

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/011/2024
(Present A. Chandrakumaran Nair)
Dated: May-06-2024**

Appellant : M/s Popular Vehicles & Services Ltd.,
Kuttukkaran Centre, Mamangalam,
Ernakulam (Dist.)- 682025.

Respondent : The Deputy Chief Engineer, Electrical Circle,
KSE Board Ltd, Ernakulam, Ernakulam (Dist.)

ORDER

Background of the case

The appellant M/s Popular Vehicles & services Ltd., represented by its vice president Sri. Renjan had applied for a new HT connection under industrial category for establishing an automobile repair centre at Chakkarapparambu, Ernakulam. For completing HT service connection an estimate for Rs. 11,27,665/- was prepared. The appellant opted for the option of executing the work by themselves and agreed to pay the supervision charges to the licensee and as such Rs. 1,75,408/- has been remitted by them. Then the licensee had completed works for providing power supply and informed the appellant to avail the power supply. The appellant has not completed the works which are to be executed by them. Then the licensee issued notice to avail power failing which the unconnected minimum charge is to be payable as per the Kerala Electricity Supply Code 2005. The licensee had raised the bills for UCM and the appellant approached the Hon'ble High Court of Kerala. Hon'ble High Court of Kerala directed the appellant to approach CGRF and accordingly the petition has been filed to CGRF. CGRF heard the case and order has been issued dated 31-10-2023. This petition has been filed as the appeal to the order of CGRF.

Arguments of the Appellant

The complainant herein is a company registered under the Companies Act and is one of the authorized dealers of passenger vehicles manufactured by M/s. Maruthi Udyog Limited. The Kerala State Electricity Board (KSEB) is the Licensee to supply electrical energy in the State. The Kerala State Electricity Regulatory Commission (KSERC) is a statutory body under Electricity Act, 2003, vested with the power to regulate the business of the Kerala State Electricity Board (KSEB). The complainant is aggrieved by the demand made by the respondent for "unconnected minimum charges" from the complainant, alleging that there was undue delay on the part of the complainant in availing the power supply. Now, even though the entire works are over and the complainant is ready to avail the power supply, the respondent is not providing the supply stating that it cannot be provided unless the complainant remits the entire amount demanded as "unconnected minimum charges". The complainant wants to have a new power connection under High Tension (Industrial) category for the purpose of running an automobile repair centre at Chakkaraparambu, at Ernakulam which is within the jurisdiction of the respondent. Therefore, the complainant had submitted an application for the same before the Deputy Chief Engineer, Ernakulam Electrical Circle and the respondent Assistant Engineer, Palarivattom Electrical Section who are empowered in this behalf. In response to the same, the Deputy Chief Engineer, Ernakulam Electrical Circle issued a communication bearing No.AE1/HT SOP/Popular/2010-11/2127 intimating that the complainant has to remit an amount of Rs.1,75,408/- towards cost of work as well as its supervision charges and the complainant was also directed to carry out certain works stated therein. The proposed works included the installation of Ring Main Unit (RMU) and laying of 80 meters of 3 X 300 Sqr.mm.

The complainant remitted the said amount and also took urgent steps to carry out the works directed to be carried out and the true copy of the receipt dated 14.06.2012 evidencing the said payment was produced in the complaint as Exhibit P2. Thereafter on 26.07.2001 the complainant received another communication dated 07.04.2011 from the respondent Assistant Engineer, Palarivattom Electrical Section by which the complainant was informed that, the work from the part of the Board for providing power to the extent of 100 KVA to the premises has been completed. Hence the complainant was requested to avail power supply within three months from the date of receipt of the letter. It was further stated that upon failing in doing so, a charges named "unconnected minimum charges" will be demanded. It is respectfully submitted that, throughout the period, the complainant was making all efforts to complete the work, but there occurred some delay due to the reasons beyond the control of the complainant. Since the complainant was asked to install RMU, it took some time to provide necessary facilities for the same. Further, for the purpose of installation of

RMU, an order in this regard has to be placed with the manufacturer and it took some time to get the delivery of the same. Apart from the above, for the purpose of completing the formalities with Electrical Inspectorate some time was taken. Further, in the mean while, the articles kept in the premises for completing the work were stolen and this aspect also contributed to the delay.

