was only necessary to include such items of work for of electricity for extension of HT line in the estimate as provided under Section 46 of the Electricity Act and clause(7) of supply code. Other items included in estimate are to receive control, distribute and use electricity with in the premises. The equipment and installations from HT SFU onwards, never include in the items for electricity supply by the licensee and such items should not have been included in the estimate. No law, rule, regulation and orders have authorized the licensee for including the same in the estimate for electricity supply by the licensee to an applicant. This decision was taken by the licensee self and it were never approved by the Commission.

(7). Electricity is supplied at HT and cost of energy charges are collected for energy metered at LT. No regulation or order has authorized licensee to consider the installation from HTSFU onwards as the facility for supply of electricity by it, on the reason that energy is metered under LT.

(8). Under clause 8 (5) of supply code and under clause 13 (1) of KSEB T & C of Supply, the applicant is bound to install an indoor transformer of adequate capacity and the appellant had installed one under the provisions of electricity rules also. The licensee has nothing to do with it and no law/rule under the land authorizes the licensee to supervise or render any service for the purchase or erection of the transformer or its control switchgear to levy 10% of expenses under clause 8 (9) of supply code or as per any other orders of the Commission.

(9). All other HT and LT installations including the energy meter in the building were provided by the appellant under clause 13 of KSEB T & C of Supply. Thereby also such

items should not be included in the estimate prepared under clause 8 (2) of supply code.

(10). The alibi that the electricity supplied at HT is metered under LT; never confer any right to the licensee to collect centage charges on all the items of electrical installation from HTSFU which were erected by the appellant at his own expense under the supervision as envisaged under the electricity rules. Thereby also these items shall not be included in the estimate.

(11). The referred Hon. Supreme Court order in Civil Appeal No. 4209 of 2007 dated 18-10-2011 is not universal. Moreover, it was not reported and not known to the appellant. Therefore, while delivering the order, the relevant portion of the said order should have been reproduced in the order by the Hon. Ombudsman. The supply code issued by Regulatory Commission of a particular state is universal to that state only. Therefore the observation of the ombudsman is wrong.

(12). The amount illegally collected based on arbitrary estimate was retained by the licensee and generated further revenue out of it. Therefore this amount shall not be treated on par with the security deposit amounts collected legally. Hence the illegally collected amount demands higher rate of interest which the appellant has prayed. Moreover, regulations stipulate to give interest to security deposit at bank rate. Therefore that interest cannot and shall not be limited to 6% annually. The bank rate (Repo rate) is decided by Reserve Bank of India from time to time. Therefore Hon. Ombudsman cannot and shall not limit the bank rate to 6%.

Arguments of the Respondent: -

The respondent has adduced the following contentions.

The respondent submits that the review petition is not maintainable as in the instant case the review petitioner has neither able to produce any new evidence nor pointed out any glaring mistake or error in the face of the record hence the review petition may be dismissed.

The respondent admits that the amount collected from the party was Rs. 926111/-. The revised estimate was for Rs. 438719/-. This estimate was prepared including the cost for providing the DP structure and later the estimate was revised excluding the expenditure incurred for providing DP structure. This was arrived at Rs. 379770/-. Hence the refundable amount is arrived as follows:

Total amount collected = Rs. 926111/-

Revised estimate amount = Rs. 438719/-
Difference = Rs. (926111 – 438719) = Rs. 487392/-
Interest @ 6% for 622 days (from 23/6/09 to 7/3/11), ie, from the date of agreement to date of revised estimate = Rs. 49834/=

Revised estimate excluding cost of DP = Rs. 379770/-
Expenditure incurred for providing DP = Rs. 438719 - Rs. 379770/- = Rs. 58949/-
Total Amount to be refunded = Rs. 487392/- + 49834 + Rs. 58949 = Rs. 596175/-

The respondent denies the argument of the review petitioner/appellant that collection of supervision charges beyond HTSFU is illegal. Section 4 (1) of the Kerala Electricity Supply Code 2005 clearly stipulates that “the point of commencement of supply shall at the incoming terminal of the cut outs installed by the consumer”. All the consumers are availing LT supply as per Section 4 (2) (a) of Supply Code. So point of commencement of supply is the incoming terminal provided after the energy meter and is not HTSFU as claimed by the complainant. Hence the prospective consumers are bound to remit 10% supervision charges up to this point.

Analysis and Findings: -

The hearing of the case was conducted on 14.5.2013. Sri.Anadhakuttan Nair, the representative of the review petitioner and and Sri. B. Sakthidharan Nair, advocate, KSEB, assisted by the respondent, the AEE, ESD, Kesavadasapuram, have attended and argued on the above lines. On examining the Petition and the arguments from either side, this Authority comes to the following conclusions and decisions thereof.

