

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION NO. P/168/2015

(Present: V.V. Sathyarajan)

Dated: 16<sup>th</sup> February 2016

Appellant : Sri Mohanan O  
Managing Director,  
G-Sons Wedding centre,  
South Bazaar, Kannur.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd,  
Kannur.

### **ORDER**

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

The appellant in this petition had applied for power allocation to the tune of 400 kVA at 11 KV to start a multi-storied shopping complex, G-Sons Wedding Centre, South Bazaar, Kannur and remitted Rs. 3,26,000.00 towards OYEC charges on 10-01-2013 as directed by the Assistant Engineer, Electrical Section, Kannur. It is stated that KSEB had completed the line work on 21-08-2013 and issued notice for availing power on 24-08-2013. But it is reported that the appellant submitted application for H.T. service connection to the Assistant Engineer, Electrical Section, Kannur on 30-6-2015. Hence the respondent demanded Unconnected Minimum Charges (UCM) amounting to Rs. 32,00,000.00 for the delay in availing the connection.

Being aggrieved by the said demand, the appellant approached the CGRF, Kozhikode by filing petition on 09-07-2015 with request to waive the UCM charges. The CGRF had taken the following decisions on this.

- 1) The demand issued by the respondent for unconnected minimum charges is as per rule and holds good.
- 2) The period of unconnected minimum charges shall be revised to completed months (19 months).
- 3) The demand notice shall be revised accordingly.
- 4) The petitioner shall be allowed a maximum of six instalments upon request.

Aggrieved against the order of CGRF, the appellant has submitted this appeal petition with a plea to set aside the direction to the respondent to collect unconnected minimum charges from the appellant.

**Arguments of the appellant:**

The appellant had applied for electric connection of 400 kVA at 11 KV to the multi-storied shopping complex, G-Sons Wedding Centre, South Bazaar, Kannur, and remitted Rs. 3,26,000.00 towards OYEC charges, on 10-01-2013 as directed by the Assistant Engineer, Electrical Section, Kannur. KSEB completed the line work under OYEC, on 21-08-2013 and issued power availability notice on 24-08-2013 with mention to remit UCM charges for the delay.

The appellant was not ready to avail supply by that time, as the construction work was delayed due to the following reasons which were beyond the control of the appellant such as:

- ❖ Scarcity of materials such as metal, sand etc. occurred due to ban on the quarry works.
- ❖ Labour problem, as the migrant workers left the place, as continuous work was not possible.
- ❖ Hike in major equipments to complete the construction and installation such as escalators, lift etc.
- ❖ Delay in supplying such items.
- ❖ Financial crisis due to delay in sanctioning the Bank loan,
- ❖ Objections from the municipality authorities, for slight change occurred in the plan due to non availability of some materials etc.

There was some alteration in the building plan and so the revised Building Permit for the period from 09-12-2011 to 8-12-2014 was issued by the Kannur Municipality, after clarification, only on 22-9-2014. Then the work was expedited and the Ownership Certificate was issued by the Kannur Municipal authorities on 26-5-2015. Application for H.T. service connection was submitted to the Assistant Engineer, Electrical Section, Kannur on 30-06-2015. In turn, the Assistant Engineer, Kannur issued a Demand Notice vide No. DB/2015-16/KNR/HT SC/G Sons./Dt. 08-07-2014 to remit an amount of Rs. 32,00,000/- as UCM charges for the delay in availing the connection.

Aggrieved by this, a petition was filed before the Consumer Grievances Redressal Forum, Kozhikode, on 09-07-2015, as O.P No.41/2015-16, for getting relief by waiving off the UCM charges. The CGRF, after enquiry, on 20-08-2015 and issued orders on 17-09-2015. This order could not redress the grievances of the appellant. The Forum failed to find that the appellant having remitted the OYEC charges should not have imposed with a liability of UCM charges for not availing the power allotted. It is true that the appellant could not take connection without completing the construction work of the building etc. for which power was applied.

The appellant had complied with all the statutory requirement and remitted OYEC charges towards the cost for construction of the 11 KV line. Hence imposing UCM charges as penalty, solely on the ground that the appellant had not availed the supply for reasons not attributed by the appellant is unreasonable and illegal in so far as such imposition is not as provided under the Kerala Electricity Supply Code 2005 or any other governing Act, Rules or Regulations. The UCM Charge imposed on the appellant is exorbitant and such imposition is without considering the facts and circumstances of the case.

Matters connected with electricity are governed by the Electricity Act, 2003 and the Rules and Regulations made thereon. As per the provisions of Electricity Act, 2003, and Regulations made there under the licensee can realise only the following charges.

