

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

**Present: Shri. K.VikramanNair, Member
Shri. S. Venugopal, Member**

Petition No. 1599/Com.Ex/KSERC/2015

In the matter of: Harassment by KSEB Ltd., by penalizing the consumer in the pretext of Section 126 of Electricity Act, 2003 and Kerala Electricity Supply Code of 2014.

The Director, Little Flower Hospital and Research Centre
Angamaly , : **Petitioner**

1.Asst. Engineer, KSEB Ltd., Angamaly

2.Special Officer (Revenue), KSEB Ltd.,
VydyuthiBhavanam, Thiruvananthapuram.

3. Secretary, KSEB Ltd., VydyuthiBhavanam,
Thiruvananthapuram. : **Respondents**

Order dated 27.01.2016

Background of the case:

1. The complainant, the Director of Little Flower Hospital and Research Centre having an HT connection with consumer No. 1355790003776 (LCN: 27/2765) with a contract demand of 800 kVA and connected load 1280.824 KW under HT II (B) tariff.On 27.4.2015 the Anti Power Theft Squad (APTS) team of KSEBL inspected the hospital and prepared a site mahazar stated that the complainant has indulged in unauthorised use of energy. An unauthorised load to the extent of 23.34 KW has been connected within the premises of the hospital. Kerala State Electricity Board Ltd has issued a provisional invoice of Rs. 10,10,070/- on 27.5.2015 under Section 126 of Electricity Act, 2003.The complainant filed an objection on 15.6.2015. The Assistant Engineer, Electrical Section, Angamaly issued the final order of assessment on 17.7.2015, after hearing the complainant on 04.07.2015, confirming the provisional assessment for Rs.10,10,070/-. Hence this complaint.

Averments of the Petitioner:-

2. The petitioner submitted the following for the consideration of the Commission.

The petitioner, the Little Flower Hospital and Research Centre is an 850 bedded multi speciality hospital registered as Charitable Trust. The hospital was established in 1936 by the Archdiocese of Ernakulam. The hospital authorities established a coffee house inside the hospital premises to serve food items such as drinking water, tea, coffee and other facilities to the patients, their bystanders and to the hospital staff as it is practically difficult for them to buy food items from outside the hospital. The management of the coffee shop including fixing of the price of food items served is under strict guidance and direction of the hospital authorities. There is no separate entrance to the coffee shop other than the entrance to the hospital. The hospital authorities never advertised the coffee shop to the public anyway outside the hospital through any publicising medium like board. It is not intended to be used by the public and for any commercial purpose. The connected load of the coffee shop is only 23.87 KW which is also included in the approved scheme sanctioned by the Deputy Chief Engineer, Electrical Circle, Perumbavur

3. The petitioner further submitted that

- (1) On 27.4.2015 the Anti Power Theft Squad (APTS) team of KSEBL inspected the hospital and prepared a site mahazar stated that the complainant has indulged in unauthorised use of energy. An unauthorised load to the extent of 23.34 KW has been connected within the premises of the hospital. Kerala State Electricity Board Ltd has issued a provisional invoice of Rs. 10,10,070/- on 27.5.2015 under Section 126 of Electricity Act, 2003. The complainant filed an objection on 15.6.2015. The Assistant Engineer, Electrical Section, Angamaly issued a final order upholding the assessment on 17.7.2015, after hearing the complainant on 04.07.2015.
- (2). As per the Kerala Electricity Supply Code, 2014, Regulation 153(4) (b) issued by the Hon. Regulatory Commission, any consumer can use upto 10% additional load of the sanctioned load for other essential purpose and such usage cannot be treated as unauthorized additional load or misuse of energy,
- (3). The contract demand in the HT Agreement is 800 kVA (connected load of HT connection) and approved connected load of 1280.824 kW in the approved scheme by the Electrical Inspectorate. The connected load of 22.342 KW used for the coffee shop is only 2.8% of the contract

demand and is within the limit specified as per Kerala Electricity Supply Code, 2014.

4. The petitioner prayed before the Commission to quash the assessment bill and issue necessary orders to the licensee to cancel all proceedings initiated under the section 126.