Thereafter the complainant was served with a notice by the 4th respondent intimating that the complainant is liable to pay an amount of Rs.1,83,750/- towards unconnected minimum charges for the period from 26.07.2011 to 26.05.2012 and the true copy of the said notice dated 28.05.2012 was produced in the complaint as Exhibit P4. Upon receipt of the said notice also, the officers of the complainant approached the Assistant Engineer, Palarivattom Electrical Section and appraised him about the facts. Thereafter, the complainant received another communication dated 17.07.2012 wherein it was threatened that, if the said amount demanded is not remitted, the application submitted by the complainant shall be treated as withdrawn by invoking Regulation 9 (2) of the Supply Code. In reply to the said notice, the complainant submitted an objection on 30.07.2012 highlighting their grievances. In addition to the above, the complainant also submitted another detailed objection on 10.08.2012 before the Assistant Engineer, Palarivattom Electrical Section.

Thereafter the complainant is in receipt of an order bearing No. AE1/SOP/Popular/2011-12/2860 dated 14.09.2012 issued by the Deputy Chief Engineer, Ernakulam Electrical Circle, rejecting all the objections of the complainant. The order was passed by the Deputy Chief Engineer, Ernakulam Electrical Circle without conducting any hearing in this regard. Thereafter the complainant was is in receipt of fresh demand by the Assistant Engineer, Palarivattom Electrical Section for an amount of Rs.3,67,500/- towards the unconnected minimum charges for the period from 26.07.2011 to 17.09.2012. It is respectfully submitted that the action of the Deputy Chief Engineer, Ernakulam Electrical Circle, The Special Officer (Revenue), Vydhyudi Bhavan, Pattom, Thiruvananthapuram and the Assistant Engineer, Palarivattom Electrical Section in issuing demands for unconnected minimum charges is illegal, arbitrary and amounting to unjust enrichment. It is true that Regulation 10 of the Kerala Electricity Supply Code, 2005 provides for collection of unconnected minimum charges. It is respectfully submitted that the said provision which is incorporated by the KSERC, is ultravires of the Electricity Act, 2003 and therefore unenforceable.

Regulation 10 of the Supply Code reads as follows:

"Delay on the part of applicant to take supply___ (1) Where 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 supply, the Licensee shall serve a notice on the applicant to take supply within sixty days

of service of notice in the case of LT consumers and 90 days in the case of HT and EHT consumers.

(2) If after service of notice the applicant fails to take supply of electricity, the Licensee may charge fixed/minimum charges as per tariff in force for completed months after expiry of notice till the applicant avail supply."

From the reading of the above, it can be seen that, by virtue of the aforesaid provision, the KSERC had introduced a new kind of charge namely such as unconnected minimum charges which is not only unsupported by the provisions of the Electricity Act, 2003 but also runs counter to the scheme of the Act. The Kerala Electricity Supply Code, 2005, has been formulated by the KSERC by invoking powers under Section 50 of the Electricity Act, 2003, which reads as follows: *"The State Commission shall specify an electricity code to provide for recovery of electricity charges, intervals for billing or electricity charges, disconnection of supply of electricity for non payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters".*

From the reading of the above, it can be seen that, what is contemplated therein is to "provide for recovery of charges". This would mean that, as far as the Supply Code is concerned, the powers of the KSERC is confined to provide for recovery of the charges and not to introduce any new charges, which are not recoverable as per the provisions of the Electricity Act, 2003. This is because, charges recoverable by the Licensee are specifically mentioned under sections 45 and 46 of the Electricity Act, 2003 and the said provisions reads as follows;

"45. Power to recover charges.-(1) Subject to the provision of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.

(2) The charges for electricity supplied by a distribution licensee shall be-
(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission,
(b) published in such manner so as to give adequate publicity for such charges and prices

(3) The charges for electricity supplied by a distribution licensee may include_
(a) a fixed charge in addition to the charge for the actual quantity supplied;
(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of Section 62, in fixing the charges under this section a distribution licensee shall not show undue preference to any persons or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulation made in this behalf by the concerned State Commission."

