

No. 0134/Com.Ex/KSERC/2016

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

**Present: Shri. T.M. Manoharan, Chairman  
Shri. K.VikramanNair, Member  
Shri. S. Venugopal, Member**

**OP No. 03/2016**

**In the matter of:** Proceedings under Section 142 of the Electricity Act, 2003

Shri. Vinod. S. Panicker, Proprietor, Ambrossia Bakery,  
Thiruvananthapuram : **Petitioner**

1. The Secretary, KSEB Ltd, Vydyuthi Bhavanam  
Thiruvananthapuram

2. The Assistant Engineer, Electrical Section,  
Cantonment, Thiruvananthapuram : **Respondents**

**Order dated 10.05.2016**

**Background of the Case:**

1. This Petition has been filed under Section 142 of the Electricity Act 2003 for initiating proceedings against the respondents and imposition of penalty for contraventions of Section 55 of Electricity Act and Regulation 104(1) of Kerala Electricity Supply Code 2014.
2. The petitioner has submitted that:

(1) The petitioner is an industrial consumer under Electrical Section, Cantonment, KSEBL, bearing consumer No. 6082 with a registered

connected load of 26220 volts. On 01.12.2015 Anti Power Theft Squad (APTS), KSEBL along with Section Officials inspected the premises and prepared a site mahazar, alleging unauthorized use of electricity by extending connection to the kitchen of a Restaurant in the same building.

- (2) In the mahazar it was also stated that one phase of the meter is faulty. The assessment under Section 126 of the Act was made on the basis of the reading recorded by the faulty meter and penalty was calculated erroneously.
- (3) The consumer was served with a provisional bill for Rs. 2, 37,250 on 2.12.2015. The consumer raised objection against the provisional bill and hearing was conducted by the Assessing Officer on 17.12.2015. Based on the hearing, a final order of assessment and a final bill for Rs. 1,51,442 were served on the complainant on 5.01.2016 for the alleged unauthorized extension of 4.63 kW under LT VII A tariff
- (4) The petitioner is not challenging the illegal and erroneous assessment made by the Assistant Engineer through this petition. But petitioner is seeking only action under Section 142 of the Electricity Act, 2003 for the contraventions of Section 55 (1) of the Electricity Act, 2003 and Regulation 104(1) of the Kerala Electricity Supply Code, 2014 for having supplied electricity through a faulty meter.

### 3. Reliefs sought by the petitioner

- (1) *to initiate appropriate proceedings against the respondents under Section 142 of the Electricity Act 2003, for the contravention of Section 55 of the Act and Regulation 104 (1) of the Kerala Electricity Supply Code, 2014 and impose appropriate penalty that this Hon. Commission may deem fit and proper.*
  - (2) *To issue necessary direction to replace the meter with notice to the petitioner, immediately*
  - (3) *And grant such other reliefs that this Honorable Commission may deem fit and proper in the circumstances of the case.*
4. The respondents were directed to file their version before the Commission after serving a copy of the same to the petitioner and proof of such service to be filed along with the version, at the time of hearing.

5. **Hearing was conducted on 25-02-2016.** The petitioner was absent. Sri. Sakthidharan Nair, Advocate represented KSEB Ltd. According to the petitioner, continuing supply of electricity through a meter, which was found to be defective in the inspection conducted on 01.12.2015 amounts to supply of electricity through a defective meter. Hence the petitioner requested for action under Section 142 of the Electricity Act 2003 against the respondents. The defect in the metering system of the petitioner was rectified by replacing the defective CT on 16.12.2015 and hence KSEBL prayed for dismissal of the complaint.
6. Subsequently the petitioner submitted a request to have a second hearing of the case, since he was unaware of the postponed date of hearing. Considering his request, the Commission, posted a further hearing on 30-03-2016.
7. **Additional statement of the petitioner:**

The petitioner submitted an additional statement on 22.03.2016. In this statement the petitioner further submitted that :

- (1) The petitioner is not aware of the replacement of the meter or rectification of the damage of meter on 16.12.2015. He contended that if the meter was actually faulty it should have been tested with notice to the petitioner, which was not done. Hence the respondents have contravened Sub regulation 10 of regulation 109 and Sub regulation 5 of regulation 115 of the Kerala Electricity Supply Code 2014. The above regulations are quoted hereunder,

***“109(10) Initial installation as well as replacement of the meter shall be done by a qualified employee of the licensee duly authorized for this purpose, in the presence of the consumer or his representative.***

***115 (5) Before testing a meter of the consumer, the licensee shall give an advance notice of three days, intimating the date, time and place of testing so that the consumer or his authorized representative can, at his option, be present at the testing”.***

- (2) The petitioner contended that in an earlier case filed as Appeal No. 36/2015 before the Kerala State Appellate Authority against the final assessment of the respondent, the respondent has failed to comply with orders issued by Appellate Authority on 11.12.2015 till date. Thereby KSEBL had violated sub regulation 18 of regulation 158 of the Kerala Electricity Supply Code 2014. The above regulation is quoted hereunder.

