

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/396/2013.

(Present: T.P. Vivekanandan)

Appellant : Sri. K P Johny,  
M/S. Sajo Industries Annexe, Maikkad,  
Angamaly, Ernakulum-683 589.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Angamaly, Ernakulum (DT).

ORDER.

Background of the Case:

The petitioner has applied for power allocation to his new industrial unit, having a power demand (connected load) of 91 KVA before the Assist. Engineer, Electrical Section, Angamaly on 27.10.2012 and remitted necessary fees for the same. But the respondent declined to grant power allocation by relying on a letter issued by the Deputy Chief Engineer (DCE), Electrical Circle, Perumbavoor. It is said that a clarification was sought before the DCE by the AE, on the maintainability of giving electric connection for a new industry in a place, separated by a wall only, where there existed already 4 Nos. of similar LT industrial connections that manufacture the same product, under the same ownership. The DCE directed to advice the consumer to take a HT connection combining all Units which according to him is technically feasible and economically beneficial.

Being aggrieved, the appellant filed a petition before the CGRF, Ernakulum praying to grant immediate connection to his new industrial unit. The CGRF dismissed the petition by stating that as per clause 21 (7) (f) of the KSEB T & C of Supply, 2005, the party should avail a HT connection, if all the connections are for a continuous process resulting in a single finished product. Aggrieved by this order of the CGRF, the Appellant has submitted this appeal before this Forum. Meanwhile, the appellant also approached the Hon. High Court, challenging the orders passed by the CGRF, which was disposed of directing the Electricity Ombudsman to consider the appeal petition, if the same has been registered on the files, and to dispose of the same after affording opportunity of hearing the parties concerned, at the earliest possible, at any rate within a period of 3 months from the date of receipt of the judgment issued vide W.P. ( C ) No. 18388 of 2013 dated 2.8.2013. The appeal petition filed by the appellant on 26.7.2013 is numbered as P/396/2013 and the judgment copy received by this Forum on 9/9/2013.

**Arguments of the Appellant: -**

(1). The Complainant is a partnership firm constituted on 20.07.1998 for carrying on the business of manufactures and sale of packaged drinking water, water cooler and hot water dispenser and similar nature business and other allied businesses. The firm decided to set up a manufacturing unit of pet bottles, caps, packaging materials at Mekkad, near Angamaly and purchased land in re-survey number 428 of Nedumbassery Village, Aluva Taluk as per sale deed dated 24.01.2012. A copy of the sale number 414/2012 dated 24.01.2012 is produced and marked as annexure-1. Thereafter, the complainant made an application before the District Industries Centers, Ernakulum for starting the business concern by name M/S. Sajo Industries- Annex.

(2). Thereafter the party made an application for power allocation to the new industrial unit for a total concerned load of 91 KVA before the 2<sup>nd</sup> respondent on 27.10.2012 and paid the necessary fees. A copy of the receipt issued by the 2<sup>nd</sup> respondent is marked as Annexure-3. However the 2<sup>nd</sup> respondent declined to grant power allocation to the complainant's new firm by stating untenable contention and by relying on a letter issued by the Deputy Chief Engineer (DCE), Electrical Circle, KSEB, Perumbavoor. A copy of the letter dated 03.04.2013 issued by the DCE, is produced and marked as Annexure-4, which is addressed to the Executive Engineer with copy to respondents 1 and 2. In the letter it is stated that a clarification was sought before the Deputy Chief Engineer regarding the applicability of giving industrial service connection for a new industry separated by a boundary under the same ownership in a compound where there exists already 4 numbers LT connections which manufacture the same product. According to the Deputy Chief Engineer HT proposal seems to be technically feasible and economically beneficial and thereafter advised to direct the party to avail a single HT connection by clubbing all LT units together. It is respectfully submitted that no legal impediment is pointed out by the Deputy Chief Engineer in granting power connection to the complainant's new industrial premises on the basis of his application.

(3). The allegation raised by the respondents that there exists 4 Nos. of LT industrial connections have no connection with the complainant firm. It is true that four other firms are engaged in the manufacturing of different items to the nearby property of the complainant. It is also true that in the 4 other firms, the partners are different and the name of the firm and registration with the Industries Department as well as with the Sale Tax Department are entirely different and has no connection with the complaint firm.

