

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/136/2015

(Present: V.V. Sathyarajan)

Dated: 18th January 2016

Appellant : Sri Jayaprakash
Navitha Rooms, S2, AP 3, 201, D2,
Iringapuram P.O.
Guruvayoor

Respondent : The Assistant executive Engineer,
Electrical Sub Division,
KSE Board Limited,
Guruvayoor

ORDER**Background of the case:**

M/s Santhimadom Builders and Developers applied for power demand for 1184.40 kVA for their two residential cum commercial complexes namely Kottapady North Project & South Project. But they abandoned the projects and the individual owners completed the villas later and they applied for electric connection separately. The individual owners completed residential villas of North Project and they were given electric connection after remitting the expenditure as demanded by the KSEB Limited. Few individual owners of South Project approached the Hon'ble High Court seeking direction to dispose of their applications for electric connections without insisting the payment of the expenses to be incurred for providing new transformer. The contention of the appellants is that the total power requirement, as specified by the builder, will not come more than 1 MW and the demand for bearing cost of transformer and other equipments cannot be sustained.

The Hon'ble High Court disposed of the case by directing the respondents to provide electric connection on remittance of cost required for up-gradation of distribution system. Based on the judgment, 55 individual owners remitted the requisite amount proportionate to their plinth area and obtained connection. After availing the connection, one of the building owners, Sri Paramu Kumaran approached Hon'ble High Court stating that the total requirement of the

present building owners comes only 350 kW which is less than 1 MW and requested to refund the excess amount remitted for availing service connection.

In the judgment the Hon'ble High court of Kerala has directed one of the building owners, Sri Paramu Kumaran, S/o Paraman Kalluchirayil, to approach CGRF under Section 130(8) of Kerala Electricity Supply Code (KESC) 2014. But Sri M Jayaprakash, Navitha Rooms, S2, AP3 201 D2, Iringapuram P.O., Guruvayoor who filed petition before the CGRF which was dismissed vide order dated 21-05-2015 holding that the petitioner does not come under the definition of **“complainant”** as per law. Aggrieved with the above decisions of CGRF, the appellant has approached this Authority with this appeal petition on 22-06-2015.

Arguments of the appellant:

The appellant stated that the petition submitted to CGRF has been rejected without applying the mind bordering on culpable bias and inherent sense of favoritism as the rules and definitions are completely messed up. Definitions of **“complaint”** and **“complainant”** are exchanged. It is a proof of bias.

Rules are quoted here for quick reference.

(e) Complainant means-

- (i) any consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;
- (iii) the Central Government or State Government - who or which makes the complaint
- (iv) in case of death of a consumer, his legal heirs or representatives.

(f) Complaint means any grievance made by a complainant in writing on: -

- (i) defect or deficiency in electricity service provided by the licensee;
- (ii) unfair or restrictive trade practices of licensee in providing electricity services;
- (iii) charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services;
- (iv) errors in billing;
- (v) erroneous disconnection of supply;
- (vi) electricity services which are unsafe or hazardous to public life in contravention of the provisions of any law or rule in force; or

(vii) any other grievance connected with the supply of electricity by the licensee except those related to the following: (1) unauthorized use of electricity as provided under Section 126 of the Act;"

(2) offences and penalties as provided under Sections 135 to 139 of the Act and

(3) accident in the distribution, supply or use of electricity under Section 161 of the Act