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

Further, Section 45 of Electricity Act, 2003 deals with power to recover charges by the distribution licensee for supply of electricity. As per Section 46 of Electricity Act, any expenses reasonably incurred in providing any electric line or electrical plant used for giving the supply. Section 47 of Electricity Act stipulates the power to require security. According to this Section distribution licensee is empowered to recover security deposit as determined by Regulations. There is no provision in any of the Regulations or in any order issued by the KSERC enabling the respondent to collect UCM charges.

The Kerala State Electricity Regulatory Commission has issued clarifications regarding the collection of Unconnected Minimum Charges (UCM) by KSEB Ltd in its letter No. 151/Com.Ex/201 5/KSERC/758 dated 09-06-2015 as:

"Neither the Electricity Act, 2003 nor the Kerala Supply Code, 2014 provide for MG scheme or for collection of UCM charges. Section 46 of the Act authorizes the licensee to realize reasonable expenditure incurred by it in providing any electric line or electric plant for the purpose of giving supply to a consumer. Therefore there is no legal sanctity to continue with the erstwhile MG scheme which was introduced prior to the enactment of Electricity Act, 2003 and for the collection of UCM charges in the absence of an agreement to the contrary. When MG scheme was in vogue, UCM charges could be collected by the licensee only as per the terms of the MG agreement."

Here there is no such agreement, and so UCM charges cannot be collected. Moreover, formalities of power allocation were also dispensed with

as per BO (FB)(Genl) No.510/2010(DPCII/AE/T&C of Supply 02/2009) dated Tvm 24-02-2010.

It is needless to state here that the new Supply Code 2014, (which is a consumer friendly Supply Code) prevailing in the KSEB Ltd, with effect from 1<sup>st</sup> April 2014 deals with the delay in availing the 11 kV electric connection within the time limit of 90 days from the completion of the work by the KSEB vide Supply Code 58, 59 and 60.

The respondent has stated in his remark here that: **"Supply Code 2014 is not applicable in this case as all the procedures are completed well before 28-11-2013."**

The appellant submits before the Hon'ble Ombudsman that the matter was originated and Demand Notice for Rs. 32,00,000/- was issued vide No. DB/2015-16/KNR/HTSC/G'Sons/08-07-2015 of the Assistant Engineer, Electrical Section, Kannur, when the appellant applied for power connection on 30-06-2015, when Supply Code, 2014 was prevailing in the KSEB Ltd. It is prayed to waive off the demand of UCM charges for the reasons explained above, which are reasons beyond the control of the appellant. The respondent has argued that the delay in availing power supply from the appellant's side is not due to any such reason stipulated in the Regulation and that the appellant's claim is not genuine.

**Clause 60 – Failure of the applicant to avail supply due to reasons beyond his control** - If the applicant fails to avail supply due to reasons beyond his control such as natural calamity, order of a Court or of any other competent authority, public resistance and change in law, the applicant shall not be liable to pay any compensation or charges to the licensee on account of such failure to avail supply of electricity.

Referring to this clause, let me bring to the kind notice of the Hon'ble Ombudsman that the reasons specified in this clause are not numbered, listed or limited to those specified here. It is specified that "...due to reasons beyond the control such as natural calamity, order of a Court or of any other competent authority, public resistance and change in law...." No entrepreneur will make delay intentionally or purposefully so as to defraud any Department. Here, even though the reasons are not exactly those mentioned in the Clause 60 of the Supply Code 2014, these are genuine reasons that most of the entrepreneurs are facing with, now a days.

The respondent has also argued that "UCM charge has not been compared with any of the actual, as if is a fine charged for the delay in availing power supply". The clause 60 of the Supply Code 2014 also specifies that ". ..... **the applicant shall not be liable to pay any compensation or charges to the licensee on account of such failure to avail supply of electricity.....**"

Here also there is no mention about UCM charge as there is no such amount agreed to, by the appellant as in the case of erstwhile Minimum Guarantee Agreement. Here the entire cost for the construction works carried out by the KSEB Ltd. has been remitted by the appellant. There is no financial commitment to the KSEB Ltd. for the work executed in favour of the appellant.

With reference to the Clause 59(3) the appellant beg to submit that the appellant could not apply for extension of time, amidst the worries in completing the installation work. Hence it is prayed that this mistake may please be excused. It is understood that the KSEB Ltd is insisting on Demand side Management to reduce the demand for electric power, especially during peak load hours, spending huge amount by way of distributing free CFL to consumers to avoid use of incandescent lamps with high energy consumption, awarding the consumers reducing monthly consumption etc. and also by imposing higher rate of tariff for higher consumption.

**61. Demand side management:** - It shall be the duty of every consumer to stop wastage and inefficient use of electricity and to extend necessary cooperation to the licensee in implementation of the programme that may be launched by the licensee for demand side management. It is also understood from print-media that KSEB Ltd is purchasing energy from outside Kerala such as NTPC etc. during peak hours at very high rate and distributing at low rate to the consumers, thereby suffering immense financial loss to the KSEB Ltd.

