

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/012/2019  
(Present: A.S. Dasappan)  
Dated: 24<sup>th</sup> April 2019

Appellant : Sri. Narayanan K.,  
Energy Head,  
Indus Towers Ltd.,  
Palarivattom,  
Ernakulam

Respondent : The Assistant Executive Engineer  
Electrical Sub Division,  
KSE Board Ltd, Velloorkunnam,  
Ernakulam

### **ORDER**

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

The appellant represents M/s Indus Towers Ltd., a company providing passive infra structure service to telecommunication providers. The consumer number of the appellant's three phase service connection is 16452 with tariff LT VI F which is coming under the jurisdiction of Electrical Section, Velloorkunnam. The appellant had applied for additional load of 11 kW to the existing load of 11 kW to the above Electrical connection for the mobile tower erected at Nellad under Electrical section Velloorkunnam on 30/12/2009.

The appellant had remitted an amount of Rs.4,34,700/- on 09/04/2010 towards the estimate cost of 11 kV line extension and installation of transformer. But the transformer installation was not done and the additional load of 11 kW was sanctioned as per the application by remitting the additional cash deposit of Rs.10,000/- and additional OYEC of Rs. 8000/- on 11/07/2010. The appellant had filed an application dated 06/03/2018 before the Assistant Executive Engineer, Electrical Section, Velloorkunnam for the refund of Rs. 4,34,700/- collected, but the officer did not respond and hence the appellant had approached the CGRF (CR) Ernakulam by filing a petition

No. 33/2018-19. The Forum dismissed the petition with a direction to the respondent to take immediate action to construct the 400m 11 kV line and install 100kVA transformer within one month. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

**Arguments of the appellant:**

The appellant had applied for additional load of 11 kW to the existing load of 11 kW to the above Electrical connection for the mobile tower erected at Nellad under Electrical section Velloorkunnam on 30/12/2009 and the appellant had remitted an amount of Rs.4,34,700/- on 09/04/2010 towards the estimate cost of 11 kV line extension and installation of transformer with receipt no.153716. But the transformer installation was not done and the additional load of 11 kW was sanctioned as per the application of the appellant by remitting the additional cash deposit of Rs.10,000/- and additional OYEC of Rs. 8000/- on 11/07/2010. From this, it is clear that the proposal for transformer installation was not necessary for catering the requested additional load.

Even though the respondent had collected Rs.434700/- on 09/04/2010, the transformer installation is not done after a lapse of more than 8 years. Immediately after remittance of the estimate amount (on 11/07/2010) the licensee sanctioned the additional load requested and the tower site is working smoothly without any voltage problems. Addition to the extra load, the transformer feeding that area also catered the normal load growth for the last 8 years. From the above, it is clear that the proposal and the estimate for the 11 kV line extension and transformer installation was quite unnecessary. The appellant's field audit team pointed out the above fact and directed to file necessary applications for the refund of the estimate amount collected unnecessarily. Accordingly, the appellant had filed an application dated 06/03/2018 before the Assistant Executive Engineer, Electrical Sub Division, Velloorkunnam for the refund of the estimate amount collected unnecessarily. But the AEE had not responded and hence the appellant filed petition before the CGRF for the refund of the estimate cost collected unnecessarily. But the Forum, by its erroneous order rejected the claim to refund the amount collected unnecessarily.

Even though the estimate amount for the 11 kV LE and transformer installation was collected during the year 2010 and after more than 8 years of time, the work was not executed by the licensee and the requested additional load was sanctioned from the existing distribution system without any alteration on 11/07/2010. But no upgradation / system enhancement was done for the last 8 years for catering the additional load and the normal load growth by the licensee. Hence the proposal of the LE work was quite unnecessary.

As per the statement of the respondent, they approached the Forest department for sanction for line extension on 22/10/2011 and expecting the delay for getting clearance, the additional load was sanctioned after rearrangements of existing load from nearby transformer. But the additional load was sanctioned on 11/07/2010 itself. Hence the above statement is not true. From the all above, it is clearly evident that the proposal of line extension and transformer installation was quite unnecessary.

Another finding of the Forum is the petitioner did not approach the respondent for installing the transformer and drawing of overhead line until this time. If the petitioner approached during 2011, the respondent could have taken action to obtain the clearance from the Forest Department. This finding is seen baseless and the Forum didn't consider the ground that the licensee proposed the line extension and installation of the transformer are quite unnecessary.