The appellant further raised the following arguments

1. The complaint is relevant as it is related to corruption and unfair trade practice.
2. Please look into the complaint which is relevant.
3. That he is not a consumer/complainant is the result of corruption and unfair trade practice.
4. The application was not accepted, and rejected on false grounds.
5. That the original applications, about 18 in number was submitted by the appellant as President of the association to the District Collector is a proof of rejection.
6. After the rejection of the application the appellant filed a court case which is pending before the Kerala High Court.
7. As president the appellant submitted the petitions/applications to the Collector for the benefit of others while the petition was withheld as it was under the consideration of the court.
8. The applicants were misled by the Guruvayoor KSEB that the petitions should-be accompanied by a joint power requirement application.
9. Several RTI application were sent to KSEB and it was found and proved that the KSEB was favouring the builder and his project, which was illegal and without any document from any competent authority, as part of a corrupt deal.
10. All documents prove that the KSEB took an adamant stand on the basis of false and non-existent documents and submitted false report and lies to mislead the High Court.
11. Rejection of the petition on technical grounds is gross injustice and flagrant violation of rules and suppression and evasion of glaring facts of mismanagement and corruption.
12. There is abundant proof of RTI and other documents to show the falsehood of the Guruvayoor KSEB that led to the litigation, excess charge, court cases, Lokayuktha Enquiry and Report, as well as the rejection of the petition all of which get rejected when the petition is rejected and will militate against the spirit of the Ombudsman.

Arguments of the respondent:

The present complaint No. 155 was submitted before this Forum by not the petitioner of the WP(C) 6267 of 2015. The appellant is neither a party in that case nor a complainant according to the definition as per Regulation 2.1 (e) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005 and hence this complaint is not maintainable before this Authority.

M/s Santhimadom developers had submitted a power demand application to the office of the Assistant Engineer, Electrical Section Guruvayoor on 19-03-11 for 1184.40 kVA for two residential cum commercial complexes namely Kottapady North Project & South Project. An estimate was prepared and clarification pertains to certain technical details was sought from the builder but he did not turn up.

The south project involves 109 individual residential villas and commercial complex like Ayurvedic Hospital, Shopping complex office building, marriage hall etc. Construction of almost all the villas (102 Nos) was completed and other buildings were partially completed.

North Project involves 12 Nos residential villas and a residential flat complex. Work of all independent villas completed and flat work is partially completed and availed power supply after installing 1 no. 100 kVA transformer. Since the developer / builder deserted the project, the occupants applied for electric connection individually. The occupants from the completed residential villas of North project applied the KSEB Ltd with their willingness to bear cost for giving electric connection, and the KSEB Limited had given connection to them.

As nobody from South project was willing to remit the cost as per Regulation 36 of Kerala Electricity Supply Code 2014, the KSEB Limited was not in a position to release the electric connections. So the occupants, approached the Hon'ble High Court of Kerala vide WP(C) No. 20614/15379, 15380/15387/15388/19382/19369/19370/19375/19407/19780/19782/19794/19938/19992 of 2014.

The KESB Ltd submitted statement of facts to the Hon'ble High Court stating that the load details calculated based on the Regulation 50 of the Kerala Electricity Supply Code, 2014 of the project comes to greater than 1 MW. The load was calculated based on the scheme submitted by the builder and almost all works of the builder was completed. So the expenditure for extension or up-gradation of electric system is to be borne by the consumer or group of consumers.

The Hon'ble High Court upheld the contentions of the KSEB Ltd and as per judgment dated 18-08-2014 directed to provide electric connections on the basis of applications submitted by the petitioners, if they comply with the requisite conditions enumerated under Regulation 36 and makes payment of the expenditure required for the up-gradation of the system.

Based on the judgment, fifty five occupants approached the Electrical Section, Guruvayoor for electric connection and the demand note for extending/upgrading the existing electric network was issued. Seven Numbers 100 kVA transformers, I No 250 kVA transformer, 450 m HT/LT line and 400 m LT line was part of the estimate. The total cost for giving connection to residential/complex was Rs. 28,93,550.00 and this is for entire residential area of 14235.98 Square Metre. The proportionate expenditure of Rs. 203.26 per Square Metre so arrived was collected from the applicants. Three Nos. 100 kVA transformers were presently sufficient to provide electric connection to present 55 applicants and hence that only were installed. The rest of the transformers and LT line will be installed as and when new applicants come and remit the proportionate amount. The occupants remitted the cost proportionate to their plinth area and the electric connection effected.

