

**BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Present: Shri. T.M.Manoharan, Chairman
Shri. P. Parameswaran, Member
Shri. Mathew George, Member

Dated: 06/02/2014

Petition O.P. No.26/13

In the matter of

The harassment of Consumers by KSEB, including collection of huge amounts as penal charges, in the pretext of Sec. 126 of the Electricity Act 2003, due to the lack of clarity in jurisdiction of the licensee and Electrical Inspectorate, and non jurisdiction of CGRF and Ombudsman in the matter relating to Sec. 126 of the Electricity Act 2003. 'Illegal and Unauthorised Disconnection' of supply without giving statutory period for remitting the Penal Charges or filing Appeal.

Sri.Shaji Sabastian ,
Electricity Committee Convenor, KSSIA, Ernakulam Petitioner

1. The Secretary,K.S.E.B. Vyduthi Bhavanam,
Pattom, Trivandrum.
2. The Chairman, K.S.E.B. Vyduthi Bhavanam,
Pattom, Trivandrum Respondents

1. In the Petition filed by Sri Shaji Sebastian on 17.7.2013 the following matters as quoted in sub-paragraphs (1) to (23) were submitted before the Commission.

(1) With the Electricity Act 2003, the authorities of Electrical Inspectors have been enhanced in the matters relating to safety, especially with regard to the energisation of new/ additional electrical installations. For energising new LT installations as well as additional installations in LT, the completion report/ test certificates signed by a licensed electrical contractor is made mandatory. The requirement of inspection by the licensee is not compulsory and the licensee is permitted to use the data filed by the consumer included in the test certificates, as the required information for their records. For energising HT premises, and

additions in HT premises, the inspection and approval of Electrical Inspectorate is made mandatory. As in case of LT, the formality with the Licensee is ending up with a Completion Report/ Test Certificates signed by a contractor submitted along with the approval of Electrical Inspectorate.

- (2) In addition to the matters relating to safety, the Electricity Act, 1910 had entrusted the Electrical Inspectorate with the authority to look into the matters in relation to the 'disputes, difference, accuracy of meters, and finally the disconnection of Electric Supply'. At present, the above referred jurisdiction is shifted from Electrical Inspectorate to CGRF and Ombudsman, but due to the lack of clarity, or in the pretence of lack of clarity, there are several incidents in which the consumer is being made to run due to the 'illegal and unauthorised disconnection of Electric supply' by KSEB employees. The statutory power enjoyed by Electrical Inspectorate were shifted from them to CGRF, Ombudsman, Assessing Officer, Authorised Officer, etc., who were supposed to execute their powers and responsibilities as per the regulations formulated by respective Regulatory Commissions under their supervision, control, and monitoring with occasional guidelines and directions.*
- (3) Although the intention of Act 2003 was to reduce the suffering of the consumer, and to enhance the harmonious relationship with the licensees, the faith of the consumer has hit rock bottom and the employees of the licensees are bundled with exhaustive powers and free hand for harassing the consumers. It is quite common for CGRF, keeping a complaint filed by a consumer without taking any decision or direction to the Board not to have coercive steps till hearing and disposal of the petition. The consumer is barred from approaching other legal forums and authorities like Ombudsman, CDRF, Civil Courts, KSERC, etc. while the complaint is pending before CGRF. Approaching Hon. High Court is generally ending up with a direction for disposing the complaint within a specific period of time by CGRF. It is also difficult for a common man to have Writ Petitions filed before Hon. High Court every time for getting justice.*
- (4) After the Order of Hon. Supreme Court in the case Seetharam Mills, elaborating Sec. 126 of the Act and its jurisdiction, it became a thorn on the side of the hapless consumer, further adding to his miseries. The Board officers indiscriminately started adding Sec. 126 in all their Site Mahazers, Penal Bills, and Demand Notices, so that the CGRF will not interfere after seeing 'Section 126'. It is quite normal and natural to have some loads added or connected to the system in almost all commercial and industrial installations having two part tariff. There are also the chances of minor extensions in every installation which can be located by examining the installation thoroughly and comparing it with the original Completion Report. Other than directing the consumer to regularise the same by submitting proper Completion Report through a contractor, or to disconnect the same, a consumer does not know on what authority the penalty is being imposed and in certain cases the penalty being continued.*