(4). Admittedly the application is for a new industrial service connection and the premises are separated by the boundary walls and hence the stand taken by the DCE in Annexure-3 is illegal, unjust and arbitrary. In the light of Annex. -3, the 2<sup>nd</sup> respondent thereafter issued a letter to the complainant directing him to avail single HT connection by clubbing all the LT units together and directed the complainant to approach the Electrical Inspectorate for the approval of the scheme. A copy of the said letter dated 16.04.2013 is marked as Annexure-5. It is respectfully submitted that the intention of the 2<sup>nd</sup> respondent in declining to grant power connection to the complainant's application is unjust, arbitrary and illegal.

(5). Since the connection was denied by stating untenable and illegal reasons, the party filed a complaint before the CGRF, Ernakulam requesting to grant immediate connection to the party's industrial unit since he had even purchased the machineries for starting the unit. A copy of the petition filed before the CGRF, Ernakulam, is marked as Annex-6 and he has specifically pointed out that the 4 firms stated by the respondents have no connection with the present firm and all those firm are independent firms having separate registration number with the Registrar of Firms and also having separate sale tax registration and separate electric connections. However the CGRF dismissed the petition by stating that as per clause 21 (7) (f) of the T & C of Supply, the party should avail a single HT connection if all the connections are for a continuous process resulting in a single finished products and further alleged that the complainant's 5<sup>th</sup> unit is for manufacturing of bottles and this unit require the performs produced from other units in the same premises. It is respectfully submitted that the above finding of the CGRF is unjust, arbitrary, illegal and hence liable to be set aside. The provision relied on by the CGRF has no nexus with the issue at hand.

(6). Regulation 21 of the KSEB T & C of Supply deals with the Service Connection. Clause 7 of Regulation 21 deals with connection obtained by the malpractice/misrepresentation. For easy reference clause 21 (7) is of the same is reproduced herewith.

"21((7) Connection obtained by malpractice/misrepresentation- A service connection shall be treated as one obtained by malpractice/misrepresentation with or without the connivance of the officers/staff of the Board if, .....

*(f) More than one connection is effected in a premise for the same purpose under the same tariff except in the case of independent domestic connection with separate entrance or for a continuous process in production of a single finished product. ....*

A reading of the above provision clearly mandates that more than one connection is effected in premises for the same purpose under the same tariff then the same can be considered as a connection obtained by the malpractice. "Premises" is defined in the Electricity Act 2003 as "premises" includes any land, building or structure. Factory premises is defined in KSEBoard Terms and Conditions of Supply as Definition 1(an) as "Factory premises means the premises in which laboratories, manufacturing/production, repair shops, stores, offices, reading rooms, libraries, yards, watch and ward, canteen and first aid centers belongings to the factory are housed, as defined in Factories Act". The respondents have no case that application submitted by the complainant is to a single premise. The clause relied on by the respondent deals with a connection obtained in a premise for the same purpose under the same tariff.

(7). It is true that one of the partners in the complainant firm has share in two other firms, but that is not a disqualification to start a new firm. The present application made by the complainant is for starting a new industrial unit in premises which the complainant obtained as per Annexure-1 sale deed. The application submitted by the complainant for establishing his unit in the premises which he obtained as Annexure-1 sale deed in which there exists no service connection. Thus the stand taken by the respondents to directing to avail HT connection is misinterpreting the provision of law with a malafide intention to deny or to delay electric connection to the industrial premises. Hence for that sole reason the denial of

power allocation to the complainant's industrial unit pursuant to his application is unjust, arbitrary and illegal.

(8). It is submitted that the respondents have no case that the 4 industrial units existing in the separate premises have obtained connection by committing fraud. The respondents have no case that each unit are not having different entity with separate sale tax registration as well as having registration with the industries department and separate accounting. There is no provision either in Electricity Act or in the KSEB Terms and Conditions of Supply to deny connection to separate units even though owned by the same company in different premises. So long as the relevant provision relied on by the respondents 1 and 2 have no application in the case at hand, complainant is entitled to get power allocation without any further delay.