*“158(18) In case the amount payable as determined by the appellate authority is less than the amount already deposited by the consumer at the time of filing the appeal, the excess amount shall be refunded along with interest at the rate of sixteen percent per annum compounded every six months from the date of each deposit till the date of refund”.*

(3) Hence the Commission may proceed against the respondent for the contravention of Section 55 of the Electricity Act 2003 sub regulation (1) ,of regulation 104, sub regulation 10 of regulation 109, sub regulation 5 of regulation 115 and sub regulation 18 of regulation 158 of the Kerala Electricity Supply Code 2014

8. **The second hearing was conducted on 30.03.2016** at Thiruvananthapuram. Adv.N. Sasidharan Unnithan and Adv. B. Sakthidharan Nair, appeared for the petitioner and respondents respectively. The petitioner submitted additional statement on 22.03.2016 alleging non compliance of Regulation 109(10) and 115(5) of the Supply Code, 2014.

Counsel for the petitioner submitted that

- (i) Kerala State Electricity Board Ltd has contravened Section 55 of the Electricity Act, 2003 and Regulation 104 of the Kerala Electricity Supply Code, by supplying electricity through a faulty meter. It was also submitted that the petitioner was not aware of the replacement of the faulty meter or rectification of the damaged meter on 16.12.2015. The meter was not tested with notice to the petitioner. Hence Kerala State Electricity Board Ltd has contravened Regulation 109(10) and Regulation 115(5) of the Supply Code, 2014.
- (ii) After filing the petition, the petitioner came to know that the respondent made submission to the effect that the defective meter was rectified on 16/12/2015. But the petitioner is not aware of the replacement of the meter or rectification of the damage of the meter on 16/12/2015 or any other date as submitted by the respondent. The meter was also not tested with notice to the petitioner. As these acts/omissions were made behind the back of the petitioner, the petitioner was constrained to file additional statement showing the above facts with additional prayers.

- (iii) The Mahazar dated 1/12/2015 states that the meter is faulty. It is the specific case of the petitioner that, the respondents violated Section 55 of the Electricity Act and Reg. 104 of the Supply Code for having supplied electricity through a faulty meter. Thereafter the 2<sup>nd</sup> respondent issued a short assessment bill for Rs. 2,22,000/- alleging fault of the meter for a long period of 21 months from 3/2014 to 11/2015. Thus it is the admitted case of the respondents that they continued supplying electricity through a faulty meter for a long period of 21 months and thus violating Section 55 of the Act and Reg. 104 of the Supply Code, entailing proceedings under Section 142 of the Act.
- (iv) The case of the respondent is that the defective meter was rectified on 16/12/2015. But the petitioner is unaware of any such rectification of the defects or replacement of the meter. No notice or communication of any nature has been given to the petitioner at any point of time. The defective meter was rectified / replaced in the absence of the petitioner. No report regarding the rectification of the defect or replacement of the meter (If actually done) was given to the petitioner. This fact is not disputed by the respondents. They did not produce any evidence showing issue of any such notice or intimation. Thus it has become evident that the respondents contravened regulation 109 (10) of the Supply Code 2014, for which they are liable to be proceeded under Section 142 of the Act.
- (v) No notice was given to the petitioner before testing of the meter. The respondent did not produce any evidence showing issue of notice as required under Reg. 115(5) of the Supply Code. Thus the testing was done without notice to the petitioner, which is a clear violation of Reg. 115(5) of the Supply Code, warranting proceedings under Section 142 of the Act.
- (vi) As the petitioner signed the Mahazar with protest, the 2<sup>nd</sup> respondent has been harassing the petitioner by resorting to a series of illegal proceedings.

The 2<sup>nd</sup> respondent is wreaking vengeance for questioning the illegal and wrong mahazar by the petitioner. The petitioner signed the mahazar with protest as there was no unauthorized extension as alleged. The equipment's allegedly used by extension as stated in the mahazar was actually used in the kitchen of the bakery itself, is very clear from the earlier mahazar. The 2<sup>nd</sup> respondent also issued a back assessment bill for Rs. 2,22,000/- without any calculation details. The petitioner is not challenging the said bill in this petition. But illegalities committed by licensee are brought to the notice of this Honourable Commission to show the harassment meted out to the petitioner by the 2<sup>nd</sup> respondent. The petitioner confines his case only for the proceedings under Section 142 and 146 of the Act.

- (vii) Hence it is most humbly prayed that this Honourable Commission be pleased to initiate appropriate proceedings and impose appropriate penalty on the respondents for violation / contravention of the above Sections/ Regulations and allow the petition.