(5) For the purpose of calculating the penalty for additional loads, in LT and HT premises, the Board is depending on the condition 51(5) of the Terms and Conditions of the Supply, 2005. In the said provision, it is provided that, the loads connected in excess of the connected load specified in the agreement shall be treated as a part of the unauthorised MD for charging penalty. It is submitted that the aforesaid provision is not enforceable as it is against the provisions contained in Supply Code. Thus, in effect, Regulation 51(5) is altering the definitions of the expression 'Connected Load' as contained in Supply Code, which is not permissible under law. The Regulation 2(1) defines Connected Load which reads as follows "Connected Load" means the sum of rated capacities in terms of KW or KVA of all connected energy consuming devices in the consumer's installation..... In case of HT and EHT connections, the contract demand shall be treated as the connected load'. Subsequent to the above, in the order of the Commission DP 84. The Commission was pleased to extend the same for LT consumers having TOD facility as elaborated in the paragraph 3.1.3 of the Order DP 84 (Encl 1). The Commission was kind enough to elaborate the 'Contract Demand' and 'Connected Load' and its applicability as 'When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence, no case is made out against the principle of linkage of 'Contract Demand' to 'Connected Load' of LT Industrial Consumers opting for Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers'. Thus, it is evident that in case of HT and LT consumers having TOD metering, the Contract Demand shall be treated as the Connected Load for all the purposes relating to the supply of energy. In other words, the first part of the definition, i.e., the first sentence in clause 2(1) is not applicable to TOD consumers. Therefore, the conditions stipulated in 'condition 51(5)' of the Terms and Conditions of the Supply, is in contrary to the definition of Connected Load as contained in Regulation 2(1) of the Supply Code. Since the Supply Code is being a subordinate legislation, and Terms and Conditions being only a set of conditions, when there is a conflict between the said regulation and the conditions, the subordinate legislation will prevail. Therefore, the condition 51(5) in Terms and Conditions of Supply is unenforceable.

(6) The Condition 26 'Extensions, Alterations and Renovation of Installations' in KSEB Terms and Conditions of Supply, 2005 clearly explains the procedure and formalities for adding new load and modifications. It also clearly elaborates 'A test report signed by a licensed wiring contractor should also be produced by the consumer along with his application for extension and alteration. The consumer should remit the testing fee. Failure to give such intimation can disrupt the supply system and will render the supply liable to be summarily discontinued'. The Clause 51(5), Para 1 is also very clear in procedures in the case of unauthorised

loads as 'In case of HT and EHT consumers the unauthorised additional load shall be got disconnected by the consumer within twenty-four hours of detection of the unauthorised load by the Board's officer or take action to regularise the unauthorised additional load. A notice to this effect shall be issued to the consumer by the Board's officer immediately on detection of the unauthorised load. If the consumer fails to disconnect the unauthorised load within the time stipulated, the power to the premises shall be disconnected after the expiry of twenty-four hours'. But the 2nd Para 'As per agreement, change in installation should be with the permission of the KSE Board. Hence loads connected in excess of the connected load specified in the agreement shall be the additional unauthorised load and will be treated as unauthorised MD for charging penalty', will become infectious as elaborated in this petition Para 13. This clearly shows that if unauthorised load is detected, the Assessing Officer can give an immediate notice of disconnection of that specific load and no penalisation in this regard is possible.

- (7) The Clause 43(4) and 31(1) of CEA, Measures Relating to Safety and Electric Supply Regulations, 2010, is very clear in defining the procedure for addition or alteration to the installation by the 'owner' of any installation. The Clause 43(4) 'The owner of any installation of voltage exceeding 650V who makes any addition or alteration to his installation shall not connect to the supply his apparatus or electric supply lines, comprising the said alterations or additions unless and until such alteration or addition has been approved in writing by the Electrical Inspector.' This clearly shows that the statutory requirement for energising LT additions is only the approval from Electrical Inspectorate. KSEB is not having any tariff loss because the tariff is two part, and their fixed charge is based on KVA maximum demand. In the order DP 84/2010 of KSERC , it is stated that 'When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence no case is made out against the principle of linkage of 'Contract demand' to 'Connected Load' of LT Industrial Consumers opting for Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers.' This clearly shows that no case can be made out against the principle of linkage of 'Contract Demand' to 'Connected Load'. Similarly, the clause 31(1) of CEA Regulation 'Upon receipt of an application for a new or additional supply of electricity and before connecting the supply or reconnecting the same after a period of six months, the supplier shall either test the installation himself or accept the test results submitted by the consumer when the same has been duly signed by the licensed Electrical Contractor.' There are also incidents in which the consumers extending the application, along with the approval of Electrical Inspectorate, and KSEB have not bothered to do the inspection or enhance the supply.

- (8) *The Tariff orders of the Commission are very clear in permitting KSEB to collect Penal Charges for excess usage of KVA above the Contract Demand. The Penalisation varies like 1.5 times, 2 times, and even 3 times during power restriction periods. In certain times, the excess usage is also being permitted up to 30% of the contracted load in different time zones. To have excess demand, the requirement and connection of Additional Load is a prerequisite. As elaborated earlier, if the consumer is connecting this excess Load without application and approval of Electrical Inspectorate, the Board can always direct the consumer to disconnect the portion of the Load so connected. The Board can never have a separate punishment other than the disconnection by way of any kind of penalty, because nobody can be punished or penalised 2 times for the same crime. Since the Board is getting the reasonable payment as tariff as approved by KSERC, and also the penal charges as stipulated by KSERC, the Board cannot extend any further collection of charges in anyway whatsoever it may be.*
- (9) *Definition of the premises in the Electricity Act 2003 as per Sec. 2(51) is, "premises" includes any land, building or structure'. But in Supply Code Clause 2(ee), after the amendment on 24/10/2008, the definition of the premises is, "premises" includes any land, building or structure or part of it, situated in an immovable property, details of which have been specified in the applications or agreements prescribed for grant of electric connection'. The enlargement of the specification above the stipulation in the Act constitutes to the harassment of the consumer in many ways. The enlarged portion is, 'or part of it, situated in an immovable property, details of which have been specified in the applications or agreements prescribed for grant of electric connection'. If a domestic consumer extends his line from his house to the adjacent cow shed or a small workshop extends the Supply for drilling or welding purpose from his industrial shed to outside, it will become an unauthorised extension, and an opportunity for the licensee to harass the consumers.*
- (10) *Most of the cases in relation to unauthorised extension have occurred after the enlargement of the definition of the premises as highlighted above. The extension outside the premises is restricted to prevent accidents. For electrical accidents, the consumer along with the licensed contractor or the authorised persons should have liability. The extension should be restricted only if the line is extended outside the compound wall, fencing or the areas owned by the consumer. The above referred enlargement will prevent a consumer even from extending a connection from the available plug points.*
- (11) *It is true that the consumer should not make any alteration or addition or substitution or transfer which may either increase the obligation or cause any damage to the electrical system of the supplier. The increase in obligation in case of TOD consumer is measured in KVA Maximum Demand and when it exceeds the contracted demand, a consumer is liable to pay penalty. This penalty is being*