(9). Section 43 of the Electricity Act 2003 deals with duty to supply on request and the Licensee is duty bound to give supply of electricity to such premises within one month after receipt of the application requiring such supply provided where such supply does not require extension of distribution mains, or commissioning of new substations. It is respectfully submitted that no line extension is required for providing supply to the premises to which the application is made by the complainant. Hence there is inordinate delay in granting power connection to the complainant's premises by the respondents and hence the complainant is entitled to get compensation as per section 43 (3) of the Electricity Act 2003.

(10) The Complainant has taken a grievance in the petition that the incumbent in the post of the 2<sup>nd</sup> respondent purposefully denied electric connection by filing false report before the higher officials and mislead them so as to deny power connection. According to the DCE the objection is to the extent that in giving supply to the said premises under LT tariff is less beneficial to the KSEB and HT connection is economically more beneficial. Whereas, according to the CGRF it is violation of clause 21 (7) (f) of the T & C of Supply. From the above it can be seen that the respondents have no consistent case and their intention is to deny supply to the complainant industrial unit or make unlawful enrichment which may not be permitted in a country wherein rule of law prevails.

(11). The findings of the CGRF is perverse and liable to be interfered by this Hon Court. According to the CGRF the existing 4 units are manufacturing performs required for making of the bottles. These performs are sold to other two companies. The Complainant's 5<sup>th</sup> unit is for manufacturing of bottles and this unit requires the performs produced from other units in the same premises. The above finding of the CGRF is factually incorrect and the contentions that the complainant is the owner of the all 5 units is also incorrect. The partnership firms are having different partners with different intention which is made mentioned in the partnership by the partners. Each firm is having separate accounts, separate sale tax registration and separate registration with the industries Department as well as with the Registrar with the firms. Hence the finding otherwise is legally untenable and can be considered as a colored exercise of power.

(12). The contention taken by the CGRF with regard to the oral submission that the appellant does not intent for sale of these bottles outside and the further contention that with the function of this new unit his final product will be bottled water are all raised only with an

intention to attract a provision which is inapplicable in the present back ground of the case. On the basis of such baseless finding the CGRF continuous to states that the entire process in the premises is a continuous process resulting in the production of a single finished product. (13). For starting the annex of the complainant's unit, the party has spent more than one corer and the machineries purchased by him for the said purpose is now in a rusted condition and even for repairing the same complaint needs a huge amount. Complainant availed huge financial assistance from banks and other institutions for setting up the industrial unit. Only because of the delay in giving electric supply to the premises that the production could not be started in the industrial unit which is resulting huge financial loss to the complainant. Hence it is only just and proper that this Hon Court directs the respondents to forth with give power connection to the Complainant's industrial unit pursuant to his application and remitting the fees as evidence by Annexure-7.

**Arguments of the Respondent: -**

(1). The complainant is an industrial consumer under Electrical Section, Angamaly and is the owner of 3 Nos. of industrial units and 1 No. of industrial unit run by his wife in the same premises under the ownership of the complainant, with a common gate and a single security cabin. A statement showing these facts is marked as Exhibit-R2.

(2). The complainant, Sri.K.P. Johny has submitted an application for power requirement for a 5<sup>th</sup> industrial unit namely M/S.Sajo Industries Annexe, Mekkad, Angamaly on 27.10.2012, with a power demand of 91 KVA in the same premises. On getting this application, the Assit. Engineer, Electrical Section, Angamaly inspected the premises and observed that there are 4 Nos of other industrial units, are functioning with in premises owned by the complainant and the properties are owned by him and his wife, as shown in the sketch attached as Exhibit: R (2) and namely as follows;

(1). M/S.Good Look, (2).M/S.Sandra Performs, (3).M/S.Ess Ess Pet, (4).M/S.Regent Venture.

Among these 4 industrial units, the complainant is the registered owner of 3 units and his wife is the registered consumer of the 4<sup>th</sup> unit.

(3). As there are 4 Nos. of industrial units functioning in the same compound of the complainant and his wife and when the party has requested for power allocation for a 5<sup>th</sup> unit in the same premise, the 2<sup>nd</sup> respondent sought a higher level direction in the matter, through the Executive Engineer, Perumbavoor vide letter dated 03.12.2012, which is marked as Exhibit- R-3. The Deputy Chief Engineer (DCE), Electrical Circle, Perumbavoor has directed the 2<sup>nd</sup> respondent, through the Executive Engineer vide letter dated 03.04.2013 that the party may be advised to avail a HT connection by clubbing all the existing LT connections together. This communication of the Deputy Chief Engineer is marked as Exhibit-R 4.