"46. Power to recover expenditure.-The State Commission may, by regulation, authorize a distribution licensee to charge from a person requiring 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."

Thus, from the above provisions, it can be seen that the only charges contemplated under the Act, are the charges for the energy actually supplied to the consumer, as determined as per methods and in the manner prescribed under section 45 and the actual expenditure reasonably incurred by the licensee for providing any electric line or plant used for the purpose of providing supply. A careful reading of the sub section (5) of Section 45 would reveal that, it specifically prohibits collection or introduction of any other charges, than contemplated under the said provision. Therefore, the unconnected minimum charges contemplated under Regulation 10 of the Supply Code is beyond the powers of the KSERC. The reading of section 50, which provides for formulation of Supply Code clearly corroborates the above contentions. As mentioned above, the said provision only provides for making regulations for providing for methods for recovering the charges payable as per sections 45 and 46 of the Act and the said provisions do not empower the KSERC to make any rules/regulations providing for any other charges which are not covered by section 45 or section 46. It is pertinent to note that, unconnected minimum charges is not the charges for energy supplied to the consumer and it is also not the charges for the actual expenditure reasonably incurred by the Licensee in providing any electric line or electrical plant used for the purpose of giving that supply. Since the complainant is not provided with the power supply so far, the charges contemplated under section 45 are not recoverable. As far as the charges under section 46 is concerned, an amount of Rs.1,75,408/- has already been collected from the complainant.

There is yet another aspect which makes the demand of unconnected minimum charges unsustainable. The provision to collect the said charge is contained in Regulation 10 of the Supply Code, and any such provision is conspicuously absent in the Terms and Conditions of Supply 2005. As per Regulation 1(4) the Supply Code, the Code shall apply to persons engaged in the business of distributing the electricity, whereas, the Terms and Condition of Supply, 2005 are the conditions based on which the connection is to be provided to the consumer. It is true that the charges contemplated under Regulation 10, authorize the Licensee to demand unconnected minimum charges. However, the KSEB had not chosen to include the said charges in the Terms and Conditions of Supply, 2005 and hence the said charges cannot be demanded by the KSEB. A perusal of the Terms and Conditions of Supply, 2005 would reveal that, even though the Board has included all the other charges specified in the Electricity Act, 2003 the unconnected minimum charges are not included therein. Therefore the only irresistible conclusion possible is that the demand of unconnected minimum

charges is not enforceable. It is also to be noted in this regard that, the complainant is not having any contractual obligation to pay the unconnected minimum charges. The complainant had not availed any benefits from the KSEB, so as to warrant consideration towards the KSEB. In other words, the demand made by the Deputy Chief Engineer, Ernakulam Electrical Circle, The Special Officer (Revenue), Vydhyudi Bhavan, Pattom, Thiruvananthapuram, Assistant Engineer, Palarivattom Electrical Section for the unconnected minimum charges are not supported by any consideration in return and therefore it is amounting to unjust enrichment by the KSEB. Therefore, even if it is assumed for argument sake, without admitting that, the Regulation 10 of the Supply Code is an enforceable provision, no demand can be made by the Board, in the absence of any enabling provision in this regard in the Terms and Conditions of Supply, 2005.

Further, while rejecting the contentions of the complainant, the respondent failed to notice the fact that, the complainant was having valid and sustainable reasons for the alleged delay. Even though the complainant highlighted the same in their objections, all the said contentions were rejected without properly considering the same. Still further, even if it is assumed for argument sake that the Assistant Engineer, Palarivattom Electrical Section is justified in making the demand for unconnected minimum charges, the present demand is highly exorbitant. The notice produced in the complaint, as contemplated under regulation 10(1) has been served on the complainant only on 26.07.2011. It is to be noted that the said provision contemplates for charges only on expiry of three months from the date of service of notice to the consumer, in the case of an HT connection. Therefore, there is no justification whatsoever, for demanding the charges with effect from 26.07.2011. Thereafter the Complainant had approached the Hon'ble High Court of Kerala by filing WPC 25548/2012 challenging the Ext P7 and P8 and the regulation 10 of the supply code. The Hon'ble High Court had through its common judgment dated 06.07.2023 directed the complainant to approach this Hon'ble Forum. The true copy of the common judgment dated 06.07.2023 passed by the Hon'ble High Court of Kerala in W.P.(C.) No.25548/2012 and 6 other cases were produced in the complaint as Exhibit P9. As per the interim order in the above Writ, the electricity supply was granted.