decided by the Hon. Commission and varies from 1.5 times to 3 times depending on the availability of the supply and power restrictions. Once penal charges are collected for an offence, there cannot be another punishment whatsoever it may be in any other way. In short, if the licensee insists for metering and monitoring the input supply to a consumer, they can easily locate the excess usage and also find out the garbage being put back into the system of the licensee by the consumer. Suitable penal provisions can be included in the tariff orders in due course for both excess usage and for misuse of energy by connecting gadgets causing power system disturbance and damage.

- (12) *As per amendment of Sec. 126(3) of the Act, w.e.f 15/6/2007, 'the reasonable opportunity of hearing' was made mandatory. Earlier, it was 'the assessing officer, who may after affording reasonable opportunity of hearing to such person', but at present, it is 'the assessing officer, who shall after affording reasonable opportunity of hearing to such person'. The change of "may" with "shall" as an amendment in the Act. Clearly proves the requirement of proper hearing. When the opportunity of personal hearing is mandatory, it is the bound duty of the Assessing Officer to provide with the same to the consumer. Instead of acknowledging and accepting the consumer, and creating a sound cordial environment, normally, the Assessing Officers is acting as superpowers and most of the time, they are questioning the consumer and the poor consumer will be forced to reply for the same which will be recorded by the Assessing Officer as per his will and wish. After that, the result of the same need not be explained because it will give a clear opportunity to the Assessing Officer to rectify any defects in Site Mahazer, Provisional Bill, the Provisional Assessment Order and finally the Final Order confirming the same penalised amount.*
- (13) *Instead of giving an opportunity of hearing and recording the statement with a copy to the consumer, the Assessing Officers generally deny the basic right of the consumer to adduce the evidence properly during the first opportunity before the appropriate forum. Without recording the statement, and examining the witnesses, the Assessing Officer can never issue an order giving reasons and with discussion of the evidence on record. The Assessing Officer should deliberate about merit and adjudge it before confirming, enhancing, reducing, or setting aside the penalty. Then only, the order of the Assessing Officer can be treated as 'a speaking order'. The 'reasonable opportunity of hearing' is the personal hearing and first opportunity of the consumer for supplementing the detailed evidence. The consumer should get an opportunity for proper recording of the statements, cross-examination of witness pointing out demeanour of those witnesses with personal appeal to the Assessing Officer, to appreciate the merit and weakness of the opposite party. The consumer will not get this opportunity before the Appellate Authority because at that stage, the Authority is merely to take his decision from the records before him. The personal hearing is intended to be a necessary requirement for the concept of reasonable opportunity to show*

cause only at the stage when evidence is to be led, cross- examination of the witness is to be done, and the demeanour of the witness is to be watched, ie., before Assessing Officer and not upon the appeal with Appellate Authority.

- (14) *The Commission may formulate procedures and formalities in details complying with Sec. 50 of the Act and Removal of Difficulty Order 2005, detailing the recordings of hearing, witness examination and cross examination. The Commission may also formulate procedures confirming the basic right of the consumer for 'reasonable opportunity of hearing.' The opportunity available for a consumer to defend the penalisation as per Sec.126 is very limited. Most of the time, since the Assessing Officer is the lowest rank Officer of the licensee , he is always restricted by higher authorities and forced to take decision as per the direction of the higher Officers. For filing an appeal before Appellate Authority, half of the assessed amount is to be remitted. Most of the time this amount will be very huge and unaffordable. If the case is not properly presented and recorded there is no further opportunity for a consumer to have a relief.*
- (15) *The procedures for assessing the penalty by the Commission is upon the Order of petition DP 75, filed by the same petitioner Shri.Shaji Sebastian on behalf of KSSIA. The same is challenged in OP 15 by KSEB and the petition is admitted by Hon. Commission. The hearing is going on. At present only KSSIA is representing as defended. After challenging the proceedings and directions in DP 75 now Assessing Officers are issuing provisional bill as per the calculations made according to their 'whims and fancies'. Even though Hon. High Court have given directions in several cases to have the calculations based only on DP 75, the Assessing Officers are not calculating the penal charges as per DP75, and Appellate Authority is also not correcting it. The consumer is burdened unnecessarily.*
- (16) *The Order DP75 is 'The difference between the average monthly energy consumption for last 12 normal months before the additional unauthorized load is connected and the monthly energy consumption after the unauthorized load is connected shall be used for charging the penalty'. The prayer of KSEB in OP15 after revision of the petition by KSEB is 'Considering the facts submitted at the time of hearing, it is prayed that in the case of unauthorized additional load connected by a consumer, the assessing officer may be permitted to take appropriate decision independently as envisaged in the Act, based on the merits of the case and to clarify that the Order dated 19-01-2010 in DP 75/2009 shall not be made applicable to all cases where unauthorized loads are detected'. The KSEB was also vehemently emphasising in all hearings that they are not for penal charges or they are not seeing the collection of penal charges as an income.*
- (17) *The Commission was kind and favourable to all LT Industrial consumers by facilitating the facility of TOD system from January 2013 onwards. The LT, TOD*