Hearing of the complaint:

5. Hearing on the matter was conducted on 20.11.2015 at the Commission's office, Thiruvananthapuram.
6. Presenting the Petition Fr. Baiju Davis, Joint Director, Little Flower hospital, Angamaly submitted that there was no intent to misuse of energy. Giving a short history of the organisation, he stated that being a famous multi-specialty hospital in Kerala as well as a charitable institution, they had to arrange food items and other facilities to the patients, their bystanders and staff of the hospital. They had entered into a lease agreement with India Coffee Board Workers Co-operative Society to establish a coffee house. A copy of the agreement was also submitted. As per the agreement the India Coffee Board Workers Co-operative Society has to pay the current charges to the hospital. Power supply from the diesel generator has been extended to the canteen at times of KSEB power failure. It was also mentioned that they had given an application to the KSEBL to authorise the power supply to the Coffee house premises and that the inspection was conducted, post to they making their application.
7. Presenting the version of KSEBLtd, Sri. Lalu Jose, Asst. Engineer, Electrical Section, Angamaly and Mr. Sharma Kumar, Deputy Chief Engineer, TRAC submitted that the proper forum to hear the case was the Appellate authority under Section 127, since this was a case taken up under Section 126. It was mentioned that the premises was sublet for commercial purpose under a separate agreement to run the Coffee house and bills were also issued for collecting the current charges from the Coffee house @ Rs. 12 per unit.
8. The Commission noted that the hearing was intended to determine whether the matter before the Commission would fall under the provision of S.126 or not. The Commission asked both parties whether they would like to provide additional information on the subject matter and the petitioner requested for time up to 30th November, 2015 to provide additional information, to which the Commission agreed.
9. The respondents submitted the statement of facts and the complainant submitted their additional statement.

10. **KSEBL submitted the following:-**

- (i). The Assistant Engineer of the Electrical Section concerned is designated as the Assessing Officer as stipulated in Section 126 of the Electricity Act, 2003. State of Kerala notified the Appellate Authority under Section 127 of the Electricity Act read with provisions of the Appeal to the Appellate Authority Rules, 2004.
- (ii). The principles followed in Section 126 is deliberated by the Supreme Court in Seetharam Rice Mills and others as reported in 2012(2) SCC 108. As per the scheme of the Act transmission, distribution and trading requires license and resale or retail of energy is not permissible without a license.
- (iii). In the inspection it is revealed that unauthorised usage of electricity has taken place by extending the supply availed in HT-II(B) tariff with connected load of 22.342 KW for commercial purpose from the supply availed under HT II (B) tariff i.e. for running a restaurant namely M/s. Indian Coffee House in the hospital premises. As this misuse of electricity by extending 22.342 KW within the premises and subletting for commercial purpose is in violation of the provisions of the Electricity Act, 2003 and reassessment bill under Section 126 is warranted and bills issued accordingly.
- (iv). In the instant case, the extension is for a purpose other than for which the supply is authorised i.e. for running a restaurant which is purely commercial. It was revealed that a 3 phase meter was installed in the wall behind the corridor of the restaurant by the consumer for recording the consumption separately. This sub meter supply was extended to the restaurant through one TPDT switch. A total connected load of 22.342kW was connected to the said sub meter.
- (v). Records showed that an agreement was executed by the Hospital Director, Little Flower Hospital with the President, India Coffee Board Thozhilali Sangam on 01.07.2013 which reveals the date of opening of the restaurant. The same was renewed on 01.09.2014. The hospital authorities levied an amount as charge for the electricity recorded by the sub meter at the rate of Rs.12/- per unit from the restaurant authorities. The restaurant is situated in the cellar floor parking area within the hospital premises and electricity was supplied to them by the hospital authorities by installing a sub meter.
- (vi). A provisional bill of Rs.10,10,070/- issued on 27.05.2015 was confirmed on 17.07.2015 after affording a personal hearing to the consumer. Since the proceedings was initiated under Section 126 of the Electricity Act, 2003 and provisional bill was confirmed, the

statutory remedy available is to approach the Kerala State Electricity Appellate Authority created under section 127 of the Act.

- (vii). A separate LT connection with a connected load was effected of 23.87kW in favour of the Director, Little Flower Hospital, Angamaly for running Indian Coffee House, was effected on 13.05.2015 at LT VII(A) tariff based on an application dated 06.05.2015.