### **Arguments of the Respondent:**

9. The Counsel of the respondent submitted that

- (i) There is no provision in the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003, to file an additional statement, after filing a petition. The prayer through this additional statement may not be admitted. Hence this petition may be confined to the pleadings and contentions in the original petition. It was also submitted that, at the time of installation, the electric meter was working properly and the same turned faulty on a subsequent date. Hence Regulation 116 of the Supply Code is applicable.
- (ii) The petitioner has alleged that the petitioner was not challenging the illegal and erroneous assessment made by the Assistant Engineer for unauthorised use of electricity under Section 126 of the Act in this petition. He further stated that he was only seeking action under Section 142 of the Electricity Act 2003 for contravention of Section 55(1) of the Electricity Act

2003 and 104(1) of the Kerala Electricity Supply Code 2014 for having supplied electricity through a faulty meter.

- (iii) Subsequent to filing the version by the respondent and after the hearing conducted by the Honourable Commission, the petitioner filed an additional statement raising false and un-tenable contentions. The petitioner alleged in the additional statement that Regulation 109(10) of the Kerala Electricity Supply Code was violated since the replacement of the meter was in the absence of the petitioner, also alleged that Regulation 115 (5) of the Kerala Electricity Supply Code was violated since the Energy meter was tested without notice to the petitioner and Regulation 158(18) of the Kerala Electricity Supply Code, since order of the Electricity Appellate Authority in Appeal No. 36/2015 was not complied with.
- (iv) So arguments are confined to the above points only ie, whether the respondent has violated Section 55(1) of the Electricity Act 2003 and Regulation 104(1) of the Kerala Electricity Supply Code for supplying Electricity through a faulty meter as alleged by the petitioner and if violated whether section 142 of the Electricity Act 2003 is attracted.
- (v) A bare reading of Section 55(1) of the Electricity Act 2003 will make it clear that the said provisions are squarely applicable for installation and replacement of energy meter and not applicable to a situation when an installed meter is found to be faulty on inspection. The relevant provision applicable in such situation is regulation 118 of the Kerala Electricity Supply Code which says that – “If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee the meter shall immediately be replaced by the licensee with a correct meter and if it is not possible, the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid future damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee.
- (vi) The inspection conducted by the APTS on 01.12.2015 at the premises of the consumer No. 6082 (LTIV) found the following irregularities (1) unauthorized extension and (2) the IIIrd phase (B Phase) of the CT was faulty. The faulty CT was replaced on 16.12.2015.

- (vii) The contention of the petitioner that the respondent has violated Section 55(1) of the Electricity Act 2003 r/w Regulation 104 of Supply Code will not stand because the applicable Regulation in the situation is regulation 118 of the Supply Code. Therefore Section 142 of the Electricity Act 2003 is not attracted. Even otherwise also Section 142 of the said Act is not attracted, because the consequence of violation of Section 55(1) is provided under section 55(3) of the Electricity Act 2003 which says "*If a person makes default in complying with the provisions contained in this section or the regulation made under Sub Section (1) the Appropriate Commission may make such order as it think fit for requiring the default to be made good by the Generating Company or Licensee, or by any officer of a company or other association or any other person who is responsible for its default*". So it is very clear that the action contemplated for default of Section 55(1) is one prescribed under Section 55(3) and not under Section 142. Since the respondent had replaced the faulty CT on 16.12.2015 there was no violation of Section 55(1) of the Electricity Act 2003 so as to attract either Section 55(3) or 142 of the Electricity Act 2003.
- (viii) The allegation of the petitioner that he is unaware of the replacement of the faulty meter, is only an afterthought. The faulty CT meter was replaced with a correct CT on 16.12.2015 in the presence of his staff. This fact was well known to the consumer since the faulty CT was replaced after the supply was disconnected for changing it by informing the staffs of the consumer. When the petitioner filed the original petition he had no such case. In the original petition his case was that inspite of the meter found to be faulty the respondents were supplying energy with that faulty meter. He raised such a contention on the basis of an endorsement in the bill issued during 1/2016 that meter was faulty, since that bill was inclusive of the current charges during meter faulty period, ie up to 16.12.2015 (the date of change of faulty CT). But in the subsequent bills issued there was no such endorsement, which is sufficient at least to know that the meter was changed.
- (ix) Regulation 115(5) of the Kerala Electricity Supply Code 2014 is applicable when meter is taken to the Laboratory of the licensee for testing and before testing a meter the licensee shall give advance notice of three days intimating the date, time and place of testing so that the consumer or his authorized representative can at his option be present. The situation here was different. Here the CT of the Meter was found defective on inspection. Then the licensee may test it at site as per Regulation 116 of the



Electricity Supply Code 2014 for which no notice is contemplated in Regulation 116 of the Supply Code 2014. Here the CT was found defective by the APTS on 01.12.2015 during the testing at the site. Hence the appropriate regulation applicable is Regulation 116 of the Supply Code and not Regulation 115. Hence the contention of the petitioner that Regulation 115(5) is violated will not stand.