was introduced for LT Industrial consumers as 'Optional Demand Based Tariff' from 2010 onwards. Our Association KSSIA has arranged the TOD meter from L & T at a reduced rate and KSEB was kind enough to extend its testing at various labs especially at Angamaly testing lab. A lot of Industrial Consumers, especially in Ernakulam District Industrial Belt's 'Kalamassery, Edayar, Aluva, Angamaly, Kalady and Perumbavoor', using this opportunity and facility have got converted to TOD tariff installing TOD meter and executing the supplementary agreement. While this system was going smoothly, KSEB themselves have taken up the responsibility of the conversion of the meters with TOD meters and they have even released several orders facilitating the same so that the conversion will be effected before January, 2013.

- (18) *KSEB was also kind enough to introduce a voluntary disclosure scheme for additional loads from December 15th of 2012 to January 15th of 2012 to facilitate any problems which may arise during the transfer of metering from 'connected load based tariff' to 'maximum demand based tariff' and to accommodate all consumers comfortably in TOD system. Even though the employees of KSEB have put their maximum effort for the conversion, they were not able to do the same in the stipulated period. The problem mainly attributes to the non availability of sufficient number of good quality TOD meters which was earlier provided by the consumers when the TOD scheme was optional. KSEB was also kind enough to extend the voluntary disclosure period for one more month and up to February. Even now, KSEB was not able to convert all eligible consumers to TOD system. When the situation is remaining the same, KSEB has started large scale inspection through its machinery, 'APTS' and started imposing huge penalty for additional load which the consumers were most of the time in the process of installing to be regularised along with the process of TOD conversion. On objecting the same, the Board officers were telling that the Commission has extended the compulsory implementation of TOD up to 1/9/2013 with a strict warning that, if there is non-compliance, it will attract Sec. 142 of the Electricity Act 2003. Since the above privilege is an exemption given to KSEB by the Commission to cover up the handicaps of KSEB, it cannot be binding to LT IV Industrial consumers who have legitimate expectation of TOD metering from January 2013. Hence the Commission may direct KSEB to consider all LT IV consumers above 20 kW connected load as TOD consumers and may abstain from penalisation towards unauthorised load including disconnection. They may also be directed to expedite the conversion proceedings and to finish off with the same at the earliest.*
- (19) *The Electricity Act seeks to encourage competition with appropriate regulatory intervention. Here, it is true that there is no competition but the requirement of Regulatory intervention is very high. Before the advent of Electricity Act 2003, Supply Code 2005 and Terms and Conditions 2007, the Assessment for unauthorised load was being done as per KSEB 'Conditions of Supply of*

Electrical Energy' and the punishment and penalty for unauthorised additional load was elaborated in Conditions of Supply framed taking into consideration the clause 78, 79 and 49 of the Electricity (Supply) Act, 1948. Since the Board was framing the Conditions of Supply under direct control and supervision of the Government, the penalty for unauthorised load was restricted as multiples of fixed charge only and it varied from 1.5 times to 3 times in various periods. Subsequently, after the arrival of the Regulatory regime, fixing the responsibility of tariff upon Regulators, the concept of proportionate energy charge came into existence. It is pertinent to note that the two part tariff was prevailing in the state for all consumers except domestic even before the Regulatory regime, came into force from 2005 along with Supply Code. The concept in Sec. 126 of the Act is not new and the tariff calculation is also not new. The approach towards unauthorised load got deferred when the legal position, facts, and circumstances were remaining the same, is not conceived by a common consumer.

