

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/017/2017
(Present: A.S. Dasappan)
Dated: 15th June 2017

Appellant : Sri Mithesh Murali
Administrator,
MGM Muthoot Medical Centre
Ring Road,
Pathanamthitta- 689645

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

ORDER

Background of the case:

The appellant, Administrator of MGM., Muthoot Medical Centre, Pathanamthitta had applied for a HT power connection to the Muthoot Nursing College and Ladies Centre, Pathanamthitta at the precinct of MGM Muthoot Medical Centre for contract demand to an extent of 130 kVA. The appellant remitted Rs.10/- and Rs. 10,000/-, towards application fee and advance amount respectively on 06-12-2012. The appellant had remitted an amount of Rs. 18,89,000/- towards the estimate cost for laying of 380 metre UG cable and constructing 360 metre 11 kV OH line in distribution side and Rs. 15,60,000/- towards the estimate cost for transmission part of the work on 11-12-2013, as demanded by the respondent. After completion of the work, the supply was provided on 13-05-2015. Aggrieved by the collection of Rs. 34,49,000/-, the appellant approached the CGRF, Kottarakkara with a request to refund Rs. 34,49,000/- collected less the reasonable expenses incurred for the tapping arrangements for 11 kV electricity from the nearest 11 kV distributing main in front of the premises and the expenses for supervision charges for drawing 11 kV service line cable provided by the appellant, along with interest at twice the bank rate with effect from the date of collection of amount until refund. The CGRF disposed the petition vide Order No. OP 83/2016 dated 30-12-2016, ordering that the respondent shall collect the

actual expenses incurred for giving power supply from substation to the DP structure and refund the balance amount if any within two months from the date of receipt of the order. Challenging the decision of the CGRF, the appellant approached this Authority by filing this appeal petition.

Arguments of the appellant:

The main contentions of the Appellant in the Petition are the following: -

Muthoot Nursing College and Ladies Hostel is a unit under MGM Muthoot Medical Centre Pvt. Ltd, in Pathanamthitta. The company applied for electricity supply to the above premises dated 06-12-2012 for a load of 130 kVA. The licensee supplied electricity under Agreement No. 1/2015-16 dated 13-05-2015 and hence commenced electricity supply. There is no outstanding arrears on this connection.

The licensee collected Rs. 34,49,000/- from the appellant for constructing a new dedicated 11 kV feeder from 110 kV substation Pathanamthitta to the premises of the appellant, which also included cost control panel etc to be erected at the substation. This was done on the plea that, the nearest 11 kV distributing main have no spare capacity to cater to this load, however there was another distributing main available having spare capacity to share the load another few metres away. Thus a new 11 kV feeder named Stadium feeder using 1072 of ABC conductor was created from substation to some other place and electricity supply was provided in some other way, admittedly constructing about 200 m 11 kV distributing main and connecting it with the next nearest 11 kV feeder to the premises. Up on understanding that, the amounts collected are illegal and supply never given from the new 11 kV stadium feeder which was constructed totally under the expenses of this appellant, and construction of such a feeder / distributing main was not required for this electricity supply and it was not the economic and efficient way for this electricity supply, this appellant requested the licensee to refund the amounts collected, in excess than the reasonable expenses incurred. However, neither the amounts were refunded nor reply given. The licensee had violated section 42(1), 43, 46, 55, Clause 32(2) & (3), 35, 36 (i), of Supply Code, 2014 order of the State Regulatory Commission in OP No. 30/2013 dated 28-02-2014 and other orders and order of the Appellate Tribunal for Electricity in Appeal No. 22 of 2007 Dated: 14th May, 2007 and other statutes under Electricity Act, 2003 while collecting unauthorized amounts and not refunding it even after repeated requests. Thus the licensee has caused grievance and amassed unjust enrichment also.

2. Application for electricity supply as required under statutes was submitted, but the Assistant Engineer, Electrical Section Pathanamthitta declined to accept it on the plea that power requirement application was not

submitted. Thereby, this appellant was required to submit power requirement application, and it was submitted on 06-12-2012, Rs. 10/- and Rs. 10,000/- were collected towards application fee and advance estimate amount.

3. No system study was conducted and feasibility sought from the nearest distributing main, but simply proposed a new distribution main (11 kV feeder) from 110 kV substation Pathanamthitta on the plea that the nearest distributing main Pathanamthitta 11 kV feeder is already loaded to the brim. Also never examined the feasibility for supplying electricity from the next nearest distributing main, which is Kadammanitta 11 kV feeder which had the capacity to supply 130 kVA electricity. The Deputy Chief Engineer Electrical Circle Pathanamthitta issued a proceedings dated 26-11-2013 ordering administrative sanction to a work for constructing an exclusive 11 kV feeder from substation Pathanamthitta up to the premises of the appellant costing Rs. 18,89,000/-, which included 380m of HT underground cable from Pathanamthitta substation along Azhoor road towards north up to the four pole structure at Azhoor petrol pump junction and from there 360m of 11 kV overhead line towards east on the posts of Pathanamthitta 11 kV feeder up to the premises of this appellant. In the same order it was also stated that the Executive Engineer Transmission Division Pathanamthitta had issued an administrative sanction to an estimate dated 19-10-2013 for erecting a feeder panel, adapter panel etc at 110 kV substation Pathanamthitta amounting to Rs. 15,60,000/-. It is not at all known on what grounds the appellant was directed to remit the expenses for developing the transmission system and how SBU Transmission of KSEBL came in to the picture, where it has nothing to do with this electricity supply and where, supply electricity on request is the mandated duty of the distribution licensee under Section 43 of Electricity Act, 2003.