However since the Deputy Chief Engineer, Ernakulam Electrical Circle and the Assistant Engineer, Palarivattom Electrical Section was insisting for payment of the amounts demanded as per the impugned orders/demands. It is respectfully submitted that the complainant is having a statutory right to get the power supply as contemplated under section 43 of the Electricity Act, 2003. In the above circumstances a complaint was submitted before the CGRF, Central Region, Kalamassery along with all further proceedings pursuant thereto. The Hon'ble CGRF has vide the order dated 31.10.2023 had found and held that the licensee KSEB's demand that the UCM charges

on 17/09/2012 for the period from 26/07/2011 to 17/09/20212 is considered as valid and in compliance with the Regulations 10(1) and 10(2) the Supply Code, 2005 as notice was issued by giving 90 days time to comply. This representation is filed in the above circumstances.

Arguments of the Respondent

Statement of Facts filed by the Deputy Chief Engineer, Electrical Circle, Kerala State Electricity Board Limited, Ernakulam under Reg. 10(2) of Kerala State Electricity Regulatory Commission (CGRF& Ombudsman) Regulation, 2005 (herein after referred to as Regulation, 2005). All the averments and allegations in the complaint which are not specifically admitted hereunder are denied. The demand raised against the consumer is valid in all aspects. The demand raised is pertaining to the unconnected minimum charges liable to be paid by the consumer as per the provisions in Electricity supply code 2005. The complainant M/s Popular Vehicles and Services Ltd, Kuttukkaran Centre, Mamaganalam, Pin- 682025 represented by Mr. Renjan has applied for a new power connection under HT industrial category for the purpose of running an automobile repair centre at Chakkaraparambu at Ernakulam which is under the jurisdiction of Deputy Chief Engineer, Ernakulam and Electrical Section, Palarivattom at the time of application. Now the premises comes under Electrical Section, Vennala after section bifurcation. As per the requirement from the applicant, M/s Popular Vehicles & Services Ltd., after conducting a site inspection an estimate was prepared and the Deputy Chief Engineer, Ernakulam has accorded Administrative Sanction to an amount of Rs. 11,27,665/- vide AS. No. 28/10-11/05.06.2010 of Electrical Circle, Ernakulam and demanded Rs.175408/- towards supervision charges for the works of SOP to complainant's premises.

As a reply to this application the Deputy Chief Engineer issued a letter vide Letter No. AE1/HT SOP/Popular/2010-11/2127 stating the estimate for giving supply of power (SOP) amounting Rs. 11,27,665/- for the construction of one number of Double Pole (DP) structure, installing one number of Ring Main Unit (RMU) and laying 80m of 3X300 sq.mm underground (UG) cable under Own Your Electric Connection (OYEC). Regulation 8(9) of the Electricity Supply Code 2005 entitles the consumer to provide the electric line/ substation which states that "*Where the applicant does not require the licensee to provide electric line or electric plant, but choose to provide them himself, he shall pay 10% of the expenses as supervision charges to the licensee for providing such services and get the work executed by a licensed contractor. The licensee shall supervise the work of the applicant and provide guidance in technical matters and matters relating to safety.*" In this complainant opted to execute the works mentioned in the letter referred above by themselves and hence supervision charges amounting Rs. 1,75,408/- was requested to be remitted. After remitting the