(20) *Kunnath Paper Mills Pvt. Ltd., is an affected HT I Industrial consumer with Consumer Code 18/34, of Electrical Section, Muthalamaada, who has paid the excess penal demand charge for the excess usage of the Max Demand and in the process of the submission of the completion report with KSEB. During the time of inspection, locating the additional load being connected for the inspection by Electrical Inspectorate, APTS prepared a long site Mahazer imposing heavy penalty. Since there was no other alternative, the consumer approached CGRF Calicut elaborating the details and filed a complaint before CGRF which was admitted on records by CGRF on 29/6/2013. The matter was informed with the Assessing Officer along with the copy of the complaint filed before CGRF and a request for keeping the matter pending for the direction of CGRF. The Assessing Officer, instead of considering the complaint and contacting CGRF for opinion, have rejected the request of the consumer deciding himself that the complaint before CGRF will not be maintainable before CGRF. CGRF in turn kept the complaint pending, even though the consumer requested for an immediate rejection of the same for approaching higher Authorities. If more time is required the CGRF could have given a direction to the Assessing Officer for a stay of further proceedings till a decision by CGRF. A general complaint pointing the above anomaly was given to the Commission by the same complainant Shri.Shaji Sebastian.*

(21) *This particular case is a clear violation of the portion of the clause 2(l), 'In case of HT and EHT connections, the contract demand shall be treated as the connected load' and the portion of the paragraph 3.1.3 of the Order DP 84, 'When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence, no case is made out against the principle of linkage of 'Contract Demand' to 'Connected*

Load' of LT Industrial Consumers opting for Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers'.

- (22) *Since the penalisation imposed is illegal and against the direction of the Hon. Commission, attracting non compliance of the directive as per Sec. 142, and also the huge penal amount, Rs. 1, 96, 96,545/- (Rupees One Crore Ninety Six Lakhs Ninety Six Thousand Five Hundred and Forty Five only), with which the company will be closed down, the Commission may direct KSEB to hold all the proceedings against the consumer till hearing and disposal of this petitions before CGRF and the Commission.*
- (23) *Pyarelal Foams Pvt. Ltd.(Con No.26/4422) is burdened with the liability of misuse of energy for an alleged extension of power in the same premises to the new unit having approval and sanction from Electrical Inspectorate and also having the completion report submitted with KSEB which was confirmed by the Hon. Commission in the Order OP 35. The petition in these regard is pending before the Commission. The Commission may direct KSEB to hold all the proceedings against the consumer till hearing and disposal of this petition and petition and petition filed by Pyarelal Foams Pvt. Ltd*

2. In view of the above averments, the Petitioner made the following prayers.

- (1) *The Commission may suitably amend clauses relating to unauthorised load and misuse of energy in Supply Code and Terms and Conditions, taking into consideration the CEA Regulation, 2010 and extended compulsory implementation of TOD Tariff to LT IV consumers.*
- (2) *The Commission may direct KSEB to have required changes in the LT and HT agreements facilitating the above requirements.*
- (3) *The Commission may impose the burden of 'strict proof principle' from the side of KSEB for enforcing an action under Sec. 126 with broader guidelines in Supply Code.*
- (4) *The Commission may direct KSEB to have a proper recording of the statements given by the consumer before Assessing Officers including witness examination and cross examination in details complying with Sec. 126 of the Electricity Act 2003 and to subject the meter or other gadgets to the test of correctness by the concerned Electrical Inspectorate.*
- (5) *The Commission may direct KSEB to strictly comply with the portion of the Supply Code 2(l), 'In case of HT and EHT connections, the contract demand shall be treated as the connected load' and consider deletion of the condition 51(5) of the Terms and Conditions of the Supply 2005 as it is in violation of the provisions of Supply Code which being subordinate legislation.*
- (6) *The Commission may direct KSEB to strictly comply with the portion of the paragraph 3.1.3 of the Order DP 84, 'When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract*

Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence, no case is made out against the principle of linkage of 'Contract Demand' to 'Connected Load' of LT Industrial Consumers opting for Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers'.

- (7) The Commission may direct KSEB to consider all loads and extensions not included in the submitted Completion Report only as additional loads, and to direct the consumer for submission of the required Completion Report and to start with disconnection procedure after giving notice, specifying the time limit.*
- (8) The Commission, 'taking into consideration the time extension given to KSEB for the implementation of LT, TOD, as an extended courtesy', may direct KSEB not to have any harassment of LT consumers in the matter related to the Connected Load or Additional Load till the implementation of TOD metering as directed by the Hon. Commission.*
- (9) The Commission may consider the possibility of the installation of the Harmonic Analyser having recording facilities fitted in the metering equipment of the licensees, mandatory for all electrical connections above a particular Contract Demand, say, 500 KVA.*
- (10) The Commission may direct KSEB to hold up the proceedings against all consumers impleading in this petition as affected party/ witness.*
- (11) The Commission may direct KSEB not to disconnect the supply while a petition is pending before the Commission because the petition before Commission can be considered only as a bona fide dispute and a person approaching the Commission will never have 'conscious, deliberate disregard for legal obligation', ie., he is not a wilful defaulter.*

3. The petitioner has also submitted the following interim prayer.

The Commission may direct KSEB to keep in abeyance all proceedings against 'M/s Kunnath Paper Mill and Pyarelal Foams' till hearing and disposal of this petition and also the petition OP 15 filed by KSEB.