While so, why this requirement of 130 kVA was communicated to the Executive Engineer Transmission SBU and collected his suggestion causing this transmission side expenditure is unknown. It was also stated in the order that, the applicant shall deposit the cost of distribution part of work amounting to Rs. 18,89,000/- at the office of the Assistant Engineer Electrical Section, Pathanamthitta and the cost of transmission part of work amounting to Rs. 15,60,000/- at the office of the Executive Engineer, Transmission Division, Pathanamthitta within 15 days of receipt of the copy of the order. Upon this appellant raising objection in remitting amount to SBU (Transmission) the Deputy Chief Engineer accorded permission to remit both amounts at Electrical Section, Pathanamthitta. Accordingly the appellant remitted Rs. 34,39,000/- vide two receipts dated 11-12-2013, which is less the amount of Rs. 10,000/- already deposited. Thereby the total amount deposited towards the expenses for this electricity supply is Rs. 34,49,000/-.

4. Executive Engineer, Electrical Division, Pathanamthitta issued technical sanction dated 10-03-2014 for an estimate amounting of Rs.18,89,000/-. The

Assistant Engineer, Electrical Section, Pathanamthitta issued the estimate. This estimate among other things contained laying of 380 m of 300 sq mm XLPE cable from 110 kV substation Pathanamthitta towards north up to the four pole structure at Azhoor petrol pump junction and from there, 360 m 11 kV Overhead line towards east up to the premises through the posts of existing Pathanamthitta 11 kV feeder further renamed as KSRTC 11 kV feeder. Thereby, a separate and exclusive dedicated 11 kV feeder was proposed for 130 kVA supply applied for, while no such request for dedicated feeder was made by this appellant and hence such an estimate was unnecessary.

5. Executive Engineer, Transmission Division, Pathanamthitta, issued proceedings dated 19-11-2013 sanctioning estimate for erecting a 11 kV feeder panel etc at 110 kV substation Pathanamthitta for Rs. 15,60,000.

6. At this point it is respectfully submitted that, it is through the administrative order under the head "Guidelines for effecting service connection-orders issued" from the Distribution Profit Centre, BO (FB) (Geni) No.510/2010 (DPC II/AE/T&C of Supply.02/2009) Dated 24-02-2010 power requirement procedure was implemented under KSEB. Under Clause 3.9 of it, it is specifically ordered that, if the grand total of the contract demand/or the HT connections and the connected load of LT connections in a proposal exceed 1000 kVA, the Executive Engineer /Deputy Chief Engineer shall send the proposal to the Executive Engineer of the concerned Transmission Division for suggestions and approval. Here in this case, the power requirement application of this appellant dated 06-12-2012 has caused estimate for Rs. 18,89,000/- for the distribution sector and estimate for Rs. 15,60,000/- for transmission sector. The above order asks for seeking opinion of the transmission sector Executive Engineer for demands for loads above 1000 KVA only. There by it is also very clear that demand for loads below 1000 KVA need not be send for the suggestion of the transmission sector Executive Engineer. Here the demand of load was only 130 KVA, even then it was send to the Executive Engineer Transmission Division Pathanamthitta in violation to the above administrative order and obtained his suggestion in the form of estimate for Rs. 15,60,000/- and then it was demanded and collected. This is highly mischievous and insubordination of the orders of the employer and product high handedness. There by demand and collection of Rs. 15,60,000/- for transmission licensee is unauthorized fraudulent and illegal.

7. After collecting the amounts, the works were never taken up and electricity supplied within the stipulated period of four months as required under supply Code, 2005. After a period of 11 months after collecting the amounts, the same Deputy Chief Engineer, Electrical Circle Pathanamthitta had the wisdom to find out that, construction of distributing main for a total length of 740m (380m UG cable& 360m OH line) under the estimate is infeasible. Thereby, he sanctioned another estimate dated 11-08-2014 proposing a dedicated distributing main having a total length of 1272m (1072

m Ariel Bunched Conductor and 200 m OH line) from 110 kV substation Pathanamthitta yard to the consumer's premises through the same route. Thus under the fresh estimate the line length was increased by 532m, which is also through the same route proposed in the first estimate. Also in the sanction order it was well stated that the works are to be carried out by the consumer from the terminating double pole to the location of the ToD meter. He also ordered that since the consumer had already remitted Rs. 18,89,000/- no further amount is to be demanded despite the revised estimate amounts to Rs. 20,70,700/-.

8. This Hon'ble Forum may kindly note that, during this period Supply Code 2014 came in to force with effect from 01-04-2014 and this estimate was sanctioned vide administrative sanction No. 22/2014-15 dated 07-08-2014 as entered in it. Therefore, work was started thereafter and electricity supply provided on 13-05-2015 and hence this is a work executed under the ruling period of Supply Code, 2014. Therefore, this electricity supply is governed under the regulations of Supply Code, 2014. Also this Hon'ble Forum may kindly note that, 1072 m of ABC Conductor was proposed to be drawn to the premises of the consumer, then there was a provision for another 200 metre of OH line in the estimate of with the requirement was never explained.