amount by the applicant the works from the part of KSEBL for providing power to the extent of 100 KVA to the premises has been completed. After this the respondent served a notice dated 7.04.2011(Exhibit P1) as per regulation 10 of Electricity supply code 2005 and informed the applicant that the work from the part of KSEBL is completed and hence the applicant was requested to avail power supply within three months from the date of receipt of the letter, failing in doing so a charge named unconnected minimum charges will be demanded. But the applicant failed to avail power supply within the stipulated time. Another notice dated 28.05.2012 (Exhibit P2) was issued by the KSEBL in which it was intimated that the applicant is liable to pay an amount of Rs. 183750/- towards the Unconnected Minimum Charges for the period from 26.07.11 to 26.05.2012. Another letter dated 17.07.2012 (Exhibit P3) by the Deputy Chief Engineer, Electrical Circle, Ernakulam intimated the applicant that the application shall be treated as withdrawn by invoking Regulation 9 (2) of the Supply Code 2005. There after the applicant raised some objections before the respondent. The reasons stated in the objections were that: (a) the difficulty in obtaining space for installing RMU (b) delay in placing the purchase order (c) theft of copper strip. If the complainant would have completed the above work within the time limit, the approval from Electrical Inspectorate also would have received. It may please be noted that the reasons for delay in completing the work was well within the control of the complainant. Also the complainant neither informed the above matter to the licensee nor obtained time extension for completing the work. Hence the UCM demand was affirmed. Since there occurred mistake in the calculation of UCM charges as per the letter dated 28.05.2012, this was corrected and the applicant was served a fresh demand amount of Rs. 367500/- towards the Unconnected by the fourth respondent for an Minimum Charges for the period from 26.07.2011 to 17.09.2012 vide letter dated 17/09/2012 (Exhibit P4). The calculation was shown in the letter itself. The applicant was not willing to remit the amount and he approached the Hon'ble High Court. The petitioner filed WPO 25548/2012 before the Hon'ble High Court of Kerala, challenging the demand dated 17/09/2012, which amounted to Rs.3,67,500/- for UCM charges covering the period from 26/07/2011 to 17/09/2012 and also against the Regulation 10 of the Kerala Electricity Supply Code, 2005. The Hon'ble High Court vide Judgement dated 06/07/2023, directed the applicant to approach the Consumer Grievance Redressal Forum, Ernakulam.

It was informed to the complainant on 7.04.2011 that the KSEBL portion of work as per AS No. 28/10-11/05.06.2010 of Deputy Chief Engineer, Electrical Circle, Ernakulam has been completed in all respect for providing power allocation to M/s Popular Vehicles & Services Ltd. and the complainant was requested to take necessary arrangements for availing the power supply within the stipulated time period of three months. It also clearly stated that, if the applicant fails to avail supply within stipulated time period of three months, he will be liable to pay Unconnected Minimum

Charges as per the Regulation 10(2) of Supply Code 2005. It is evident from the notice that the complainant was well informed regarding the completion of work with respect to the licensee is concerned. It is pertinent to note that a reply was preferred by the complainant after receipt of the notice. The complainant conceded some facts that the delay of completing work was occurred due to slow delivery of RMU, article kept in their premises get stolen, and delay in getting sanction from Electrical Inspectorate. It is the duty of the complainant to avail the articles for work in time and keep it in safe and obtain sanction for energization from the authority concerned. If the applicant fails to avail the power within a time limit of 90 days after the completion of work of the Board, the consumer had to pay the unconnected minimum charges. It is a bounden duty of the complainant to remit the UCM charges as demanded by the respondents. The letter of Assistant Engineer, Electrical Section, Palarivattom dated 7.04.2011 is dispatched to the complainant informing them that the work from KSEBL is completed and also added that consumer is liable to pay Unconnected Minimum Charges, if he fail to avail supply within three months from receipt of this letter. It is evident that complainant is well known about the fact that he is liable to pay UCM Charges. Even after receiving the notice, the consumer failed to complete their part of work, hence then the Assistant Engineer, Electrical Section, palarivattom issued a demand notice for Rs. 1,83,750/- as UCM charges for the period of 26.07.2011 to 26.05.2012.