From the above narrations it is obvious that the KSEB Ltd. has not sustained any loss on account of delay in availing supply of electricity within the period specified. As per BO (FB)(Genl) No.51012010 (DPCII/AE/T&C of Supply 02/2009) dated Tvm 24-02-2010, formalities of power allocation were also dispensed with. Moreover, practically there is no reservation of the power allocated to the appellant.

Reliefs sought for:

- 1) To set aside the order in O.P. No. 41/2015-'16 of the Consumer Grievance Redressal Forum KSEB, Kozhikode
- 2) Exempt the appellant from payment of UCM charges
- 3) To grant such other order that this Hon'ble Ombudsman may deem fit and proper in the facts and circumstances of this case.

**Arguments of the respondent:**

It is true that the appellant has moved a petition before the Hon'ble CGRF, Kozhikode vide No OP 41/2015 requesting to waive the Un Connected Minimum Charges, demanded due to delay in availing power. The Hon'ble CGRF had passed Order on 17-09-2015 after hearing both the parties in which the Hon'ble forum has decided that the Un Connected

Minimum charges demand by the Assistant Engineer, Electrical Section, Kannur is as per rule holds good and also asked to revise the period of charging to completed months (19 month ).

The appellant applied for a Line Extension work for availing HT service connection with a Contract Demand of 400 kVA. The appellant paid an amount of Rs 3,26,000.00 vide Receipt No 283189 dated 10-01-2013 as expenditure for extension of line. The Line work was completed on 21-08-2013. After completing the work a notice, vide letter No AE/Kannur/DB/106/2011-12/ dated 24-08-2013 was issued to appellant to avail Power within 3 months from the date of issue of notice. In this notice it is clearly specified that the Un Connected Minimum charge will be applicable after 3 months from date of issued notice. The appellant has not replied to this letter. This notice was issued as per Section 10 of Kerala State Electricity Supply Code, 2005 prevailing at that time.

**Regulation 10 of Kerala State Electricity Supply Code 2005 states as follows**

- 1) Where as the licensee has completed the work required for providing supply of Electricity to an applicant but the installation of the applicant is not ready to receive the supply, the licensee shall serve a notice on applicant to take supply within sixty days of service of notice in the case of LT Consumer and 90 days in the case of HT & EHT Consumers.*
- 2) If after serving the notice the applicant fails to take supply of electricity, the licensee may be charged fixed charge as per the tariff in force for completed months after expiry of notice till the applicant avail supply.*

In this case, even though the work completion notice was issued on 24-08-2013, the appellant filed the application for availing HT Power Supply only on 30-06-2015 whereas the notice date expired on 28-11-2013. A reminder against Unconnected Minimum charge was also issued to the appellant on 08-01-2014. The appellant never filed any reply to any of the letter sent regarding the unconnected minimum charges.

The revised UCM charges for 19 months as per the order dated 17.09.2015 of the Hon'ble CGRF, Kozhikode will be 400 KVA \* Rs 400 per KVA \*19 months = 30,40,000.00 The Supply Code 2014 is not applicable in this case as all the procedures are completed well before 28-11-2013.

Even if that is the case, Section 59 of Kerala Electricity Supply Code 2014 also refer for the Delay on the part of applicant to take supply, which also insists to avail HT Power Supply within ninety days from the date of completion of the work .

**Regulation 60 of Kerala Electricity Supply Code 2014 state as follows**

(1) Failure of the applicant to avail supply due to reasons beyond his control: - If applicant fail to avail the supply due to reason beyond his control such as natural calamity, Order of a Court, or of any other competent authority, the public resistance and change in law, the applicant shall not be liable to pay any compensation or charges to the licensee on account of such failure to avail supply.

In this case the delay in availing Power Supply from the Petitioner side is not due to any such reason stipulated in regulations. So the petitioners claim is not genuine or with the support of any of the prevailing rules and regulations. Regarding the billing pattern, and the tariff alleged in the appeal it is to be pointed out that the UCM charges has not be compared with any of the actual, as it is a fine, charged for the delay in availing power supply .

In the light of the above, the Hon'ble Ombudsman may be pleased to dismiss the appeal.

**Analysis and findings**

A hearing of the case was conducted in the Conference Hall, Electrical Circle, Kannur. The appellant, Sri Mohanan O and Sreekumar O were present for the appellant's side and Sri. Asokan C.P., Assistant Executive Engineer, Electrical Sub Division, Kannur represented the respondent's side. Both sides have presented their arguments on the lines as stated above. This Authority has deeply gone through the evidence and other materials available on records and a written submission by the appellant. The issue that arises for consideration is as to whether the appellant is liable for remitting the unconnected minimum charges for the delay in availing the power to the extent of 400 kVA.

