

BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

O P NO. 33/2013 Dated: 25/02/2014

In the matter of: APTS and Sub Engineer (i/c), Electrical Section, Mala inspected in the premises of MET's School of Engineering and found additional load of 128 kVA, Asst. Engineer, Mala issued provisional assessment bill amounting to Rs. 15,29,238/-. The bill issued by the Asst. Engineer, Electrical Section, Mala appears to be irrational, unreasonable and without any scientific basis.

Petitioner(s) : Dr. Shaju A. Antony
Chairman, MET School of Engineering
Kuruvilassery, Thrissur

Respondents : 1. The Secretary
Kerala State Electricity Board Ltd
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram

2. The Chairman & Managing Director,
Kerala State Electricity Board Ltd
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram

ORDER

1. The Petitioner, Dr. Shaju A. Antony, Chairman, MET School of Engineering ,
Kuruvilassery, Thrissur filed a petition before the Commission against the

provisional assessment order issued by the Sub Engineer i/c of Electrical Section, Mala under Section 126 of the Electricity Act 2003 (hereinafter referred to as the Act). The main contentions in the petition are the following:

“1). MET’s School of Engineering is an HT IV consumer under Electrical Section, Mala with a contract demand of 109KVA. The connected load in the premises was 218.2 KW at the time of availing connection during 7/2007.

2). On 5/6/2013, APTS along with Electrical Section authorities inspected the premises and detected an additional load of 128 KVA. Based on this the Sub Engineer i/c of Electrical Section, Mala being the Assessing Officer issued a provisional assessment bill for Rs. 15,29,238/- under Section 126 of the Electricity Act 2003.

3). The bill consists of two parts:

a. Fixed charge for one year for the additional load of 128 KVA, ie, Rs.12,16,000/-

b. Proportional current charges of Rs. 3,13,283/-

4). KSEB cannot charge the proportional fixed charge since the existing agreement is for 109KVA of Contract Demand. Whenever the Contract Demand has exceeded the limit, KSEB has levied penalty. Proportional current charge can be charged only when the Contract Demand interfere with the metering accuracy. The CT ratio is 10/5 and the meter full load occurs at 192 KVA. The recorded maximum demand of the premises has not exceeded 135 KVA at any time.

5). The bill issued by the Assistant Engineer, Electrical Section, Mala is irrational, un-reasonable, without any scientific basis and against natural justice and violates the provisions of Supply Code”.

2. The Petitioner prayed that the provisional assessment bill for Rs. 15,29,238/- issued under the Section 126 of the Electricity Act 2003 by the Assessing Officer may be stayed and appropriate favourable order may be issued.

3. Notice was issued by the Commission to the Respondents on 15/01/2014 and a hearing was fixed on 18/02/2014 at 11 A.M.
4. The Chief Engineer (Commercial & Tariff), KSEB Ltd, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram filed a written statement of defence on behalf of the respondents on 18.02.14. In the written statement the respondents denied the allegations raised by the Petitioner. Further it was submitted by the Respondents that the petition is not maintainable under the scheme of law in the Act and in accordance with the various decisions of the Hon'ble Appellate Tribunal and Hon'ble Supreme Court. The main contentions of the Respondents in this regard are quoted hereunder.

“a. The present petition is not filed based on any provisions in the Act, 2003 or any provisions contained in the KSERC (Conduct of Business) Regulations.

b. The petition is not maintainable as no petition to redress individual complaint of a consumer can be entertained by the State Commission as there are ample forum to redress grievance of an individual consumer as per Electricity Act, 2003. This position is confirmed in orders of the Hon'ble Apex Court in various petitions as given under:

(i) The Hon'ble Supreme Court in Maharashtra State Electricity Distribution co. Ltd Vs Lloyd's steel Industries Limited (Appeal (civil) 3551 of 2006)

(ii) The Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission Vs Reliance Energy and ors Appeal (Civil) 2846 of 2006.

(iii) The Hon'ble Appellate Tribunal for Electricity in UP Power Corporation Ltd Vs Jagannath Steel (P) Ltd and ors (Appeal No. 153 of 2011)

(iv) The Hon'ble Appellate Tribunal for Electricity in Madhyanchal Vidyut Vitaran Nigam Ltd. And anr Vs Uttarpradesh Electricity Regulatory Commission and anr (appeal no. 165 of 2005)

c. As none of the functions enumerated under Section 86 of the Act enables proceedings under the present petition.

d. Also, Section 126 and 127 of the Act do not envisage any functions to be discharged by the Hon'ble Commission, other than specifying the manner of filing appeal and fees while a consumer files appeal against an assessment under Section 126 of the appellate authority.