After getting the connection one of the occupants Sri Paramu Kumaran approached Hon'ble High Court stating that the total load of the present applicants comes to only 350KW which is less than 1 MW. The petitioner kept silent about the near future occupants. However, the Hon'ble Court dismissed his petition vide judgment dated 27.2.15 of WP(C) No. 6267 of 2015 directing him to approach this Hon'ble Forum. But he did not approach the Forum. Instead of this, the appellant, who has not remitted any amount to the KSEB Limited till date for getting any electric connection, approached this Hon'ble Forum to release the amount remitted by other parties which was collected as per the judgment of the High Court as stated above.

The complainant in this case is not a party who remitted the cost to get electric connection. Hence this Authority may kindly be pleased to dismiss the appeal based on the very facts.

Analysis and findings

A hearing of the case was conducted on 15-10-2015 in my chamber at Edappally. Appellant Sri M. Jayaprakash, Sri K.S. Sasidharan, President, Santhimadom Villa Owners Association, Kottapady and Villa owners Sri A. Narayanan Achary, Sri S. Raghunathan, Sri K.T. Sailesh and Smt. Rema Sailesh represented for the appellant's side. Sri A.C. Ravi, Assistant Executive Engineer, Electrical Sub Division, Guruvayoor and Sri James T. Paul, Nodal Officer (Litigation), Electrical Circle, Thrissur represented for the respondent's side. During the hearing the appellants requested for a site inspection for ascertaining the real facts of the issue. On the basis of discussions, this

Authority has directed the respondent to verify the estimate prepared for giving power to individual villa owners and to report urgently. It was also decided to conduct site inspection and further hearing after receipt of details from the respondent.

A site inspection was conducted on 16-11-2015. The appellant and the respondent were present. A hearing was also held at Inspection Bungalow, Guruvayoor, on 17-11-2015. Appellant Sri M. Jayaprakash and Sri Achankunju, a villa owner represented for the appellants side and Sri A.C. Ravi, Assistant Executive Engineer, Electrical Sub Division, Guruvayoor, Sri. James T. Paul, Nodal Officer (Litigation), Electrical Circle, Thrissur and Sri Rajesh P.C., Assistant Engineer, Electrical Section, Guruvayoor appeared for the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in 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.

On going through the order dated 21-05-2015 of CGRF it can be seen that the petition was dismissed on the ground that appellant does not come under definition of complainant as per law. The respondent's argument before the Forum is based on the judgment in WP (C) No.6267 of 2015 in which Sri. Paramu Kumaran, the petitioner, was directed to approach CGRF under Section 130 (8) of Supply Code 2014. But, instead of Paramu Kumaran, a third person named Sri M. Jayaprakash who made the complaint before the Forum. Hence the Forum observed that Sri Jayaprakash is not a party in the Writ Petition and hence he is not entitled to submit a petition in the matter.

The point to be decided in this case is as to whether appellant, who is not a party in the Writ Petition, is eligible to approach the CGRF and the Electricity Ombudsman on the same grievance raised in the Writ Petition?

As per Regulation 2.1 (e) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a complainant is defined as

- (i) any consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;
- (iii) the Central Government or State Government - who or which makes the complaint

(iv) in case of death of a consumer, his legal heirs or representatives.

Here in this case, the 'Santhimadom Villa Owners Association' authorized Sri M. Jayaprakash, the appellant, to act on behalf of the Association in the cases related to KSEB before CGRF and Ombudsman. The appellant, Sri M. Jayaprakash comes under the definition of 'Complainant' and hence the petition is maintainable. In view of the above findings that the complaint is maintainable, it is proper for this Authority to remand the matter for fresh consideration of the CGRF as to comply with the direction issued by the Hon'ble High Court in WP (C) No. 6267/2015. Here, in view of the thorough study and after conducting a site inspection, it is decided to dispose the petition by this Authority.