All the points raised by the appellant in the review petition are the points to be raised in the appeal petition against this Forum’s order, if it is challenged in a Superior Court of Law. No mistake or apparent errors on the face of record were pointed out by the appellant and hence cannot be considered now for a review petition as most of them are ‘challenging the decision taken by this Forum’ arguments only and include fresh arguments, which cannot be considered again. However, this Forum wants to discuss the following points challenged under ‘review’ petition.

(1). The appellant has not produced any document suggesting that he has submitted papers to KSEB for availing more than 100 KVA load in his name or some other name for availing HT connection. For availing HT connection, the metering cubicle with CT and PT equipment for measurement of inputs to the Meter, before the Transformer point, has to be arranged at the consumer’s cost. No such HT metering arrangements

were reported to be carried out by the consumer. Moreover, had the party wanted a HT connection initially, he could have applied for it specifically and obtained it easily. If the same had been denied surely the action would have been challenged and no such case is reported. The party has not a complaint that he was denied a HT connection. In such a situation, after availing LT connections for all the apartments by the appellant and/or the occupants residing in the building complex, the party is arguing for HT consumer status now, for getting reduction in estimate cost and Supervision charges is not at all found justifiable.

In this case, no individual consumer has a power demand of more than 100kVA and hence the obligation of the Licensee is to provide LT electric connections.

(2). As per rule, for providing HT or LT supply, the estimate need to be consisted of, starting from the nearest existing distribution line to the consumer premises, as per section 46 of Electricity Act, 2003, i.e. any expenses reasonably incurred in providing any eclectic line or electrical plant used for the purpose of giving that supply. The Act clearly empowers the Licensee to collect the cost of any electric Line or electric plant required to provide the supply. The RMU is an electric plant, which is not under the control of the consumer, and hence it's cost can be collected by the Licensee, at the rate approved by the Commission, if the same is needed to provide electric supply to the appellant.

Further, the appellant has not a contention that 'RMU' is not required in his case, but has an argument that it should be provided by the Licensee only, as it is a part of Distribution system. The Clause (7) of the Electricity Supply Code, 'the Commission authorizes the Licensee, to recover from the owner or occupier of any premises requiring supply, the expenses reasonably incurred in providing any eclectic line or electrical plant required specifically for the purpose of giving such supply'.

"Provided that, the Licensee shall not be entitled to recover such expenditure if such expenditure is under the scheme approved by the Commission or otherwise charged in the Annual Revenue Requirements of the Licensee".

Hence the exemption from the payment of cost estimate for providing the electric supply, including cost of electric line and electric plant, is restricted for certain cases only and the appellant does not belong to that group.

(3). The appellant contends that the licensee has collected unauthorized amounts as supervision charges upon the cost of materials, plants, accessories, labor charges and other items, which were actually incurred by the appellant himself and upon which no supervision of the license is required or necessary. The appellant argues that the distribution licensee KSEB, who is also the supplier, shall not supervise the works of electrical installation in any building. The party insists that, KSEB is not authorized or qualified or mandated to supervise such works or is the duty of it and hence KSEB is not at all entitled to collect 10% as supervision charges on the cost of electrical works in a high rise building.

3.1). The scheme of electrical works, in any High rise building has to be approved by the Electrical Inspector, is the rule. As per Regulation 29 (1) & (2) of Central Electricity Authority (measures relating to safety and electric supply) Regulation, 2010, the works shall be executed through a *“licensed contractor” under the direct supervision of a person holding a certificate of competency (and by a person holding a permit) issued or recognized by the State Government”* and under Sub Clause (2), it reads that, *“no electrical Installation work which has been carried out in contravention of sub-rule (1) shall be connected with the work of the supplier”*.

3.2). The sub section (5) of Regulation (8) of Electricity Supply code states that, if the power demand of a High rise building is below 50 kVA, the same shall be given from the LT lines of KSEB. But if it exceeds 50 kVA load, the owner/occupier has to provide a separate Transformer of sufficient capacity. This is followed by sub section (9) of the same Regulation, which reads as;

Reg. 8(9) Supply code, 2005, -Supply where electric line/substation is provided by the appellant-

“Where 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 for providing such services and get the work executed by a licensed wiring contractor. The licensee shall supervise the works of the applicant and provide guidance in technical matters and matters relating to safety”.

The said Regulation was created for cases where the consumer himself opt to provide the electric line or electric plant, under Reg.8(2) to 8(5). The Reg.8(9) is a general one after the general clause 8(8) for Street Lights. The Reg. 8(9) specifically entrust the

licensee to supervise the work of the appellant (electrical line/sub-station and electric plant) and also to provide the guidance in technical matters in this regard. It reads as; The licensee shall supervise the works of the applicant and provide guidance in technical matters and matters relating to safety.