Additional Statement of the Complainant:

11. The hospital authorities submitted that

- (i) As the number of patients increased they found it difficult to manage the food needs of the patients and bystanders and hence entrusted the responsibility to a professional and reliable agency like Indian Coffee House. They never had an intention to sell electricity to anyone, but at the same time, need to provide electricity to the canteen for its proper functioning. The meter was installed to measure the actual quantity of electricity utilised by the coffee house for computation of monthly rent.
- (ii). After being advised by KSEB Ltd they had applied for a separate connection to the canteen and got it sanctioned on 13.05.2015.
- (iii). As per clause (b) of sub-regulation (4) of regulation 153 of the Kerala Electricity Supply Code, 2014, any consumer can use 10% additional load of the sanctioned load for other essential purpose and hence the load of the canteen cannot be treated as unauthorised additional load and the supply to the canteen cannot be treated as misuse of energy.
- (iv). The contract demand in the HT agreement is 800kVA (connected load of HT connection) and approved connected load of 1280.824kW in the approved scheme by the Electrical Inspectorate also included the connected load of the coffee shop referred in the site mahazar. The connected load of 22.342kW used for the coffee shop is only 2.8% of the contract demand and is within the limit as per Kerala Electricity Supply Code 2014.

Analysis and Decision of the Commission

12. The Commission has examined the written statements, oral submission and the documents submitted. It has to be decided as to whether the action of the petitioner in extending power supply to the coffee house attracts action under Section 126 of the Act, 2003. The Petitioner, the Little Flower Hospital and Research Centre, is a super specialty hospital with 800 beds registered as Charitable Trust, which was established in 1936 by the Archdiocese of

Ernakulam. The petitioner is an HT consumer under HT II B tariff with a contract demand of 800 kVA and a connected load of 1280.824 KW. In July 2013, they had established a unit of Indian Coffee House in the cellar floor of a nine storied building, with a connected load of 23.89 kW and extended the power supply from the existing HT connection. The management of the coffee shop was entrusted to India Coffee Board Workers Co-operative Society. The coffee house is intended to provide food and beverages to the patients, bystanders and the hospital staff. In several other governmental and non-governmental institutions power supply from the existing connection is extended to the canteen facility established for providing food and beverages to patients, by-standers and staff. The hospital authority has approached KSEB Ltd for authorising the load in the coffee shop area. The inspection by the APTS wing of KSEB Ltd was done after their application.

The Tariff of HT II General B applicable to the petitioner and HT IV Commercial are given below

	HT II General B	HT IV Commercial
Fixed Charges Rs/kVA	400	400
Energy Charges Ps/kwh		
(i) Of and below 30000 units	620	630
(ii) Above 30000 units	720	730

The difference between HT II General (B) and HT IV Commercial is only Rs.0.10 per unit. Hence, taking into consideration the consumption of the canteen the amount of loss to the licensee is not material.

13. Regulation 153 of Kerala Electricity Supply Code, 2014, deals with the Estimation and Regularization of unauthorized additional load.

153(4) (a) *If the additional load in the case of domestic consumers is of and below twenty percent of the sanctioned load it shall not be reckoned as unauthorised additional load.*

(b) If the additional load in the case of other consumers is of and below ten percent of the sanctioned load, it shall not be reckoned as unauthorised additional load.

(c) The licensee may, suo motu or on application from the consumer, regularise such additional load mentioned in clause (a) and clause (b) above.

153 (6) *In the case of consumers billed under demand based tariff, the total load declared in the test cum completion report of the installation of the consumer, submitted at the time of availing connection or the load mentioned in the energisation approval granted by the Electrical Inspector or the load at the time of revising contract demand or revising the connected load may be taken as the sanctioned connected load.*

153(7) *If it is found that any additional load has been connected without due authorisation from the licensee or in violation of any of the provisions of the Central Electricity Authority (Measures relating to safety and electric supply) Regulations, 2010, as amended from time to time, the licensee shall direct the consumer to disconnect forthwith such additional load and the consumer shall comply with such direction, failing which the supply of electricity to the consumer shall be disconnected by the licensee.*

153(9) *If it is found that additional load has been connected without any increase in the contract demand, steps may be initiated to regularise the connected load in accordance with the provisions in the agreement within a time frame as stipulated by the licensee.*

(10) *If it is found that additional load has been connected without due authorisation from the licensee and contract demand has been exceeded, steps may be initiated to regularise the additional load and to enhance the contract demand in addition to collection of demand charges as per the agreement conditions, for the recorded maximum demand at the rates approved by the Commission:*

(15) *Unauthorised additional load in the same premises and under same tariff shall not be reckoned as 'unauthorised use of electricity'.*

154. Unauthorised extension.- (1) *Extension of supply of electricity shall be reckoned as unauthorised if:- (i) the extension is beyond the limits of the premises; or (ii) the extension is for a*

purpose other than for which the supply is authorised whether or not such extension is within or outside the premises: Provided that in the case of domestic consumers, temporary extension within the premises for non-domestic purposes shall not be reckoned as unauthorised extension if the load of non-domestic purpose is not more than twenty percent of the sanctioned load.