According to appellant, he had complied with all the statutory requirement and remitted OYEC charges towards the cost for construction of the 11 KV line. Hence imposing UCM charges as penalty, solely on the ground that the appellant had not availed the supply for reasons not attributed by the appellant is unreasonable and illegal in so far as such imposition is not as provided under the Kerala Electricity Supply Code 2005 or any other governing Act, Rules or Regulations. The UCM Charge imposed on the appellant is exorbitant and such imposition is without considering the facts and circumstances of the case. Hence his contention is that a consumer who had complied with the entire statutory requirements for power allocation and statutory remittance for such power allocation, solely on the ground that consumer had not availed the supply for the reasons not attributed by such consumer are unreasonable.

On the other hand the respondent argued that the appellant failed to avail the supply even after receipt of notice under Regulation 10(2) of Supply

Code, 2005 reads as **“if after serving the notice the applicant fails to take supply of electricity, the licensee may be charged fixed charge as per the tariff in force for completed months after expiry of notice till the applicant avail supply”**. Hence the appellant is liable and bound to pay the unconnected minimum charges for the delay in availing the connection. Regulation 10 of Supply Code, 2005 deals with the delay on the part of applicant to take supply. Regulation 10(1) reads as **“whereas the licensee has completed the work required for providing supply of Electricity to an applicant but the installation of the applicant is not ready to receive the supply, the licensee shall serve a notice on applicant to take supply within sixty days of service of notice in the case of LT Consumer and 90 days in the case of HT & EHT Consumers”**.

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

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

The Section 45 of Electricity Act, 2003 deals with power to recover charges by the distribution licensee for supply of electricity. As per Section 46 of Electricity Act, any expenses reasonably incurred in providing any electric line or electrical plant used for giving the supply. Section 47 of Electricity Act stipulates the power to require security. According to this Section distribution licensee is empowered to recover security deposit as determined by Regulations. There is no provision in any of the Regulations or in any order issued by the KSERC enabling the respondent to collect UCM charges. Further the respondent has not submitted any orders issued by KSERC in order to substantiate their claim.

The respondent has also submitted that the spirit of a demand under Regulation 10 for the delay beyond the stipulated time mentioned therein is not for any work carried out therein by licensee, but for the quantum of power that is being reserved for the consumer for which the licensee is entitled to recover the due minimum/fixed charges. The appellant is bound to remit monthly demand charges corresponding to the actual maximum demand or 75% of the Contract Demand whichever is higher. Hence monthly demand charges corresponding to 75% of the Contract Demand is the minimum guaranteed revenue to KSE Board. Here, the respondent failed to furnish any capacity idling or any electrical plant erected exclusively for the use of appellant consequent to the additional power allocation. As per BO (FB)(Genl) No. 510/2010 (DPCII/AE/T&C of Supply 02/2009) dated Tvm 24-02-2010, formalities of power allocation were dispensed with.



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

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

As per Regulation 9(1) of Supply Code, 2005 reads thus “If any person after applying for supply of Electricity with the Licensee withdraws his application or refuses to take supply the amount of security paid under Clause 14 shall be refunded to him. Amount paid for providing electric line or electric plant shall not be refunded if the Licensee has commenced the work”. Here in this case the respondent had completed all the works required for providing supply to the appellant on 21-08-2013 but the appellant had submitted application for availing supply on 30-06-2015. As the appellant failed to avail supply within the stipulated time limit, the amount remitted by the appellant shall not be refunded as per the Regulation 9 (1) mentioned above. Further, the argument of the respondent that the power reserved for the appellant for which the licensee has charged the minimum/fixed charges is without any valid grounds and hence cannot be accepted. In such a situation it is highly irregular to issue such a huge bill towards the unconnected minimum charges.

**Decision:**

In view of the above discussions and findings it is concluded that the respondent failed to prove that any capacity idling or any electrical plant erected exclusively for the use of appellant consequent to the issue of power

allocation. In this background there is no justification for issuing UCM charges for an amount to Rs. 32,00,000.00, hence quashed.

Having concluded and decided as above it is ordered accordingly. Appeal petition filed by the appellant is found having some merits and is admitted. The order of CGRF in OP No. 41/2015-16 dated 17-09-2015 is set aside. No order as costs.

**ELECTRICITY OMBUDSMAN**

P/168/2015/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Sri Mohanan. O., Managing Director, G-Sons Wedding centre, South Bazaar, Kannur.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kannur.

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, Vydhyuthibhavanam, KSEBoard Ltd, Gandhi Road, Kozhikode