3.3). As such, the licensee is supposed to provide the details like, the specification of the 11 kV cable to be purchased viz; their size, capacity rating, type (XLPE or PVC), the specifications of the energy meter, the circuit breaker specifications and its settings, which should be graded so that, it operates before the protective devices in the Board's supplying station operate etc. The Electrical inspector will verify the suitability of the electrical design with regard to load, safety and specifications of the work. But KSEB can give information based on the fault level of the Substation feeding the electric power and the minimum size of cables to be provided, the Circuit Breaker Rupturing capacity level requirement etc. As such, it is bounded under Reg. 8(9) of the Supply Code, to supervise the whole electrical works by KSEB and issue the guidance needed.

3.4). Also, it is better to refer Reg.11 of KSEB T & C of Supply; 11- Apparatus of HT/EHT consumers & LT Power consumers-(2). HT consumers requiring supply of 750kVA and above as well as all indoor substations must provide suitable circuit breakers / fuse switches on the supply side fitted with automatic overload protective devices so adjusted that they operate before the protective devices in the Boards Supplying station operate. The circuit breakers/ switches for units must be of sufficient rupturing capacity to be specified by the Board and the Inspectorate to protect the consumers' installation under short circuit conditions. (4) HT/EHT consumers and LT (Power) consumer shall consult the Board, in their own interest before ordering HT switch gear or apparatus and deciding the layout thereof. Here it is specifically directed to collect technical details stated as above from the Licensee, KSEB, to ensure a safe Electrical Supply system.

3.5). The wiring supervisor is authorized to supervise the wiring for 'Light and Power' circuits only of the building. The Cable laying and the installation works of Indoor T'rfr are to be done under the supervision of KSEB. Further, the wiring Supervisor is the lowest qualified person, to supervise the electrical wiring works done by an Electrical contractor. A higher qualified person, approved by the Govt. and who have acquired

Degree/Diploma in Electrical Engineering and had undergone training, are authorized persons to perform supervision in their area of jurisdiction, as per Central Electricity Authority (measures relating to safety and electric supply) Regulations, 2010, vide Chapter II- Clauses (3), (7) and (29).

3.6). The above referred rules make it clear that the wiring installation work can be supervised by either a person holding a certificate of competency like a Degree or Diploma in Electrical Engineering or person holding a permit (like wiring supervisor) issued by the Govt. The Rules make the stress on the point that, all the electrical wiring works should be supervised at least by an approved wiring supervisor and not by a 'wiring supervisor alone'. Other competent and qualified persons under clause (7) referred above are also eligible. Moreover, Regulation 8(9) of Electricity Supply Code, 2005, specifically authorize and directs the KSEB, that it should supervise the works of the applicant and provide guidance in technical matters and matters relating to safety, when the applicant himself provides the electric Line/sub station. Hence I am of the view that, KSEB can also supervise the electrical works of a High rise building where the party has applied for electric supply and Board intends to provide it, to ensure safety and better reliability of KSEB system.

3.7). The Kerala State Regulatory Commission vide its order dated 3rd Jan: 2013 in OP 32/2012, has approved the cost estimate for the installation of RMU's. In it, for arriving at the cost of RMU's, 16% charges (including 10% centage charge) on the material cost, the transportation and labour costs were added to determine the final cost of the electric plant, RMU. The Commission has levied 10% on the whole amount thus arrived at, as the supervision charge, to calculate the estimated cost of the RMU equipment, to be recovered from the prospective consumers, wherever it is required.

3.8). Further, the Regulation for Street Light installation by the Local Bodies is as follows;

Reg. 8 (8)- Supply for street lights- Licensee shall provide electric supply for street lights on request from local bodies on realization of cost of installation.....Local bodies shall have the option to provide their own street lighting installation and avail power though metered supply in which case capital and maintenance works will be

carried out by the local body under the supervision of the licensee. A supervision charge not exceeding 10% of capital cost shall be levied by the licensee in such cases.

This clause states that, even in the case of local Bodies which provide the street lights for the 'general public' and where the capital and maintenance works are carried out by the local bodies itself, the licensee is authorized to collect 10% of the capital cost, on both material and the labour, as supervision charges. When there is lack of clear provision, the intention of the Rule for the supervision charges has to be decided, in comparison with similar nature works where the rule is squarely applicable. Hence this Regulation 8(8) corroborates the findings that the Licensee can levy the supervision charges on the capital cost including materials, even if it is supplied by the party.