4. In the counter statement the K.S.E.Board submitted the facts as quoted in sub paragraphs (1) to (30) hereunder.

(1) This petitioner has no locus standi to file this petition. As per regulation 22 under chapter III of KSERC (Conduct of Business) Regulations, 2003 as amended on 8.12.2010, all proceedings before the Commission shall be based on the petitions as stated therein. Proceedings may be initiated under these Regulations in one of the following manners:-

- 1) Suo motu by the Commission*

- 2) *Upon a petition filed by the Board or a licensee,*
 - 3) *Upon a petition filed by the Government of Kerala*
 - 4) *Upon a petition filed by an affected party*
- (2) *Provided further that the proceedings under (a), (b), (c) and (d) above shall pertain to matters relating to the powers and functions of the Commission as assigned to it under Section 86 and other provisions of the Act.”*
- (3) *The petitioner in the present petition, Sri. Shaji Sebastian has not claimed that he is an affected party nor can be stated to be an affected party in the matter. In case the petitioner claims to represent the Kerala State Small Industries Association (KSSIA) and the Association claims to be an affected party then the affidavit claiming that the petitioner is authorized on behalf of the Association has to form part of Form 2 stipulated as per Regulation 24(5). However, such an affidavit is conspicuously absent in the present petition.*
- (4) *The petitioner has claimed that he is representing the district unit of KSSIA. Even though the petitioner has not declared which district unit of KSSIA is being represented, it appears that the claim is related to the Ernakulam district. However, the petitioner has not pointed out any small industrial consumer in Ernakulam district being affected by the alleged lack of clarity of jurisdiction, but surprisingly has sought impleading two industrial consumers from Palakkad district.*
- (5) *The interim prayer of the petitioner to “direct KSEB to keep in abeyance all proceedings against ‘M/s Kunnath Paper Mill and Pyarelal Foarms’ till hearing and disposal of this petition” unveils the real intention of the petitioner. Apparently the intention of the petitioner is to purposefully drag the Commission with mischievous intentions into the proceedings initiated under section 126 of the Act, which the Commission has already declined in petition No. OP 35 of 2012.*
- (6) *The petitioner has filed the present petition without being an affected party and is trying to bring in the very same issues which the Commission has already disposed in OP 35 of 2012, which is a clear case of abuse of the process of law. Thus the respondent submits that the petition may be dismissed as not maintainable.*
- (7) *None of the functions enumerated under Section 86 of the Act enables proceedings under the present petition. Also, Section 126 of the Act does not envisage any functions to be discharged by the Commission. The function of the Commission prescribed under Section 127 relates to specifying the fees while a consumer files an appeal against an assessment under Section 126 to the appellate authority.*
- (8) *The petitioner relies on an order of the Ministry of Power dated 8.6.2005 for seeking amendments in the Supply Code notified by the Commission. It may be noted that the said order deals with including the methodology in case of*

detection of theft, procedures for disconnection of supply and removing meter, electric line, electric plant etc in case of theft or unauthorized use of electricity and measures for prevention of theft, unauthorized use of electricity etc., in the Electricity Supply Code to be notified under Section 50 of the Act. The petitioner is very well aware of the fact that Section 50 of the Act has been amended by the Parliament by Act No.26 of 2007 w.e.f 15.06.2007. By this amendment the whole Section 50 has been replaced. After the amendment in 2007, the order of the Central Government vide order No.S.O 790(E) dated 8/6/2005 has no place in the Act.

- (9) *From a reading of Section 50, it is clear that, under the Electricity Supply Code provisions are to be made for recovery of electricity charges, billing of electricity charges, disconnection etc. and measures for preventing tampering, distress or damage to the electrical plant or line or meter etc. But this provision does not give power to the State Electricity Regulatory Commissions to make rules or regulations related to assessment of charges for “unauthorized use of electricity” under Section 126 or action to be taken against those committing ‘offences’ under Sections 135 to 140 of the Electricity Act, 2003. Clearly no regulation can be framed nor amended based on petitions filed and thus present petition is not maintainable under law.*
- (10) *Even the jurisdiction of civil courts has been barred by Section 145 of the Act. It precludes entertaining petitions against assessments made under Section 126 and final order of the appellate authority. The State Commission finds no place in the statute to interfere with the procedure initiated under Section 126 of the Act. The State Commission has no power to sit upon an order made under Section 126 or 127 of the Act.*
- (11) *Neither the Commission has jurisdiction in the matter nor the petitioner is an affected party and the cause of action sought by the petitioner is not allowed and thus the petition is not maintainable under law and is liable to be dismissed.*
- (12) *The petitioner failed to point out a cause of action to file this petition as an affected party. He further failed to point out which provisions of the “K.S.E Board Terms & Conditions of Supply” that are inconsistent with the provisions of the CEA (Measures relating to Safety and Electricity Supply) Regulations 2010’ and which are required to be changed or deleted. The rules lay down by Government of India requires a well laid out procedure for notification of regulations and amendments thereon and cannot be met through petitions filed before the Commission.*
- (13) *The Commission has already initiated steps to replace the existing Supply Code and Terms & Conditions of Supply with a new and elaborate Supply Code and the petitioner as well as the KSSIA has made elaborate suggestions on the draft of the regulation. Thus the present petition is not a genuine one or a well meaning effort to cure defects in the regulations and is only a misconceived*

attempt to unnecessarily drag the Commission into certain unwarranted disputes created by the petitioner on behalf of two consumers.