9. The works as per the revised estimate was never carried out and the Ariel Bunched conductor was never drawn to the premises of this appellant as ordered. Whereas, it was drawn farther north through the four pole structures at Azhoor petrol pump junction and farther it was drawn towards east towards market and shared the loads on Pathanamthitta 11 kV feeder so to reduce the load of that feeder as admitted by the licensee. Then this new 11 kV feeder was named Stadium feeder and Pathanamthitta 11 kV feeder was renamed as KSRTC feeder. This bare fact has been admitted by the licensee before the Hon: Consumer Grievance Redressal Forum. Thereafter, the licensee drew 11 kV overhead line from the four pole structure at Azhoor petrol pump junction towards east through the poles of KSRTC 11 kV feeder (Pathanamthitta 11 kV feeder) up to the nearest point to the premises of this consumer in the east. Then this new 11 kV Over Head line was connected with the 11 kV feeder known to be Kadammanitta 11 kV feeder which has been terminated at the four pole structure at Azhoor petrol pump junction. Thereby, it is evident that, the licensee had developed its distribution system by creating a new 11 kV feeder including the switching panels in the substation of the transmission sector at the expense of this appellant. This is highly illegal.

10. The licensee pleads that the nearest 11 kV distributing main, Pathanamthitta 11 kV feeder was loaded to the brim. Thereby, they have proposed a fresh dedicated 11 kV feeder from substation to premises of the consumer along with the cost of feeder panel etc. Power requirement application was submitted on 06-12-2012. According to system statistics for the month of 01/2013 of 110 kV Substation Pathanamthitta, the months

maximum Load on Kadammanitta 11 kV feeder on was 124 A and of Pathanamthitta 11 kV feeder was 198A. As submitted earlier, the supply to the appellant is provided from Kadammanitta 11 kV feeder, constructing an OH line from the four pole structure at Azhoor petrol pump junction towards east to the nearest point with the premises, which is not at all disputed by the licensee. Then, the licensee definitely could have supplied electricity in the above method itself upon submitting application dated 06-12-2012, without going for the estimates and further revised estimate. In that event, the licensee should have constructed the above OH 11 kV distributing line at its expenses and collecting the reasonable expenses for the service line from this appellant and provided supply as required under Clause 8(l) (d) of Supply Code 2005. Now also the licensee had constructed the above OH 11 kV line and has supplied electricity to this appellant. Since the licensee is mandated to supply electricity in an economic and efficient way, this was the next economic and efficient way since the nearest distributing line was loaded to the brim and if they could not shift any of the loads from it to accommodate 130 KVA load requested by this appellant. Thereby, estimates and collection of Rs. 34,49,000/- from this appellant and further revised estimates were unnecessary and thereby illegal.

11. Another important matter this appellant brings to this Hon: Forums' kind notice is that, as per the note under the estimate, the administrative sanction to the revised estimate was issued on 07-08-2014, which is after coming in force of Supply Code 2014 dated 01-04-2014. The work was started only after 07-08-2014. Since the estimate was sanctioned and works started accordingly only after the commencement of Supply Code, 2014, this electricity supply is governed under the regulations of Supply Code, and 2014. There is no case for the licensee, that this appellant was an applicant for exclusive supply through a dedicated feeder. Therefore, either as per the regulations under Supply Code, 2005 or under Supply Code, 2014, there is no provision to collect the expenses for a dedicated feeder. This appellant's requirement of load was only 130 KVA and the licensee has no case that, this appellant is a consumer classified under Clause 36 of Supply code, 2014. Thereby, this appellant belongs to the group consumers under Clause 35 of Supply Code, 2014, where, expenditure for extension or upgradation or both of the distribution system shall be borne by the licensee. In the given situation the licensee should have sanctioned, an estimate for supplying electricity from the nearest distributing main which is Pathanamthitta 11 kV feeder. If there was any system constrains for the licensee to do so, it should have constructed an overhead distributing main from the four pole structure at Azhoor petrol pump junction, where next nearest distributing main (Kadammanitta feeder) was available, to the point of the premises through the posts of Pathanamthitta 11 kV feeder at licensee's expenses. Then the licensee should have demanded reasonable expenses for providing service-line only from this appellant. This would have prevented the illegal collection of Rs. 34,49,000/- from this appellant for a fresh 11 kV feeder including the expense for the improvements in the transmission sector of transmission licensee. Since the consumer has

provided the service line and other essentials, the licensee should have claimed 10% of the labour charge towards supervision charge for laying and connecting 15m of UG service line between the distributing main and cut out at consumer's premises and the cost of terminal arrangement at the point of connection with the distributing main, which is just and proper. Thereby Collection of Rs. 34,49,000/- from this appellant is illegal.

12. There is certain unconditional acceptance and admittance of the licensee before the Consumer Grievance Redressal Forum (South) during the course of the hearing as extracted here under, to which the Hon: CGRF turned a blind eye while disposing the complaint despite it was pointed out to the Hon: Forum. The Licensee has specifically admitted under Para 9 of the statement of facts that, "construction of the new feeder was for the diversion of load in the existing 11 kV feeder. Construction of a new feeder was necessary/or the bifurcation of the existing Pathanamthitta 11 kV feeder which was under full load condition". Here no pro-rata charges per kilowatt collected, 15,60,000/- collected towards feeder bifurcation works and collection of 18,89,000/- for constructing a separate was necessary. Then the opposite party continued under Para 14 & 15 that, Pathanamthitta 11 kV feeder emerging from 110 kV Substation Pathanamthitta was passing near to the consumers' premises along the main road. The HT supply to the said premises was to be given from that 11 kV feeder. Further continues that, "without bifurcation of Pathanamthitta feeder, it was not possible to give HT supply to the appellant". Then the opposite party continues under Para 16 that, the existing Pathanamthitta 11 kV feeder bifurcated into Stadium feeder and KSRTC Feeder. Pathanamthitta 11 kV feeder renamed as KSRTC feeder and apart of load from the Pathanamthitta feeder transferred in to Stadium Feeder by drawing 372 m ABC from Substation to Muthoot Nursing College Junction. This 372m 11 kV ABC has drawn through the poles of the existing 11 kV OH line. Then the remaining 700 m ABC of sanctioned 1072 m ABC used for feeder rearrangement works at town where bare OH conductor can't be used due to safety reasons.