3.9). In Civil Appeal No. 4009 of 2007 Hon. Supreme Court of India dismissed the appeal petition against supervision charge demanded by the licensee, with the following general observations.

- a. Supervision charges would be governed by the Supply Code with effect from the date of enforcement of the code.
- b. If the work is to be done by the party, licensee shall charge (15% in the case of UP State Regulatory Commission) supervision charges *on the total estimated cost*, as supervision charges.
- c. Erection of transmission lines, associated distribution substations, and LT distribution mains, are having dangerous connotations. *If appropriate standards are not maintained, disastrous consequences are possible. Delegation of such activity has necessarily to be regulated by supervision, so as to avoid any lapses. Supervision needs inputs which have to be paid for. The electricity supply code stipulates certain percentage (15% in the case of UP State and 10% in Kerala) of the total estimated cost of electrification works as supervision charges.*
- d. The argument that public at large would have to bear the brunt of supervision charge is totally unacceptable.
- e. Supervision charges are being levied, so that interested parties who decides to carry out the activities of erection of transmission lines, associated distribution substations and LT distribution mains, on their own, abide by the minimum prescribed norms. Higher public cost ensuring prescribed safety measures, would certainly override the cost consideration projected by the applicant.

It is clear that that the above observations are not case specific, and is applicable to all State Regulatory Commissions, Licensees and applicants. The Apex court decision is binding on all courts below it. A precedent is a previous instance or case which furnishes an example or rule for subsequent conduct, and a pattern upon which subsequent conduct is based. Hence as such, the above said Supreme Court order is universal in nature, in upholding the legality of Kerala Electricity Supply Code, 2005.

3.10). For the above reasons, I am of the view that the 'supervision charges' that can be levied in the High rise building of the appellant, is on the total cost of the electrical installation work executed by the consumer, including the material and a labour (both supplied by the party) and not on the labour charges of cable lying alone, as contented by the party. If the wiring of the 'Light and Power' circuits of the building and the LT metering panel works, has been carried out by the Electrical contractor, under a 'wiring supervisor' alone, that part can be excluded.

DECISION: -

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

(1). This Forum has considered all the issues raised by the appellant in detail and have come to a conclusion and accordingly pronounced the judgment dated 19.3.2012. The issue of collection of 'Supervision Charges' by KSEB on the works executed by the party himself, was also examined in detail by this Forum at that time. The additional and other fresh averments of the appellant submitted in the review petition was also analyzed and came to the conclusion that the contentions raised do not pose for a review on the decision already taken by this Forum in this regard.

(2). The appellant argues that there is error in the calculation of the amount refunded by KSEB. As per the petition, the consumer has the complaint that; "the total amount arrived at as per order as refund is Rs. 5,96,175/-, but the actual amount should be Rs. 5,96,946.74". Thus the petitioner seeks a claim of Rs. 772/-, the difference. But the party has not submitted the details of how he arrived at his cost estimate. Anyway, if the party is aggrieved on this point of difference in the cost estimates, he can approach the respondent and if not satisfied with its decision, can urge the issue before the CGRF, on this point.

(3). Bank rate means the rate at which the RBI prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase under RBI Act, 1934, and as

such, it may be taken as the ruling rate from time to time. Further, it is made clear that all the amounts, ordered to be refunded from this end, will bear interest from the date of collection of such amounts to the date of refund to the consumer.

In this review petition, no mistake or apparent errors on the face of record were pointed out by the appellant. Also there is no discovery of a new and important matter or evidence produced by the appellant warranting a review on the issues raised before this Forum and on which decisions were already taken vide the Judgment dated 19.3.2012. If there is any glaring mistake in the calculation of the Cost estimate amount collected by KSEB, for the works needed for giving electric supply to the appellant, it shall be verified by the respondent on filing petition by the appellant. If the party is still aggrieved on its decision, they are free to approach the CGRF on this point.

Having concluded and decided as above it is ordered accordingly. The Review petition filed by the appellant is found having no merits and is disposed of with the directions issued as above. No order on costs. Dated the 16th of July, 2013.

Electricity Ombudsman.

Review Petition on Appeal Petition No. P/205/2011/1854 /Dated 16.7.2013

Forwarded to :

- (1). Sri. Biju M Nizam, Flat No.S2, TC-2/3031/(2) Dally's Apartments',
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- (2). The Assistant Executive Engineer, Electrical Sub Division, KSEBoard,
Kesavadasapuram, Thiruvananthapuram.

Copy to:

- (1). The Secretary. Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard, Vidyuthibhavanam, Pattom,
Thiruvananthapuram-4.
- (3). The Chairperson, Consumer Grievance Redressal Forum, KSEBoard,
Vidyuthibhavanam, Kottarakkara.