- (14) *Government of Kerala has framed the rules regarding powers and functions of electrical inspectors and notified the same on 20.5.2013 as "Kerala Chief Electrical Inspector and Electrical Inspectors (Power and Functions) Rules, 2013". The petitioner cannot stipulate the powers and functions of electrical inspectors at his whims and fancies. When appropriate governments are entrusted with the rule making power by the legislature and when the Government makes the rules as per the procedure laid out every one is bound to follow the same. The remedy if any required by the petitioner could be available only through a judicial review and cannot be met through a petition before the Commission. Also, citing certain powers purportedly available to the electrical inspectors under the repealed laws does not have any relevance when the prevailing Act does not confer any such powers to the inspectors.*
- (15) *The contention that KSEB does not have any powers to inspect the consumer premises under the CEA (Measures relating to safety and electric supply) Regulations, 2010 is without any basis in view of regulations 31, 33, 34, 35, 36, 37 and 44 therein.*
- (16) *Since the Consumer Grievance Redressal Forum (C.G.R.F) is manned by the employees of the K.S.E Board, they cannot act independently is not true and against facts. The petitioner could not point out a case where the C.G.R.F has acted otherwise. The Ombudsman system is a creation of the Act. The members of the Ombudsman are appointed by the State Commission. If a consumer is not satisfied by the decision of the C.G.R.F, the Act enables the consumer to approach Ombudsman for getting his grievance redressed of. The allegation that the C.G.R.F has no power to give interim orders is not true. Clause 9(3) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2005 enables the CGRF to pass interim orders pending final disposal of the case. The allegation that the KSE Board is harassing consumer and the consumers are forced to succumb to the whims and fancies of the KSE Board are against facts.*
- (17) *The adverse impact of connecting excess loads and drawing power beyond the Contracted Load or Contracted Demand were brought before various Courts and for a and the need for discouraging and preventing such drawal to maintain the grid discipline and transmission & distribution networks were agreed and upheld. Drawal of power by a consumer cannot be controlled by a licensee. Only the consumer is able to control his consumption within the Contracted Load. Unless deterrent measures as envisaged in the Act under Section 126 is taken consumers would not limit their consumption of power within the Contracted Load.*

- (18) *The licensee is bounded by the agreement to supply power to the consumer up to the agreed connected load. The liability to supply is up to this limit. But, if a consumer connects load in excess of this connected load and draws power beyond this connected load, licensee is not in a position to prevent such a consumer from the overdrawal. Also, the abrupt use of unauthorized additional load in the distribution grid will create imbalance loads in the distribution system which in turn affects the quality of power provided by the licensee to the consumers. Usage of additional load with the permission of the licensee enables to ensure its safety to the consumers also.*
- (19) *Drawal of power in excess of the contracted load or contracted demand comes within the meaning of “unauthorized use of electricity” as envisaged in Section 126, particularly within sub-Section 6(b)(ii). No further clarification is required to understand this position. The demand of the petitioner to avoid actions under Section 126 of the Act in case of drawal of power through unauthorised additional load is against law.*
- (20) *The contention that when unauthorized load is detected only disconnection of the load is required and no assessment is warranted is thus devoid of any merit. The disconnection of the load may become necessary whenever it is found that electrical equipments are connected to the supply without following the procedures envisaged in the CEA Safety Regulations as well as to ensure safety of lines and equipments of the supplier. In cases where it is established that power is consumed unauthorisedly the liability will also follow. Assessment is made after the conclusion of the Assessing Officer that the consumer indulged in unauthorised use of electricity. The Act is very particular that the Assessing Officer shall himself, to the best of his judgment assess the charges payable by a consumer or the person benefited by the unauthorised use of electricity.*
- (21) *The adverse consequences of drawing power by a consumer in excess of the agreed or contracted quantum of power over the distribution system of the licensee and particularly on other consumers/licensees are among the greatest concerns of the electrical industry. The Act hence included deterrent measures to discourage and prevent unauthorised use of electricity.*
- (22) *The requirement of authorisation of the Electrical Inspector for commencing supply to any consumer at a supply voltage above 650 volts is more specifically covered under regulation 44. All the electrical equipments connected as load is to be inspected and tested by the Electrical Inspector or authorised personnel in respect of safety measures. In order to ascertain this requirement, Electrical Inspectorate through the Licensing Board under it has authorised contractors/supervisors for ensuring the safety aspects of the electrical wiring and installations and stipulated certain bench marks for the tests and empowered them to issue test certificates with observed values. These test certificates form part of the application form of effecting supply to consumers or enhancing*

connected loads of consumers of a licensee. Hence in the present case, the petitioner is accepting this statutory requirement of test certificate by Electrical Inspectorate or authorised personnel. A licensee is not only bothered about its financial loss, but is primarily bothered about the inconsistency of the system due to the addition of unauthorised additional loads. Rules and Regulations are framed to avoid such a situation and meant to provide quality and uninterrupted supply to the consumers without causing any damage to the infrastructure of the licensee.