Regulation 9 (2) of Supply code 2005 says that, If a person fails to pay the sum required for extension of supply lines or other works within the time allowed by the Licensee, the Licensee may treat his application as withdrawn after giving him 30 day's notice. On 17.07.2012 Deputy Chief Engineer served a notice indicating the cancellation of request for power to consumer, in which it was stated that if the applicant fails to remit UCM charges within 30 days of reception of that notice, the application will be treated as withdrawn as per Supply Code 2005 Regulation 9(2). The reasons mentioned in the applicant's letter dated 30.07.2012 like difficulty in obtaining space for installing RMU, delay in placing of purchase order, theft of copper strip etc are not reasons to be considered in this regard for the delay. There is only erection of DP structure in KSEB part and respondent completed the work within the time period and complainant have failed to avail supply within the prescribed time period. The unconnected minimum charges demanded are legal, liable and consumer is bound to pay the same.

On 17.09.2012, after four months from issuing demand notice, Assistant Engineer again served a demand amounting to Rs. 3,67,500/- to complainant towards the UCM charges for the period from 26.07.2011 to 17.09.2012, as consumer failed to remit the previous demanded amount. 12) It is true that Regulation 10 is not existing in prevailing supply code but consumer is liable to pay the amount as that regulation is prevailing at the time of issuing demand notice ie, the above demand notices are issued according to existing law at the time of application. The charges demanded

as per regulation 10 are fully bounded and legal. The petitioner did not avail the supply within the specified time limit. Accordingly the unconnected minimum charges were issued as per Regulation 10(2) of the Supply Code 2005. The applicant has been intimated of the details of the work to be executed for providing the supply and the estimated cost of work. Supervision charges to be remitted if work is done by the party. The petitioner has to execute the work and avail supply as per the stipulated Regulation 10 of Supply code 2005. As an authorized distribution Licensee, KSEBL is bound to obey the prevailing rules and regulations of KSERC. The UCM charges demanded are as per the rules and regulations of KSERC at the time of application.

The charges contemplated under regulation 10 of Supply Code 2005 authorize the licensee demand the unconnected minimum charges. Therefore the licensee is bound to demand the same. The applicant failed to complete the work and avail supply within stipulated time, and intimations as per law are given to the applicant. As a licensee the Board is bound to obey the regulation of KSERC. The reasons stated by the complainant for delay in completing the work was well within the control of the complainant. Also the complainant neither informed the licensee the above reasons nor requested for time extension for completing the works. Hence the contentions raised by the applicant were rejected by the Deputy Chief Engineer, Electrical Circle, Ernakulam. The Assistant Engineer, Electrical Section, Palarivattom dispatched the letter on 07.04.2011, intimating the applicant to avail the power supply within three months from the date of receipt of this letter, failing which unconnected minimum charges will be levied from the applicant. The claims presented by the respondent will stand before law for as per the rules prevalent at the time of application, the applicant is liable to remit the required UCM charges along with the interest for belated payments, if any. The licensee is bound to abide by the statutes and is bound to recover the charges and the same amounts to public money. The petitioner is capable of paying the amounts demanded and is having sufficient means to satisfy the same. Considering the above facts, I may request Honourable Ombudsman to accept the contentions raised through this Statement of Facts and dismiss the above complaint with cost to the respondents and declare that the short assessment bill issued is in order and to direct the consumer to pay the short assessment amount with interest.

Analysis and findings

The hearing of the appeal petition was conducted on 23/04/2024 at 11:00 am in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The hearing was attended by the appellant's representative Adv. Sri. Anzil Salim and

respondents Sri. Tito V. William, Nodel officer, Sri. Sajeev Kumar K., Asst. Executive Engineer, Electrical Sub Division, KSE Board Ltd., Palarivattom.

The appellant has applied for a new HT service connection of 100kVA for their proposed automobile repair centre at Chakkaraparambu, Ernakulam. For extending power to their installation the followings are to be executed.

1. Erection of a Double pole structure.
2. Installation of a Ring main unit.
3. Laying of 3x300² sq.mm, 11kv, underground cable

The licensee has prepared an estimate for Rs. 11,27,665/- and sanction has been accorded.

As per the Supply Code 2005, the appellant opted as per regulation (8) to execute this additional works by themselves.