This Authority went through all related records in the file, documents and depositions. The relief sought for by the appellant is to remove the following anomalies and refund the excess amount collected by the respondent and electrify the apartments which are partially completed and provide electricity to the existing residents on normal charges based on the existing realistic and un-inflated load. The anomalies pointed out by the appellant are:

- 1) The load was inflated by including load for non-existent buildings
- 2) Clubbing load for residential and commercial buildings
- 3) Total load was calculated by relying on plinth area unsupported by any document and
- 4) Municipal documents deliberately ignored for calculation of the load.

In order to decide the issue, the relevant judgment in WP (C) No. 15379 of 2014 of the Hon'ble High Court of Kerala in this matter has to be undergone and is held as under.

“The respondents to provide electric connections on the basis of applications submitted by the petitioners, if they complies with the requisite conditions enumerated under Regulation 36 and makes payment of the expenditure required for up gradation of the distribution system. Necessary steps for providing the connections shall be taken at the earliest, at any rate within a period of 2 months from the date of receipt of the petitioners making the requisite deposits.”

In light of the judgment 55 occupants obtained electric connections by remitting the cost proportionate to their plinth areas. 7 Nos. 100 kVA transformers, 1 No 250 kVA transformer, 450 m HT /LT line and 400 m LT line was part of the estimate. The total cost for giving connection to residential complex was Rs. 28,93,550/-and this is for entire residential area of 14235.98

Sqm. The proportionate expenditure of Rs. 203.26 per square metre so arrived was collected from the 55 occupants. Three Nos. 100 kVA transformers were installed to provide electric connection to the present 55 applicants. After getting connection Sri Paramu Kumaran, a villa owner, approached Hon'ble High Court claiming that the total load of the present applicants comes only 350 kW which is less than 1 MW and requested to refund the excess amount collected by the respondent.

Let us examine the relevant provisions in the Regulations 35, 36 and 37 of the Kerala Electricity Supply Code 2014.

Regulation 35 deals with *Expenditure for extension or up-gradation or both of the distribution system to be borne by the licensee* -

The expenditure for extension or up-gradation or both of the distribution system up to and including the distributing main, for meeting the demand of new consumers and the additional demand of existing consumers shall normally be borne by the distribution licensee and this expenditure shall be recovered from the consumers through tariff as approved by the Commission.

Here Regulation 36 and 37 are relevant and reads as under

36. *Expenditure for extension or up-gradation or both of the distribution system to be borne by the consumer* -

The expenditure for extension or up-gradation or both of the distribution system undertaken exclusively for giving new service connection to any person or a collective body of persons or a developer or a builder, or for enhancing the load demand of a consumer or a collective body of consumers or a developer or a builder, shall be borne by the respective applicant or consumer or -collective body of consumers or developer or builder, as the case may be, in the following cases:-

- (i) for meeting the demand of an applicant with a contract demand above one megawatt (MW);
- (ii) for meeting the additional demand of existing consumers, if the aggregate demand including the additional demand applied for, is above one megawatt (MW);
- (iii) for meeting the demand of the domestic or commercial or industrial complex or colony constructed by a developer or a builder with a demand above one megawatt (MW);
- (iv) for meeting the demand of a high rise building irrespective of its demand;
- (v) for meeting the demand of power intensive unit irrespective of its demand; and
- (vi) for meeting the demand of a consumer requesting for dedicated feeder or protected load status irrespective of its demand:

Provided that, if due to technical reasons, the extension or up-gradation or both to be undertaken by the licensee as per this regulation is more than the requirement of such consumer, the expenditure for such extension or up-gradation or both to be realized from the consumer shall be limited to the proportionate expenditure.

37. Expenditure for service line, plant etc., for providing supply.

(1) The consumer shall bear the expenditure for the service line or of the plant or of both, provided exclusively for him by the licensee.

(2) The expenditure for line and plant mentioned in sub regulation (1) above shall be determined as per the cost data approved by the Commission.