- (x) In the above circumstances the Honourable Commission may be pleased to dismiss the petition filed by the petitioner.

## Analysis

10. The petitioner has filed the petition to initiate proceedings against KSEBL under Section 142 of the Electricity Act, 2003 for the contravention of Section 55 of the Act and Regulation 104 (1) of Kerala Electricity Supply Code, 2014.

**“Section 55. Use etc., of meters:-** (1) *No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority”*

**“Regulation 104. Requirement of meters:-** (1) *The licensee shall not supply electricity, except through a correct meter installed in accordance with the provisions of the Central Electricity Authority (Installation and Operation of meters) Regulations 2006, as amended from time to time.”*

Section 55 of the Electricity Act, 2003 and Regulation 104 of the Supply Code 2014 are primarily applicable to the installation of energy meter at the time of new connection and not applicable to a situation when an installed meter is found to be faulty on inspection. The petitioner has not alleged that the service connection was effected with a faulty meter. The meter was found defective in subsequent inspection. Hence the relevant provision applicable in this instant case is Regulation 118 of the Kerala Electricity Supply Code, 2014.

**“118. Replacement of damaged meter:-** *If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid*

*future damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee”.*

The inspection conducted by the respondent on 01.12.2015 at the premises of the petitioner (Consumer No. 6082), under Electrical Section, Cantonment, Trivandrum) found that the third phase (B Phase) of the current transformer attached to the energy meter as faulty. The faulty current transformer was replaced on 16.12.2015.

From the above it can be seen that the Regulation 104 (1) of the Supply Code and Section 55 (1) of the Act have been complied with by KSEB Ltd., Hence KSEB Ltd., cannot be proceeded against under Section 142 of the Electricity Act, 2003, on this ground.

11. The petitioner submitted an additional statement during the course of hearing. The petitioner submitted that the respondents have contravened Sub regulation 10 of Regulation 109 and Sub regulation 5 of Regulation 115 of the Kerala State Electricity Supply Code, 2014. It is also submitted that KSEB Ltd has not complied with the order of the Appellate Authority dt. 11.12.2015 in an Appeal No. 36/2015 in an earlier case.

After issues are framed on the original petition it is not fair on the part of the petitioner to file an additional statement raising additional points alleging contravention of regulations of the Supply Code which was absent in the original petition. However the Commission has examined the submission.

**“Regulation 109(10)** *Initial installation as well as replacement of the meter shall be done by a qualified employee of the licensee duly authorized for this purpose, in the presence of the consumer or his representative.*

**Regulation 115 (5)** *Before testing a meter of the consumer, the licensee shall give an advance notice of three days, intimating the date, time and place of testing so that the consumer or his authorized representative can, at his option, be present at the testing”.*

The petitioner has stated that he was unaware of the replacement of the faulty meter on 16.12.2015. No notice or communication of any nature has been given to the petitioner at any point of time. The defective meter was rectified/ replaced

in the absence of the petitioner. The faulty current transformer was replaced with a correct current transformer on 16.12.2015 in the presence of the staff of the petitioner. The faulty current transformer was replaced after disconnection of supply to the premises after intimating the staff of the petitioner. Hence the contention of the petitioner that he is unaware of the replacement of the faulty meter is not valid.

Regulation 115 (5) of Kerala Electricity Supply Code, 2014 is applicable when an energy meter is taken to the laboratory for testing. Here the CT as part of the energy metering system installed in the premises of the petitioner was found defective on inspection by officials of the respondent on 01.12.2015. The testing was done at the site in the presence of the petitioners' representative and the same was recorded in the site mahazar.

From the above, the Commission has come to the conclusion that there is no valid reasons for proceeding against the licensee for the contravention of Sub regulation 10 of Regulation 109 and Sub regulation 5 of Regulation 115 of the Kerala Electricity Supply Code, 2014.

12. The respondent has submitted that the order of the Appellate Authority in Appeal No. 36/2015 the assessment was revised on 22.01.2016 and the amount towards principal was issued on 25.03.2016 and towards the interest portion the amount was released on 08.04.2016. Thus KSEB Ltd has complied with the order of the Appellate Authority.
13. Petition is hereby dismissed as there is no ground to proceed against KSEB Ltd., under Section 142 of the Electricity Act, 2003 for the contravention of the provisions of the Electricity Act, 2003 or the provisions of any regulations made there under.

sd/-  
**S. Venugopal**  
Member

sd/-  
**K.Vikraman Nair**  
Member

sd/-  
**T.M. Manoharan**  
Chairman

.Approved for issue,

Secretary.