- (23) *Consumption of power through equipments not specified in the agreement for supply even within the premises constitutes “unauthorised use of electricity”. The statutory requirement of permission from the licensee for connecting loads not mentioned in the agreement for supply even within the premises is to ensure safety also. The averment that liability for accidents from extension is limited to the electrical contractor or authorised person is not true. The liability of electrical accidents has been fastened with the KSE Board by various Courts and fora even in cases where the victims were solely responsible for the accidents. For the reason that the Act does not delegate power to the State Commission to make regulations for the safety of consumer installations, the Commission lacks authority to entrust the Electrical Inspector with the supervision of the same.*
- (24) *The Commission lacks authority to prescribe any guidelines or procedure to be followed by the Assessing Officer. The Act itself confer independent authority to the Assessing Officer for assessing the charges payable by the consumer or person benefitted by the unauthorised use of electricity, to the best of his judgment. The functions and duties of the Commission are explicitly specified at the relevant provisions of the Act. But none of these provisions confer a power to the Commission to prescribe rules or regulations or procedures or even guidelines to the assessing officer to be referred while taking actions under Section 126 of the Act.*
- (25) *In the case of introduction of TOD meters to the consumers the Commission already took adequate steps to address the issues related to the same of the petition is untimely and meaningless. KSEB expects to commence TOD billing for industrial consumers having connected load of 20 kW and above within the extended time allowed by the Commission.*
- (26) *The allegation that the assessing officers are not giving opportunities to the consumers for filing their objections against the provisional assessment is wrong. The consumers who are assessed under Section 126 are being given all opportunities as provided in the law. Allegations in the contrary are false and baseless. Also if a consumer has such a complaint he has every right to challenge the final bill and raise his objections before the Appellate Authority. The assessing Officer being a statutory person the apprehension and allegation that he is influenced by the orders of his higher officers is not correct.*

- (27) *This Commission in its order in Petition No.DP 75/2009 prescribed a methodology for the assessment of the penal charges in case of detection of any unauthorised additional load. On implementing the same, field officers of KSEB found certain difficulties and the same were brought to the notice of this Commission through petition No.15/2013. This petition is in the active consideration of the Commission at present. In the meantime, Assessing Officers are following the methodology prescribed by the Commission as far as possible and following the strict compliance of the Act wherever finding difficulty in following this guideline.*
- (28) *The Commission has granted time to implement the TOD metering and billing of LT industrial consumers having connected load 20kW and above up to 1.9.2013 vide letter No.507/CT/KSERC/2012/559 dated 17.5.2013 considering the genuine difficulties faced by KSEB. The responsibility of providing meters to the consumers was taken up by KSEB based on the direction of the Commission only. Already KSEB has taken adequate steps for its smooth implementation w.e.f 1.9.2013 without fail. All the matters related to the implementation of TOD metering and billing have been already taken care of.*
- (29) *The petitioner has failed to prove all allegations made in the petition. Hence the allegations made against KSEB are baseless and attracts action against him. Hence it is once again submitted to dismiss the petition with cost and initiate action against the petitioner for misleading the Commission and purposefully seeking abuse of the provisions of law with vested interests.*
- (30) *The Board is keen and anxious in addressing all the genuine grievances and difficulties, if any, faced by the consumers. KSEB can look into any such difficulties actually experienced by the consumers and is ready to take appropriate action to redress the genuine grievances of the consumers. KSEB is keen to look into any specific cases of harassment, intentional or otherwise, that could be pointed out by the petitioner of KSSIA or any individual consumer and initiate appropriate measures to adequately address all such issues. Also, KSEB is open to providing adequate guidelines to its officers working as assessing officers and appellate authority under Sections 126 and 127 of the Act, as may be found necessary, to empower them in ensuring fair and transparent disposal of cases before them by following adequate procedures for ensuring principles of natural justice as envisaged under the law.*

5. Hearing of Petition

- (1) The petition was heard on 27-08-2013 and 01-10-2013 at the Commission's office at Vellayambalam, Thiruvananthapuram. Though the petitioner presented the petition in detail on the first hearing, he withdrew the Petition before the second hearing by a letter dated 26-09-2013. In the said letter the petitioner stated that 'instead of taking up the Petitions independently or separately, I find that strangers are being inducted in to the petition along with me without my

consent or knowledge .Induction of parties without complying with 'Rules Regulations and Procedures ' is constituting to the "Misjoinder of charges and parties' leading to 'Misrepresentation and Mispleading' , because of which grounds and relief of the original petition is getting deviated and diluted '. The Commission do not approve any of such statements made by the Petitioner in his letter dated 26.9.2013 since the Commission has acted strictly in accordance with the statutory provisions.

- (2) The Commission do not intend to go through the points raised in the petition or rejoinder of the respondent since the Petition has been withdrawn by the Petitioner and the issues do not survive for consideration by the Commission. The Commission notes and records that the respondent KSEB has issued detailed guidelines to be followed during inspection , provisional assessment on detection of unauthorised use of electricity, hearing, final assessment, appeals etc by the Order No:BO(FB)No.2518/2013/ dated 28.11.2013 as per directions of the Commission during the hearing on 1.10.2013 .

6. Orders of the Commission

The Petition is disposed as withdrawn.

Sd/-
P. Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
T.M. Manoharan
Chairman

Approved for issue

Sd/-
Secretary