Even if the amount collected for the installation of a new 11 kV feeder panel and ABC from substation to the appellants premises dedicated feeder is not technically feasible for a mere 6.8 A load".

Thereby there is a total admission that collection of Rs. 15,60,000/- and Rs. 18,89,000/-, was necessary for construction of a new distributing main, however collection of that amount from this appellant was and illegal. It is worth notable that, the licensee admitted that new 11 kV Stadium Feeder was constructed for reducing the load of the Pathanamthitta 11 kV feeder. Then after such reduction of load on Pathanamthitta 11 kV feeder, supply could have been directly provided from it. Then the purpose of constructing another OH line from the four pole structure at Azhoor petrol pump junction and connecting it with Kadammanitta 11 kV feeder and then providing supply from that OH line was unwarranted. However provision for drawing 200 m OH line is

also included under the revised estimate. This gives mismatch in intentions of the licensee. Under Section 42 (1) of Electricity Act, 2003 duty is cast upon the licensee to establish and maintain a distribution system in its area of supply. The expenditure for this is collected through tariff as fixed charges or demand charges. This position is settled under the orders of the Appellate Tribunal for electricity in the order on appeal 22 of 2007 dated 14-05-2007. However the State Electricity Regulatory Commission has brought in some regulations and orders so that expenditure for extension or upgradation or both of the distribution system could be collected from certain class of consumers only. At the same time issued repeating and reiterating orders preventing KSEB/ KSEBL from collecting transmission side expenses for Transmission Profit Centre / SBU (Transmission). At the same it has ordered Distribution Profit Centre/SBU (Distribution) can collect for extension or upgradation or both of a transmission system if it has provided a transmission system within their distribution system. Here this consumer never belong to the category of such consumers under the orders and regulations created by State Regulatory Commission and not a consumer where suggestions Transmission Sector of KSEBL is required as per the administrative order of KSEBL above referred.

13. It is evident that the amounts collected from this appellant were used for system development of KSEBL which is totally illegal. Therefore the licensee shall refund the entire amount collected after deducting the supervision charges for providing 15 m of service line and the expense for the terminal arrangement for connecting the service line with the distributing main. On the above grounds and which are to be urged during the hearing this Hon: Electricity Ombudsman may award the relief and remedies prayed here under.

Nature of relief sought from the Ombudsman

1. To call for the documents and declare that collection of Rs. 34,49,000/- from this appellant for his electricity supply is illegal
2. To issue orders to refund Rs. 34,49,000/- collected less the reasonable expenses incurred for the tapping arrangements for 11 kV electricity from the nearest 11 kV distributing main in front of the premises and the expenses for supervision charges for drawing 11 kV service line cable provided by the appellant, along with interest at twice the bank rate with effect from the date of collection of amount until refund.
3. Such other reliefs the appellant prays for, during the course of appeal

Arguments of the respondent:

Summary of averments made by the respondent is as follows:

The 11 KV feeder viz “Pathanamthitta Feeder” originated from the 110 kV Sub Station, Pathanamthitta, passing through the area adjacent to the appellant’s premises was in an overloaded status and the available technically feasible remedy before the respondent was solely providing a 11 kV feeder, by mode of bifurcating Pathanamthitta Town 11 kV feeder and constructing other associated lines and installation towards catering to the requirement from the appellant. Collection of estimated cost to the work from the appellant by the respondent is perfectly and validly correct. The Appellant is ethically and legally bound to make good the expenditure actually incurred by this respondent. The date of application for power allocation as well as date of remittance of application fee/advance was on 08-12-2012. The date of sanction of estimate amount was on 11-12-2013. Thus the regulation applicable to the instant case is reasonably the ‘Kerala State Electricity Supply Code, 2005’.

When the legality of levying cost of the work for providing supply to this Appellant, as well as Regulation/codes applicable to this instant case was contested before the Consumer Grievance Redressal Forum (South), Kottarakkara in OP No: 83/2016, the Honourable Forum reasonably upheld that the regulation applicable to the instant case is Kerala State Electricity Supply Code 2005', as Supply Code, 2014 notified on 01-04-2014 has no retrospective effect. No provision of the Act or regulation thereof provide any embargo on collecting the cost for any line on or above 11 kV or/and any plant required for giving supply to a premises. Division Bench of the Hon'ble High Court of Kerala in a common judgement in W.A. No. 900/2013 and others have held that, the Kerala State Electricity Board Limited is entitled to realize the transmission side development charges, required for providing a supply to a premise. Hence, it is a settled legal preposition that a licensee is entitled for the cost of transmission line or/and the cost of electric plant required for providing supply to a premise. The decision of the Division Bench of the Honourable High Court of Kerala was delivered on 30-06-2016. It is also worth mentioning that the Order of the APTEL in Appeal No: 22/2007 was particular to the Regulation 3.3.4 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions of Supply). There is no commensurate Regulation in the Kerala Electricity Supply Code 2005. Thereby this Appellant is legally entitled to bear the cost of the work for providing supply to him. Thus the contention of the Appellant is void and inoperative.