e. The present petition is against the provisional assessment order issued under Section 126 of the Act in accordance with the recorded site mahazar based on the site inspection conducted on 05.06.2013 in the premises of the Petitioner. The Assessing Officer was in the process of completing proceedings vide Section 126 of the Act.

f. The jurisdiction of the Assessing authority is exclusive and interfering into its domain in any manner is against the Act. Accordingly, no jurisdiction has been accorded to the Hon'ble Commission to enter into the domain of the Assessing Officer. The Apex Court in the case of "Seetharam Rice Mills" (2010(4)KHC 1) case has declared that "the High Court transgressed its jurisdictional limitation while travelling into the exclusive domain of the Assessing Officer relating to passing an order of assessment and determining the factual controversy of a case." The Hon'ble Supreme Court has held that Sections 126 and 127 of the Act is a Code in itself having detailed provisions for inspection, provisional assessment, hearing of party, final assessment, appeal and disposal.

g. 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. Also it cannot confer upon itself a power which the Act itself does not intend.

h. In civil appeal No. 5466 of 2012, the Hon'ble Supreme Court has upheld the provision and has ruled that no court or forum other than that specified in the Electricity Act, 2003 has jurisdiction in entertaining a complaint against the proceedings under Section 126 and 135 of the Act".

5. Respondents also submitted that the inspection conducted by Anti power theft Squad on 5/6/13 along with Sub Engineer i/c of the Electrical Section, Mala revealed that the consumer had an additional load of 115.044kW which was connected to the consumers installation without due authorisation from KSEB Ltd and that the consumer was found to exceed the contract demand several times. The above contentions were substantiated by various facts and figures in written statement.
6. A hearing was conducted on 18/02/2014. Sri. Mohammed Ismail P.M., Asst. Professor, MET's School of Engineering, Mala, presented the case of petitioner in addition to the facts stated in the petition. It was submitted before the Commission that additional load was added mainly for operating the instruments and equipments in laboratory of the Engineering College. These instruments and equipments were operated only for the purpose of demonstration in laboratory during practical section for the students as evident from the additional quantum of energy used by the institutions. It was also submitted that as and when the recorded maximum demand exceeds contract demand, the consumer is being charged penal rates as provided in the agreement. Sri. Mohammed Ismail P.M. submitted that the

additional load added to the system of the consumer cannot be compared to those in commercial or industrial establishment. To the query raised by the Member of the Commission Sri. Mohammed Ismail P.M. clarified that the additional installations have not been certified by the Electrical Inspector.

7. Sri. B. Pradeep, Executive Engineer, TRAC, KSEB Ltd presented the case on behalf of the Respondent. Apart from the facts and figures and legal position explained in written statement, he emphasised that the petition is premature and cannot be entertained, since it is against the provisional assessment order issued by the Assessing Officer under Section 126 of the Act. It has clarified by the Hon'ble Supreme Court that Section 126 and Section 127 are codes itself and no authority can interfere in processes of Assessing Officer and Appellate Authority under Section 126 and 127 of the Act. Sri. Pradeep informed the Commission that since the Petitioner filed this petition before the Commission, the Assessing Officer in all fairness, has not proceeded further and passed final order. He requested the Commission to allow the Assessing Officer to pass the final order in accordance with the law.
8. In view of the legal position explained by Sri. B. Pradeep on behalf of the Respondent the Commission advised the Petitioner to submit all relevant facts and claims before the Assessing Officer as a written statement on the provisional assessment order. Sri. Mohammed Ismail P.M. on behalf of the Petitioner submitted that the Petitioner should be given one more chance to submit his written statement of defence and for further personal hearing by the Assessing Officer.

9. The Commission is also of the view that it would not be appropriate to interfere in a proceedings of the Assessing Officer or of Appellate Authority unless a petition is filed under Section 142 of the Act. It would appropriate for the Petitioner to represent all facts before the Assessing Officer to pass his final order. If there is any grievance against the final order passed by Assessing Officer the Petitioner can approach the Appellate Authority under Section 127 of the Act. The Respondent KSEB has recently issued order No.BO (FB) No.2518/2013 (KSEB/TRAC/S Code/R2/2009) Thiruvananthapuram dated 28/11/2003 giving guidelines to its officers with regard to proceedings under Section 126 & 127 of the Act. The Commission anticipates that the Assessing Officer and the Appellate Authority in this case, also will follow such guidelines while disposing of the representation submitted by the Petitioner.

Sd/-
P. Parameswaran
Member (E)

Sd/-
Mathew George
Member (F)

Sd/-
T.M. Manoharan
Chairman

Approved for issue

SECRETARY