Regulation 50 of Kerala Electricity Supply Code, 2014, reads as follows:

(i)	For domestic loads	500 Watts per 10 Square Metre of constructed area
(ii)	For Commercial loads	1500 Watts per 10 Square Metre of constructed area
(iii)	For lift, water lifting pump, street light if any, corridor/campus lighting and other common facilities	Actual load shall be calculated separately
(iv)	For Industrial loads	Actual load required shall be calculated separately

The respondent fixed the loads in accordance with the above Regulation. But it is a fact that as the project was incomplete and individual owners completed the villas and applied electric connections separately. So far the respondent had issued service connections to 55 villas. The non residential buildings owned by the builder himself were found incomplete and seen as abandoned and no applications submitted for connection. Actually the occupants of villas have no role with the above non residential buildings. So, application, if any, comes from the occupants / owners of non residential buildings, it may be considered at that point of time.

The appellant further contented that 19 permits were cancelled by the Municipality which was not considered while preparing the estimate for total requirement of load. This point was argued by the appellant stating that the load calculations are inflated. The respondent has never challenged the above arguments. But the respondent argued that the total load requirement is greater than 1 Mega Watt as per the load details of the project based on the Regulation 50 of Supply Code, 2014.

This load calculation was purely based on the scheme submitted by the builder and the expenditure for extension or up-gradation of the system is to be

borne by the consumer or group of consumers. The Hon'ble High Court upheld the contention of the licensee and in its judgment dated 18-08-2014 directed to provide electric connections on the basis of application submitted by the petitioners if they comply with the requisite conditions enumerated under Regulation 36 and make payments of the expenditure required for up-gradation of the system. The Hon'ble High Court had already disposed of that issue, this Authority has no scope for further intervention.

In an overall evaluation of the events, documents and facts reveals that out of 109 villas, the respondent had issued service connections to 55 villas so far by installing 3 Nos. 100 kVA transformers. On a close perusal of the estimate to provide service connections to the individual occupants it can be seen that the load calculation was purely based on the scheme submitted by the builder. The respondent's argument is that in the estimate the total load was calculated on the basis of application and approved plan submitted by the builder and is in accordance with the Regulation 50 of Supply Code, 2014. The Municipal Authorities cancelled the permit of 19 villas and the respondent omitted to consider these facts while preparing the load calculation.

In the estimate the respondent has proposed 7 Nos. of 100 kVA transformers for providing service connections to the 109 villas. The reason for non-proposal of higher capacity transformers like 160 kVA, 250 kVA has not been furnished. Since 19 permits were already cancelled by the Municipal Authorities, it is not proper to include the area for the load calculation which is not in existence. The respondent has to provide service connections to the remaining 35 villas on receipt of applications subject to compliance with the requisite conditions and this can be given by installing one or two nos. 100 kVA transformers or a suitable transformer having adequate capacity.

Hence the respondent is hereby directed to recalculate the load requirements in a realistic manner considering those aspects. On my personal verification a proper planning is lacking while calculating the total power requirement of the applicants. The reason for proposing 7 Nos. 100 kVA transformers for giving 109 villas is not forthcoming from the respondent. If the officers of the licensee would have taken due diligence in preparing the estimate and effecting service connection this sort of unnecessary litigation could have been avoided.

Decision

In view of the above discussions it is concluded that the proportionate expenditure of Rs. 203.26 per square metre arrived by the respondent is found as excess and hence directed to revise the same based on the observations contained herein above. The respondent is directed to recalculate the rate and to issue orders accordingly. The excess amount remitted by the all the

applicants shall be adjusted in the future bills or to refund the amount at any rate within 45 days from the date of receipt of this order.

As the service connections of 55 villas of the scheme were effected and in the circumstances the builder is not proceeding with the project and also considering the direction of Hon'ble High Court in this matter, connections to the rest of applicants may be given as per the provisions of Electricity Act and the Regulations. The appeal filed by the appellant is found having some merits and is allowed. No order as to costs.

ELECTRICITY OMBUDSMAN

P/136/2015/_____ /Dated:_____

Forwarded to:

1. Sri Jayaprakash, Navitha Rooms, S2, AP 3, 201, D2, Iringapuram P.O., Guruvayoor
2. The Assistant executive Engineer, Electrical Sub Division, KSE Board Limited, Guruvayoor

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018