The contention of the appellant, that no system/technical feasibility study was conducted by the respondent, is against the facts. Pursuant on receipt of application for power allocation from the Appellant, after having a thorough technical feasibility study by the Assistant Engineer, Electrical Section, Pathanamthitta, the scheme for providing supply to the Appellant was

worked out. It was unequivocally upheld that the 11 KV feeder drawn near to the premises of the appellant was in full load condition from January 2013 to October 2013, 130 KVA load could not be given through the feeder, which warranted bifurcation of Pathanamthitta feeder. It is unbecoming on the part of the Appellant to allege that the respondent has not examined the feasibility for supplying electricity from the next nearest feeder Kadammanitta 11 kV feeder. As this hypothetical argument was never made before the Honourable Consumer Grievance Redressal Forum (South) in OP No: 83/2016, it is unbecoming on the part of this Appellant to contest a diametrically different version in the Statutory Appeal proceedings. The Honourable Consumer Grievance Redressal Forum (South) in OP No: 83/2016 has unequivocally upheld that the estimate prepared on the basis of approved guidelines and methodology, cost data approved by the Kerala State Electricity Regulatory Commission, and hence the estimate prepared is genuine. So for the reasons and facts in realizing the cost, altogether amounting to Rs.34.49,000/- (Rs. 18,89,000/- + Rs.15,60,000/-), from this appellant is legally and perfectly in order. Pathanamthitta Town 11 kV feeder emerging from 110 kV Substation, Pathanamthitta was passing near to the Appellant's premises along the main road. The HT supply to the said premises was to be given from that 11 kV feeder. But at the time of the petitioner's power requirement, Pathanamthitta Town 11 kV feeder was fully loaded. Bifurcation of the Pathanamthitta Town 11 kV feeder is only solution to give supply to the petitioner. The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

The bifurcation of the existing Pathanamthitta 11 kV feeder and other allied works were necessitated exclusively on the basis of the request from this appellant, the other argument of the appellant are falsely fabricated and untrue, as mere bifurcation of an existing feeder was proposed to by the respondent. Construction of the new feeder was for the diversion of load in the existing 11 kV feeder. Construction of a new feeder was necessary for the bifurcation of the existing Pathanamthitta 11 kV feeder, which was under full load condition. Here no pro-rata charges per kilowatt collected. Rs. 15,60,000/- collected towards feeder bifurcation works and collection of Rs. 18,89,000/- for constructing a separate feeder was necessary and legal. As the feeder from which supply to the Consumer to be given was then in full load condition, bifurcation of the existing feeder was resorted to. As the activities involving bifurcation of a feeder and necessary rearrangements at the Sub Station have been delegated to the Transmission wing of this utility, such activities were handled by the Transmission Wing.

At the time of cable trench digging for the laying of UG cable along the public road, it was found that both the sides of the road were accommodated either with communication cable or water supply pipes. Therefore, it was not

feasible to lay UG cables. The only solution for it was to draw Aerial Bunch Cables. Accordingly, the Executive Engineer, Electrical Division, Pathanamthitta has submitted a revised estimate for constructing the entire length of 11 kV line using HT Aerial Bunched Cable. As regards to the applicability of Regulation, the Honourable Consumer Grievance Redressal Forum (South) reasonably held that merely on the ground that the estimate was revised prospectively on 11/08/2014 due to some unforeseen additional works. One cannot construe that the law applicable to this instant case is the Law applicable on the date of such succeeding revision of estimate and the Forum termed such contentions as illegal, irrational and illogical, especially when barely a single pie was demanded pursuantly from this appellant. Evidently the revision of estimate was merely an official formality. Filing of application for power allocation, sanctioning of estimate, remittance of the requisite amount were during the period when the Electricity Supply Code 2005 was in force.

The other contentions in this Para are null and void, as the Honourable Consumer Redressal Forum (South) has reasonably held that the 11 KV feeder drawn near to the premises of the Appellant was in full load condition, as per the documents. The respective feeder was in full load condition from January 2013 to October 2013 and 130KVA load could not be given through the feeder. Technically it was not feasible. Here in this case the 11 KV Feeder passing near to the Appellant's premises then was Pathanamthitta 11 KV Feeder. This factual position had never been conflicted by the appellant, even before the honourable Consumer Redressal Forum. The Forum also asserted that the bifurcation of the respective Pathanamthitta 11 KV Feeder was inevitable for giving supply required by this appellant. It is up to the respondent to decide strictly upon the technical feasibility.

The respondent could decide upon only after comprehensive evaluation of factors affecting system stability and effectiveness. The contention of the appellant will not sustain, even for argument sake. When compared, the Kadammanitta feeder was then catering to a major portion of geographical area under Electrical Section, Kumbazha. Total connected load of transformers altogether under both the Electrical Sections (Pathanamthitta & Kumbazha) was as high as 6080KVA then, irrespective of the load statistics at the Sub Station at Pathanamthitta. Furthermore, at the far end of the respective Kadammanitta Feeder was having an interlink with Cherukol Feeder (from Sub Station, Kozhencherry) of Kozhencherry Section at Alumkal Junction. Thus, this feeder was in frequent utilisation for back feeding arrangement with the Kozhencherry Sub Station at the instance of shut down/maintenance work at Kozhencherry Sub Station. Moreover, as this feeder passes through remote areas under Electrical Section, Pathanamthitta and Electrical Section, Kumbazha, having thick vegetation, supply interruption rate was apparently high on this feeder. It is pseudo scientific to decide upon merely on the basis of one among the many parameters.