(4). The complainant has filed a complaint before the Hon Consumer Grievance Redressal Forum (CGRF), Ernakulum for getting connection. The Forum has dismissed the petition vide order No: CGRF-CR/Comp: 5/2013-13/dated 04.07.2013.

**Analysis and Findings: -**

The Hearing of the case was conducted in my chamber at Edappally, Kochi on 25.09.2013. Sri. Julian Xavier, the learned Advocate and Sri. Johny Thomas represented the appellant's side

and Sri. N.S. Indrasenan, AEE, KSEB, Angamaly, appeared for the respondent. On perusing the Petition, the counter statement of the Respondent, the documents submitted, the contentions in the Hearings and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

**1.1.** The cause for the grievance is that, the respondent has declined to grant power allocation to the complainant's proposed new industrial Firm, by relying on a letter issued by the Deputy Chief Engineer, Perumbavoor, stating that the party has to avail a HT connection clubbing the present application for power connection, with those 4 Nos. of existing other Firms, alleged to be operated under the same consumer (appellant) and which was working in close vicinity. This direction is seen issued relying on Clause 21(7) (f) of the KSEB T & C of Supply, 2005.

But on verifying the documents filed, it is seen that the appellant is only a partner in some of the units. As per the DCE, the application for a new LT industrial connection in a premise, where there existed already 4 Nos. of other related industrial electric service connections, which ultimately leads to the manufacture of the final product of 'bottles', has to be regarded as a single entity. He is seen to have directed the respondent to advise the party to avail a HT connection by clubbing all the LT units. But according to the CGRF, giving supply to the same premises with the same owner and one tariff, tantamount to the violation of Clause 21(7) (f) of the KSEB T & C of Supply, 2005, and hence not admissible.

**1.2** *The question to be decided is whether the CGRF order, denying the request of the appellant to provide a new electric connection, as it will be violating Regulation 21(7) (f) of KSEB T & C of supply, 2005, or the DCE's direction that a HT connection has to be taken by the applicant for new connection, has any sanctity as per rules?.*

**1.3.** In this case, firstly whether there is any case of more than one connection effected in the same premises, for the same purpose and tariff, for the appellant has to be examined first. It is seen that the appellant and his partners run 4 Nos. of separate industrial units, in a compound owned by the appellant, which is located in an Industrial area. The new electric connection is applied for the adjacent compound purchased by him. On perusing the documents submitted by the appellant, it is noted that 3 Nos. Firms are under partnership and only one firm is under the sole proprietorship of the appellant and the statuses in these units are as follows:

1. ESS ESS PET – 4 partners – Appellant hold 40% share
2. Sandra Preforms – Appellant's proprietorship
3. Regent Venture – 2 partners – Appellant's wife hold 70% share
4. Good Luck Preforms – appellant and wife together hold 60% share.

**1.4.** All these units belong to the Appellant and others, including his wife, as partners. More over, these industrial Units are having separate sale tax and local authority registration. The appellant's contention is that his new industrial unit is absolutely independent from the other four industrial units and it is not legally binding to avail a single HT connection for all, since these four units belong to different managements with different registrations.

**1.5.** The Regulation, "21(7) of the KSEB T & C of Supply, 2005, states as follows;

A service connection shall be treated as one obtained by malpractice/misrepresentation with or without the connivance of the officers/staff of the Board if, .....

(f) More than one connection is effected in a premise for the same purpose under the same tariff except in the case of independent domestic connection with separate entrance or for a continuous process in production of a single finished product.

**1.6.** The rule was created, I believe, is to safeguard the Licensees from those consumers taking multiple connections in a premise, where the actual electric Power demand is high and which necessitates the installation of a suitable Transformer and erection of HT electric Lines etc. On other hand, if the total power is subdivided into small individual units, requiring less power for each Unit, the party can escape from the liabilities of Transformer and its accessories. That is to say, to prevent any consumers with malafide intention from circumventing the stipulated rules, such a regulation was framed.