Considering all the above facts, the appellant prays to set aside the erroneous order of the CGRF and to refund the amount collected unnecessarily with permissible interest.

**Arguments of the respondent:**

The Consumer had operated the Mobile with 9Kw connected load from the date of connection 30/10/2008. The consumer had applied for additional load of 11 kW in the name of Mr. Biju T Nair, Deputy General Manager, M/s Vodafone Essar Cellular limited. The Consumer has remitted the application fees on 30/12/2009. The Additional Power Allocation up to an extent of 11kW was sanctioned to the Consumer as per the System development work by drawing 400 mtrs 11 KV OH Line and installing a 100KVA Transformer at Mobile tower Site. An estimate was prepared for an amount Rs. 4,34,700/- and then issued Administrative Sanction to the above work on 22/03/2010. The consumer had remitted the LE-OYEC amount Rs. 4,34,700/- at Electrical Section through Bank DD on 9/04/2010 and work was Tendered on 15/05/2010.

The Proposed 400 mtrs 11 KV OH Line Route has to be constructed along Veliyathu Kavala, Thrikkalathoor road in which 200 mtrs of the road route passes through the Veettor Forest Reserved Land where prior forest clearance was mandatory for any construction activities. The OH Line construction was progressed without the consent of Forest Department which is due to the lack of awareness in the matters of forest clearance. The 400 mtrs OH in the Line construction was in full swing during 6/2010 period. Severe objections were raised by the Forest Department against this Line Construction. The Forest Department objected that all stays are provided in the Forest Land. Hence KSEB approached the Divisional Forest Officer Malayatoor for the clearance on 22/10/2011 and submitted all the required documents for

processing the application. Meanwhile the Paipra Grama Panchayath authorities are also associated for the Forest Clearance with their keen interest for widening 'Road portion inside the Veetoor Forest.

In meantime Sri Narayanan K., Authorized Signatory Indus Tower Ltd. filed a petition against KSEBL before CGRF and hence a case has been registered vide Case No 33/2018-19/10/07/2018. As a final order, the CGRF has directed KSEBL to take immediate action for obtaining the sanction from Forest department, for constructing 400mtr 11 KV line and for installing 100 KVA transformer within one month. Based on this order a joint inspection was conducted with the Forest Department and the sanction for energizing the transformer was obtained. Thereafter the Transformer was energized on 08/02/2019 after clearing the line and obtaining the sanction from the Electrical Inspectorate.

### **Analysis and findings:**

The hearing of the case was conducted on 22-03-2019 in the Office of the State Electricity Ombudsman, Edappally, Kochi, and Sri. M.Y. George represented for the appellant's side and Smt. Chandrika P, Assistant Executive Engineer of Electrical Sub Division, Velloorkunnam and Sri. Aji A.S., Assistant Engineer, Electrical Section, Velloorkunnam appeared for the respondent's side. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the decision.

On going through the records it can be seen that the appellant submitted an application for an additional load of 11 kW on 30-12-2009 and the respondent had sanctioned an estimate for Rs. 434700.00 for system development work by drawing 450 mtrs 11 kV OH line and installing 100 kVA transformer for giving supply to the appellant. Subsequently the appellant had remitted the estimated cost of the work on 09-04-2010. But the transformer installation was not done and the additional load of 11 kW was sanctioned as per the application by remitting the additional cash deposit of Rs.10,000/- and additional OYEC of Rs. 8000/- on 11/07/2010. The appellant's argument is that no upgradation / system enhancement was done for the last 8 years for catering the additional load and the normal load growth by the licensee, and hence no separate transformer is required.

The respondent has stated that the OH Line construction was progressed without the consent of Forest Department which is due to the lack of awareness in the matters of forest clearance and hence severe objections were raised by the Forest Department against this Line Construction. This was the cause for the delay and now Transformer was energized on 08/02/2019 after clearing the line and obtaining the sanction from the Electrical Inspectorate.