The contention of the appellant that there were other options to provide the 130 kVA power requirement of the consumer without laying a new 11 kV feeder is only an afterthought. Construction of a new feeder was the only technically feasible solution to provide the 130 KVA power requirement of the consumer. The consumer has remitted the estimated cost without any protest and without any proposal of other options because the Consumer was fully aware of the fact that the only technically feasible solution is to provide a new 11 kV feeder for bifurcation, of the existing line. Thus the belated alternative option casually suggested is only an afterthought and also not technically feasible.

It is true that supply was given to this appellant, by mode of bifurcation of 11KV Pathanamthitta feeder. No dedicated feeder was constructed, as the load requirement from the appellant was 130 KVA. As contented above, it is true that caused by the system constraints prevailed then it was impossible to give HT Supply to the appellant without going in for the bifurcation of Pathanamthitta feeder. Accordingly it was resorted to bifurcating the existing Pathanamthitta 11 kV feeder into Stadium Feeder and KSRTC Feeder.

This respondent finds certain infirmity in the decision of the Consumer Grievance (South) in Para 21 of its order in OP No: 83/2016. On fractional appraisal of the contention in the Para No: 21 of the Counter Affidavit from this respondent, as regards the refund of 10% of the supervision charge collected on the materials supplied by the appellant. The Forum Ordered to refund the supervision charge on entire cost of materials, making the observation that the respondent had agreed to do so. As commitment from this respondent was refund on supervision charge collected confined to the materials supplied by the appellant, the Order of the Forum misconceived the same and making wrong observation, it was ordered to refund supervision charge on entire cost of material.

Similarly, in dilution of the right for realization of the entire expenses for providing the service towards which this licensee is authorized, the Forum held in the Para 12 of its Order that the cost of transmission and distribution works involved from the substation to the DP structure alone should be collected from the party, and the balance amount if any, to be refunded after evaluation of the works. So these decisions of the Forum require necessary modification, in the back drop of the aforesaid facts and reasons.

Analysis and findings:

The hearing of the case was conducted on 15-05-2017 in the Court Hall of CGRF (South), Kottarakkara. Sri Anandakuttan Nair, represented the appellant's side and Sri Pradeep A.V., Assistant Executive Engineer, Electrical Section, Pathanamthitta represented for the respondent's side. On examining

the petition, the counter of the respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The instant appeal has been filed against the demand issued for a sum of Rs. 34,49,000/- and collected from the appellant towards estimate cost for laying 380 metre HT UG cable from Pathanamthitta 110 kV substation to Azhoor Petrol Pump junction and constructing 360 metre 11 kV OH line (as 11 kV duplication line) from Azhoor Petrol Pump to the premises of the applicant in distribution side along with the capital work of 110 kV Substation, Pathanamthitta (providing 1 No. 11 kV feeder panel and associated 11 kV Excel PV cable and DP structure for proposed Muthoot feeder) in transmission side for providing 130 kVA power in the premises of the appellant. The appellant is aggrieved to the extent that the respondent has no right to collect the development charge or any other similar charge in any other name, as the development of distribution system is the sole responsibility of the licensee under Section 42 of Electricity Act, 2003. Further, the respondent could make any demand only in accordance with the orders issued by the Regulatory Commission and more specifically in accordance with Order dated 23-05-2011 in Petition No T.P. 87/2011 and as per the stipulations contained in order dated 22-01-2015 in O.P No. 22/2011.

The main allegation of the appellant is that the respondent had demanded/collected development charges which were against the orders issued by the Hon'ble Appellate tribunal for Electricity in Appeal No. 22 of 2007 dated 14/05/2007 and orders issued by the Hon'ble Kerala State Electricity Regulatory Commission, in Petition No. OP 22/2011 dated 22-01-2015. The respondent has denied the contention of the appellant in the additional argument note submitted by him and has stated that the respective decision of the Hon'ble APTEL was specifically in the backdrop of the Regulations issued by the Maharashtra State Electricity Regulatory Commission in force there. Further it is submitted that it is unbecoming and strange on the part of the appellant to contend and claim advantage of a decision totally negating the fact that such a decision was arrived in a totally different context and legal frame, that too when subsequent decision of the Division Bench of the Honourable High Court of Kerala in WA No.1042/2013 prevails in favour of the respondent. As in the case of the order of KSERC in OP No.22/2011 dated 22-01-2015, the respondent has argued that though the respective order of the KSERC was explicitly on the question of realization of development charges on pro-rata basis, which is in no way applicable to this instant case, the Commission has unequivocally upheld therein that the KSEBL has the right to recover the reasonable expenditure, specifically incurred by the distribution profit centre for providing electric line and electric plant required for giving supply of electricity to any consumer irrespective of whether such electric line and electrical plant are in the distribution system or the transmission system.