(2) *On detection of unauthorised extension of supply of electricity, the licensee shall issue notice to the consumer, directing him to disconnect such unauthorised extension within twenty four hours and intimating that, the supply to the premises of the consumer will be disconnected if he does not comply with such direction.*

(3) *If the consumer complies with such direction issued by the licensee, the supply shall not be disconnected and if the consumer does not comply with such direction, the licensee may disconnect the supply immediately after the notice period, under intimation to the consumer or his representative available at site.*

(4) *Extension of electric supply through the meter to adjacent rooms or toilets or sheds or such other structures within the premises or to portable electrical equipment for the use in the same premises and for the same sanctioned purpose, shall not be treated as unauthorised extension.*

(5) *Consumption of electricity on account of the unauthorised extension shall be considered as unauthorised use of electricity and shall be assessed under Section 126 of the Act.*

In view of the above statutory provisions the petitioner has contended that the extension of power supply to the coffee shop does not fall under unauthorized use of electricity in view of sub-regulation 4(b), (9) and (15) of Regulation 153 read with Regulation 154 of Supply Code, 2014.

14. The petitioner, Little Flower Hospital, Angamaly is admittedly a well renowned hospital which was started as early as in 1936. This hospital is run by a charitable trust constituted by the Archdiocese of Ernakulam, for rendering medical services to the patients especially from the rural areas around Angamaly. Being a hospital run by a charitable trust, it has to be managed without any profit motive and the income derived from the hospital has to be utilized for the management and development of the hospital. The following aspects deserve consideration.

15. Admittedly by the petitioner as well by the authorities of KSEB Ltd, electricity was used for the unit of Indian Coffee House run by the India Coffee Board Workers Co-operative Society Ltd in the hospital building itself which is serving the purpose of a hospital canteen. Canteens are available in all major private and Government hospitals, industrial units and Government offices. As submitted by the petitioner, the unit of Indian Coffee House functioning in the Little Flower Hospital building, is providing simple food and beverages mainly to the patients, the by standers and staff of the hospital at reasonable rates. The hospital canteen run in the hospital building cannot be considered as a public restaurant. This fact has not been refuted by the KSEB Ltd authorities.
16. The difference in HT tariff applicable to private hospital and commercial establishments is nominal. The fixed charge per kVA, both for HT II General B (tariff applicable to private hospital) and for HT IV Commercial is Rs.400/- per kVA per month. The energy charge per unit for HT II General B is 620 paise and the energy charge per unit for HT IV Commercial is 630 paise. Therefore the financial impact consequent to the use of electricity by the unit of Indian Coffee House may not be considerable, even if the unit of Indian Coffee House is considered to be a commercial unit.
17. The connected load of the Indian Coffee House unit is only 22.34 kW whereas the connected load of the hospital is 1280.82 kW and the contract demand of the hospital is 800 kVA. Therefore the connected load of the Indian Coffee House unit is well within 10% of the connected load which may come under the ambit of sub-regulation (4) (b) of regulation 153 of the Kerala Electricity Supply Code, 2014.
18. It is also submitted by the petitioner that it had applied for regularization of the supply of electricity to the impugned Indian Coffee House unit well before the inspection by the APTS. Further the petitioner has applied for and obtained a separate connection for the Indian Coffee House unit as soon as it was advised to do so. In view of these facts the petitioner has contended that it had no criminal intention or profit motive in supplying the

electricity to the Indian Coffee House unit and that the petitioner only wanted to provide a canteen facility to the patients, by standers and staff of the hospital.

20. Though the petitioner has submitted the above facts to substantiate its genuineness and transparency in its dealings, the Commission cannot at this stage interfere in the case. The Hon'ble Supreme Court in Seetharam Mills Case has held that Section 126 and Section 127 are Codes in themselves and the proceedings under the said Sections by the Assessing Officer and by the Appellate Authority shall not be interfered with by any other authority. Therefore the petition is disposed of with advice to the petitioner to approach the Appellate Authority under Section 127 of the Electricity Act, 2003, if it is aggrieved by the order passed by the Assessing Officer under Section 126 of the Act.

The petition is disposed of accordingly.

Sd/-
S. Venugopal
Member

Sd/-
K.Vikraman Nair
Member

Approved for Issue,

Santhosh Kumar K B
Secretary