**The point to be decided in the case is as to whether the system development and a separate transformer is required for giving additional load to the appellant?**

The additional load requirement of the appellant was 11 kW and the load at the time of giving connection on 30-10-2008 was 9 kW. The request of the additional load was on 30-12-2009. The estimate for constructing 450 metre 11 kV single circuit OH line and erection of a 100 kVA transformer was Rs. 4,46,500/- . The OYEC charge realized from the appellant is Rs. 4,34,700/- on 09-04-2010. The work was completed only on 08-02-2019. As directed by this Authority, the respondent furnished the actual expenditure which comes to Rs. 4,00,413-. Though the appellant had remitted the OYEC amount for Rs. 4,43,700/- on 9-04-2010, the work was only completed on 08-02-2019, as directed by CGRF/Central Region. As such the work can't be treated as an OYEC work, considering the delay occurred. Further it is found that the estimate of the transformer prepared is for a new transformer, but the transformer erected is a repaired one. Even though sanction for widening the road is seen received from the Forest Department on 29-03-2012, the respondent couldn't present the reason for the delay in completing the work. The respondent reported that 102 consumers were transferred to the newly erected transformer from the nearby transformer.

**As per Regulation 5-1(c) of KSEB Terms and Conditions of Supply, 2005 stipulates that** *“The cost estimates for LT consumers shall include the cost of service line and terminal arrangements at the premises of the applicant but shall not include the cost of the meter if connected load is less than 50 KVA. For loads of 50 KVA and above, connection shall be effected only after installation of separate transformer of adequate capacity, the cost of which shall be recovered from the consumer. In such cases the consumer shall provide the space for erecting such transformer.”*

**Regulation 4 (1) of KSEB Terms and Conditions of Supply, 2005 – deals with Power to recover expenditure, which reads as follows;**

*“Subject to the conditions under clause 8 of the Code, the Commission authorizes the Board under Section 46 of the Act, to recover in advance from the owner or occupier of any premises requiring supply the expenses reasonably incurred by the Board for providing any electric line or electric plant required specifically for the purpose of giving such supply. The cost estimates for LT consumers shall include the cost of service line and terminal arrangements at the premises of the applicant but shall not include the cost of meter. For loads of 50 kVA and above, connection shall be effected only after installation of separate transformer of adequate capacity, the cost of which shall be recovered from the*

*consumer. In such cases the consumer shall provide the space for erecting such transformer.”*

In the order dated 30-11-2010 issued in the Petition No.TP-87/2011 by the 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. In the order 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 statutory provisions and facts it is clear that distribution licensee can recover the expenditure specifically incurred for giving connectivity to a consumer.

But 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.

In order to administer the processing of applications properly and to avoid inequitable distribution of expenses, KSEB started to levy cost of giving supply as per kVA rate of total expenditure incurred for the development of the infrastructure facilities from all prospective consumers who are the beneficiaries of the electric plant so created. The cost as per the estimate for the construction of the entire capital work is not levied from such applicants and instead, the total cost is divided among all the beneficiaries/applicants considering their power requirement.

The methodology was implemented in good faith in order to have an equitable distribution of expenses rather than burdening any one applicant from bearing the entire cost of providing infrastructure, and relieving the others from bearing any cost. The amount demanded is arrived based on the estimate cost of work for the capacity enhancement necessitated for giving supply to the appellant and the prospective consumers.

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) 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.

(3) 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.

(4) 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 High Court of Kerala in WA No.900/2013 and connected cases has held that Kerala State Electricity Board Limited is entitled to collect transmission charges incurred by the Board from an applicant who required electric supply. The decision of the Division Bench of the Hon'ble High Court of Kerala in WA No.900/2013 and connected cases is the rule of the land, as per which demand of transmission charges is legal.

But the appellant's argument is that since no upgradation / system enhancement was done for the last 8 years for catering the additional load, there is no need for a separate transformer for providing the additional load. On a perusal of the documents submitted by the appellant it can be seen that the total connected load in the premises is only 20 kW. Hence the question of

collecting the complete cost of a separate transformer from the appellant alone is not justifiable and against the methodology prescribed by the Commission for development works.

### **Decision**

In view of the above discussions it is concluded that the proportionate expenditure of Rs. 88,091/- i.e., 22% (a load of 22 kVA is connected to the 100 kVA transformer for the appellant) of the actual cost of Rs. 4,00,413/- incurred for the erection and drawal of 450 mtrs 11 kV line need be realized from the appellant. The excess amount of Rs. 3,46,609/- remitted by the applicant 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.

The appeal filed by the appellant is found having some merits and is allowed. The order dated 31-12-2018 in 33/2018-19 of CGRF is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/012/2019/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Narayanan K., Energy Head, Indus Towers Ltd., Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Velloorkunnam, Ernakulam

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.