The appellant has also challenged the collection of Rs. 34,49,000/- on the following grounds. The estimate amount is for constructing a new dedicated 11 kV feeder from 110 kV substation Pathanamthitta to the premises of this appellant, which also included cost of control panel etc to be erected at the substation. This was done on the reason that, the nearest 11 kV distributing main have no spare capacity to cater to the load requirement of 130 KVA. But there was another distributing main available having spare capacity to share the load another few metres away. Thus a new 11 kV feeder named Stadium feeder using 1072 of ABC conductor was created from substation to some other place and electricity supply was provided in some other way, admittedly constructing about 200 m 11 kV distributing main and connecting it with the next nearest 11 kV feeder to the premises. The amounts collected are illegal and supply never given from the new 11 kV stadium feeder which was constructed totally under the expenses of the appellant, and construction of such a feeder / distributing main was not required for this electricity supply and it was not the economic and efficient way for this electricity supply.

Another averment of the appellant is that no system study was conducted and feasibility sought from the nearest distributing main, but simply proposed a new distribution main (11 kV feeder) from 110 kV substation Pathanamthitta on the plea that the nearest distributing main Pathanamthitta 11 kV feeder is already loaded to the brim. Also never examined the feasibility for supplying electricity from the next nearest distributing main, which is Kadammanitta 11 kV feeder which had the capacity to supply 130 kVA electricity. The licensee had developed its distribution system by creating a new 11 kV feeder including the switching panels in the substation of the transmission sector at the expense of this appellant.

The appellant has also put forward another contention in his appeal petition that Supply Code 2014 came in to force with effect from 01-04-2014 and the estimate was sanctioned vide administrative sanction No.22/2014-15 dated 07-08-2014. The work was started thereafter and electricity supply provided on 13-05-2015 and therefore, the electricity supply is governed under the regulations of Supply Code, 2014.

The respondent has denied all the above contentions of the appellant.

The points for decisions are: -

- 1) Whether there was another distributing main available having spare capacity and feasible and any other options to provide power supply in the premises of the appellant?
- 2) Whether the collection of Rs.34,49,000/- (Rs. 18,89,000/- as distribution side and Rs.15,60,000/- as transmission side) was reasonable for providing 130 KVA load to the premises of the appellant?

- 3) Whether the regulations of Supply Code,2014 is applicable in this case of the appellant?

According to the respondent, the 11 kV "Pathanamthitta Feeder" originated from the 110 kV Sub Station, Pathanamthitta, passing through the area adjacent to the appellant's premises was in an overloaded status and the available technically feasible remedy before the respondent was solely providing a 11 kV feeder, by mode of bifurcating Pathanamthitta Town 11 kV feeder and constructing other associated lines and installation towards catering to the requirement from the appellant. Further it is contended by the respondent that the scheme for providing supply to the Appellant was worked out after having a thorough technical feasibility study by the Assistant Engineer, Electrical Section, Pathanamthitta. It was unequivocally upheld that the 11 kV feeder drawn near to the premises of the appellant was in full load condition from January 2013 to October 2013, 130KVA load could not be given through the feeder, which warranted bifurcation of Pathanamthitta feeder. The respondent also contented that the Kadammanitta feeder was catering to a major portion of geographical area under Electrical Section, Kumbazha and at the far end of the respective Kadammanitta Feeder was having an interlink with Cherukol Feeder (from Sub Station, Kozhencherry) of Kozhencherry Section at Alumkal Junction. Thus, this feeder was in frequent utilisation for back feeding arrangement with the Kozhencherry Sub Station at the instance of shut down/maintenance work at Kozhencherry Sub Station. Moreover, as this feeder passes through remote areas under Electrical Section, Pathanamthitta and Electrical Section, Kumbazha, having thick vegetation, supply interruption rate was apparently high on this feeder. It is the respondent to arrive at a decision on any request for supply, duly considering the feasibility and technical constraints prevailing after evaluating factors affecting system stability and effectiveness.

In the order dated 30-11-2010 in Petition No. TP-87/2011 filed by KSEB before the Regulatory Commission, it is held that the Licensee is entitled to recover the cost of works on the distribution side as well as transmission side based on the estimated cost of works. It was also specified that the licensee shall prepare the estimate of costs of the works based on the principles laid down. A copy of the estimate thus prepared should be handed over to the beneficiary under acknowledgement. On completion of works, the licensee shall prepare an evaluation statement of the work, based on actual quantities, within 3 months of completion/energisation of the works and hand over the same to the beneficiary.

According to the judgment in Writ Appeal No. 900 of 2013 of Hon'ble High Court and in OP No. 22/2011 of Hon'ble Commission, the licensee can recover the transmission charges from the appellant and this Authority is of the view that there is no violation in issuing the demand for transmission

charges. Meanwhile the Hon'ble KSERC had issued a final order in petition OP No. 22/2011 dated 22-01-2015. The order reads as follows:

“(1) KSEB Limited has the right to recover the reasonable expenditure, specifically incurred by its distribution profit centre for providing electric line and electrical plant required for giving supply of electricity to any consumer irrespective of whether such electric line and electrical plant are in the distribution system or the transmission system owned by the distribution profit centre, subject to the following conditions:-

- (i) the expenditure has been incurred by the distribution profit centre;
- (ii) the expenditure is reasonable;
- (iii) the expenditure has been estimated fairly and transparently in accordance with the cost data approved by the Commission;
- (iv) the expenditure is incurred for providing electric line or electrical plant used for the purpose of giving that supply; and
- (v) the expenditure is not included in the ARR & ERC or in any other investment plan approved by the Commission.

(2) As ordered by the Commission in its order dated 16.11.2009 in OP No.13/2009 and as admitted by KSEB Limited in its submission before the Commission, it has no right to collect the pro-rata development charge or any other similar charge in any other name.