**1.7.** In this case, the 3 Nos. of existing electrical connections stand in the name of the appellant under LT IV- industrial tariff and the registered owner of the fourth connection is Smt. Sajini Johny, the wife of the appellant. All these connections were seen obtained in the year 2005, 2006, 2007 and 2009. The nature of production in these Units is the Raw product needed for the final product of plastic bottles (Preforms). The 5<sup>th</sup> electric connection applied for (under dispute) is sought in the name of the appellant and its nature of purpose is for the production of bottles, for which the raw material is the product of other 4 units. Hence the apprehension expressed by the DCE and the respondent, in such a scenario, cannot be find fault with. Hence, the pray for compensation is not found reasonable.

**1.8.** But the Regulation 21(7), does not prohibit to give a new connections where it is sought for. The Rule empowers the Licensee to initiate steps, only if it is detected that the Consumer has obtained the electric connection by malpractice/misrepresenting to the KSEB, including the detection of multiple Units for the same end purpose and the consumer has deceived or misrepresented to the Licensee, while taking the said connections.

In this case, since the Power connection applied for, has not been provided to the party so far, the Licensee cannot invoke Reg. 21(7) of KSEB T & C of Supply, 2005, in anticipation that it will violate Clause 21(7). At best, the Licensee can give a caution to the consumer about the rules prevailing and if it is found misused on a latter date, for such type of connections. Hence I am of the view that the CGRF order is not justifiable and has to be set aside.

**1.9.** The Deputy Chief Engineer has suggested a HT connection covering all the 5 units (4 old +1new) and the proposal seems to be technically feasible and offers a more reliable electric supply to the to the consumer and also beneficial to the Distribution system of the Licensee. The DCE is seen to have asked the respondent to advise the consumer the pros and cons of a HT connection and the multiple LT connections in its place. There is no harm in intimating the party the rules in force in advance and the consequences to be faced, if it is found violated in future, for such type of multiple connections in a premise so as to take a considered decision.

**1.10.** The respondent has issued already 4 Nos. of electric connections to the appellant and has not raised such allegation over the same. Therefore, the Licensee cannot simply deny a 5<sup>th</sup> electric service connection merely on ground of suspicion, but has to be established, for which the respondent has to inspect, record the irregularities or anomalies noticed and then issue notice under the appropriate rules and proceed as contemplated under the Law .

In such a case, if the consumer wants a new LT connection, the Licensee is bound to provide the same. The Licensee can initiate steps later, if it is detected that the consumer has misused or has misrepresented to KSEB, to obtain the said electric Connections and thus have violated the relevant Clause of the Electricity Act, 2003 or the Rules or Regulations, made there under, as the case may be.

**1.11.** The new electric connection which was applied for, is requested in the near by property purchased by him, may be lying close to the existing property of the appellant. Hence it is clear that the 'premises' of the existing four electric connections marked in the sketch, in the papers submitted to KSEB while registering them and the present premise is not one and the same but are different. This point suggests that the KSEB cannot compel the appellant to go for a HT connection when his Power demand for the new connection is less than 100 KVA. In brief, I feel the respondent ought to have released the electric connection applied for.

**DECISION :-**

From the analysis done and the findings and conclusions arrived at, I take the following decision.

The decision of the Respondent to insist the appellant to club all his 5 industrial Units (4 old +1-new) in the Angamally Industrial area, and to take a HT connection for the whole including his new connection, is found as not justifiable. Hence the Respondent is directed to initiate urgent steps, to provide the electric connection as applied by the appellant, after collecting the required fees and observing the rules in force.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed to the extent ordered and is disposed of accordingly. The related CGRF order vide No. CGRF-CR/Comp. 05/2013-14 dated 04.07.2013 is set aside. No order on costs. Dated the 4<sup>th</sup> of November, 2013.

Electricity Ombudsman.

**Ref. No. P / 396/ 2013/ 2034 / Dated 4.11.2013.**

Forwarded to: 1). Sri. K P Johny,  
M/S.Sajo Industries Annex, Maikkad,  
Angamaly, Ernakulum-683 589.  
2). The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Angamaly, Ernakulum (DT).

Copy to: - 1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.  
2). The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.  
3). The Chairperson, Consumer Grievance Redressal Forum, KSEB,  
Power House Buildings, Ernakulum-682 018.