Regulation (8) *“Where the applicant does not require the licensee to provide electric line or electric plant but choose to provide them himself, he shall pay 10% of the expenses as supervision charges to the licensee for providing such services and get the work executed by a licensed contractor. The licensee shall supervise the work of the applicant and provide guidance in technical matters and matters relating to safety”*

The licensee demanded Rs. 1,75,408/- as the supervision charges and the appellant has paid the same. The licensee has completed the works from their part and intimated the appellant to avail the power failing which the unconnected minimum charge is applicable as per the regulation of Supply Code 2005.

The licensee is empowered to collect the UCM charges as per the Regulation 10 of the Kerala Electricity Supply Code 2005.

10. Delay on the part of applicant to take supply.- (1) *“Where 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 supply, the Licensee shall serve a notice on the applicant to take supply within sixty days of service of the notice in the case of LT consumers and 90 days in the case of HT & EHT consumers”.* (2) *“If after service of notice the applicant fails to take supply of electricity, the Licensee may charge fixed/minimum charges as per the tariff in force for completed months after expiry of notice till the applicant avail supply”.*

In the case in hand, the licensee has issued notice on 07/04/2011 to avail the power as the work from their side have been completed in accordance with the regulation 10(1). Accordingly, the applicant would have availed the power within 90 days of the notice, failing which they are liable to pay the unconnected minimum charges.

The appellant is contenting the demand of UCM and challenging that the licensee is not empowered to collect this charge. The Section 50 of Electricity

Act 2003, along with Section 181 of the Act the State Electricity Regulatory Commission is empowered to make Supply Code and other regulations. The UCM charges are applicable as per the Supply Code 2005.

The Section 45 of Electricity Act 2003 authorises the licensee to recover the charges.

45(1) *“Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity, him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.”*

45(2) *“The charges for electricity supplied by a distribution licensee shall be –*

- (a) Fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;*
- (b) Published in such manner so as to give adequate publicity for such charges and prices.”*

45 (3) *“The charges for electricity supplied by a distribution licensee may include-*

- (a) a fixed charges in addition to the charge for the actual electricity supplied;*
- (b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.”*

45 (4) *“Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons”.*

45 (5) *“The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission”.*

The Section 46 authorises the licensee to recover expenditure

46 *“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 Electricity Act 2003 is very clear about the recovery of charges from the consumer. There are three charges applicable to the consumer.

1. The fixed charges in accordance with the methods and the principles as may be specified by the concerned State Commission.

2. The charges for the electricity consumed as per the tariff fixed by the Commission.
3. The rent or other charges in respect of any electric meter or electric plant provided by the distribution licensee.

The fixed charges are charged by the licensee as fixed by the Regulatory Commission to reserve the infrastructure of the licensee to provide power to the consumer. The liability of fixed charges arises when the power has been allocated or when the licensee is ready to provide power with a minimum grace time which 90 days as per Supply Code. The licensee has to build and maintain the upstream infrastructure for providing the required quantum of power asked by the consumer. When the power allocation has been granted, the licensee wont be able to allocate power to any other consumer including the allocated power. If any spare capacity other than allocated only could be granted to other persons. Then the UCM is nothing but fixed charge and the same is termed as UCM as the power was not been connected. Till the cancellation of the power allocation, the said power is reserved from the consumer. Further the consumer is blocking the opportunity of availing that much quantum to any other consumer and as well as the licensee also loose the opportunity of selling (allocating) this power to anybody else. As per the natural justice also the appellatant is liable to pay this UCM charges.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellatant is liable to pay the unconnected minimum charges demanded by the licensee.
2. No other costs sanctioned.

ELECTRICITY OMBUDSMAN

No. P/011/2024/_____ dated: 06/05/2024.

Delivered to:

1. M/s Popular Vehicles & Services Ltd., Kuttukkaran Centre, Mamangalam, Ernakulam (Dist.)- 682025.

2. The Deputy Chief Engineer, Electrical Circle, KSE Board Ltd, Ernakulam, Ernakulam (Dist.)

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503.