(3) The individual cases for recovery of expenditure from the consumers under section 46 of the Electricity Act, 2003, as mentioned in the petition may be settled in accordance with the principles pronounced by the Hon'ble High Court in its Judgment dated 30-06-2014 in Writ Appeal No. 900/2013 and connected cases.

(4) The individual cases which arose on or before 31-03-2014, for recovery of expenditure from the consumers under section 46 of the Electricity Act, 2003, which are not mentioned in the petition, may also be settled in accordance with the principles pronounced by the Hon'ble High Court in its Judgment dated 30-06-2014 in Writ Appeal No. 900/2013 and connected cases.

(5) The recovery of expenditure under Section 46 of the Electricity Act, 2003 in the cases which arose on or after 01.04.2014 shall be regulated in accordance with the provisions in the Kerala Electricity Supply Code, 2014, since the Judgment of the Hon'ble High Court dated 30-06-2014 in Writ Appeal No. 900/2013 and connected cases was issued in view of the provisions in the Supply Code, 2005”.

The Hon'ble Commission is of the view that the said judgment of the High Court in a Writ Appeal has application in other individual cases on the same matter. Generally the principle pronounced by the Hon'ble High Court in its judgment has to be followed by KSEB in similar cases. If the appellant wants such clarification it is for him to move the Hon'ble High Court and obtain such clarification. In the SLPs filed by the connected parties against the judgment in Writ Appeal No. 900/2013, the Hon'ble Supreme Court have not stayed or annulled the judgment in the Writ Appeal.

It is the bounden responsibility on the part of respondent to prepare the estimate fairly and transparently in accordance with the cost data approved by the Commission and on completion of works the licensee has to prepare and hand over an evaluation statement of the work, based on actual quantities, within 3 months of completion/energisation of the works. On the basis of this the excess/arrears shall be recovered/ adjusted by the respondent.

According to the Commission, the judgment of Hon'ble High Court dated 30-06-2014 in Writ Appeal No. 900/2013 and connected cases has to be understood and implemented in view of the Section 46 of Electricity Act, 2003. However, for investments involving huge expenditure only one applicant had to bear the entire cost for the establishment of capital works even though his power requirement may only be a fraction of the total installed capacity. On the other hand, the other applicants whose demand is catered from the investment already made need not bear any cost towards providing supply to his establishment.

According to the judgment in Writ Appeal No. 900 of 2013 of Hon'ble High Court and in OP No. 22/2011 of Hon'ble Commission the licensee can recover the transmission charges from the appellant and this Authority is of the view that there is no violation in issuing the demand for transmission charges. But different amounts are seen collected as development charge by the respondent. The respondent is demanding different rates for transmission and distribution part of the work including system up gradation, so that the individual is charged not the portion proportionate to his requirement.

However, the distribution system can be extended, if required, at the cost of the consumer wherever it is absolutely needed. It is authorised by the Section 43 and 46 of the Electricity Act and there is clear provisions in the Regulations created by the Regulatory Commission under Electricity Supply Code 8(2) to (5) to realize the cost for distribution extension to provide the electric supply. So the cost estimates collected by KSEB, to provide the supply except the items which are specifically directed to omit by this Forum as shown below, are found to be in order.

The respondent also denied the application of Supply Code 2014 in the present case of the appellant. Filing of application for power allocation, sanctioning of estimate, remittance of the requisite amount were during the period when the Electricity Supply Code 2005 was in force i.e., prior to the inception of the Electricity Supply Code, 2014. On analysing the facts and circumstances, it is right to say that law applicable to the appellant in this case is the Supply Code, 2005, as the appellant applied for power and remitted required amounts before 01-04-2014 i.e., the Supply Code 2005 was in force.

Decision

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

- 1) The appellant remitted Rs. 18.89 Lakhs for laying 380 metre HT UG cable and constructing 360 metre 11 kV OH line in distribution side and 15.60 Lakhs for erecting 11 kV VCB & new coupler panel and allied works in transmission side for giving 130 kVA power.
- 2) The estimate was prepared by the respondent and the amount remitted by the appellant before 31-03-2014, during the application period of Supply Code, 2005.
- 3) The estimate for the distribution work was revised later, after 01-04-2005, and no realization of additional amount was made.
- 4) There was no revision of estimate in the transmission side.
- 5) Execution of work both in distribution and transmission were not in accordance with the estimate prepared for the purpose.
- 6) The actual works executed both in transmission and distribution sector were not evaluated.
- 7) The applicant has not requested for an exclusive feeder.

As the work was executed not in accordance with the original estimate or revised estimate and an exclusive feeder was not constructed from the substation to the premises of the appellant, the evaluation-cum-cost report shall be prepared.

The final accounts of each work, for which amount has been collected by KSEB to provide the electric supply to the appellant, may be prepared and the actual cost estimate be arrived at, incorporating the revisions as ordered above by this Forum, within three months of this order and the same shall be communicated appellant. The excess amount if any shall be refunded with interest.

The Order No. OP 83/2016 dated 30-12-2016, of CGRF (South), Kottarakkara, stands modified to this extent.

Having decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is disposed of with the said decisions taken and issued. No order as to costs.

ELECTRICITY OMBUDSMAN

P/017/2017/_____ /Dated:_____

Delivered to:

1. Sri Mithesh Murali, Administrator, MGM Muthoot Medical Centre Ring Road, Pathanamthitta- 689645
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Pathanamthitta.

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, KSE Board Ltd, Kottarakkara - 691 506.