

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

**PRESENT: Shri K.J.Mathew, Chairman
Shri M.P.Aiyappan, Member**

January 19, 2010

In the matter of
Withdrawal of proportionate energy charges for additional loads and
prevention of collection of unrecorded energy charges

Petition No. DP 75/2009	Dy No 1061 dt 15.7.09	Kerala State Small Industries Association Vs Kerala State Electricity Board	Petitioner Respondent
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ORDER

1. Background

1.1 This petition is regarding the non implementation of the directives of Kerala State Electricity Regulatory Commission by Kerala State Electricity Board. Commission in the Order on ARR and ERC for the years 2008-09 and 2009-10 issued a directive that a proposal for introducing TOD tariff for LT Industrial Consumers above 50 kVA may be submitted considering the revenue implication and reducing the peak demand. Relief sought by the petitioner is that Commission may direct KSEB to comply with the directives.

- 1.2 As per Sub sec 2(k) of Sec 180 of Electricity Act, 2003 “ manner of service of provisional order of assessment under sub section (2) of Sec 126” has to be issued by the Government of Kerala as rule. The petitioner contends that since this rule has not been issued by the Government, collecting penal charges in the pretext of unauthorized addition of load by KSEB is totally illegal and unwarranted.
- 1.3 Petitioner points out that if a person by mistake adds a load more than what is mentioned in the Completion Report, it is true that there is some revenue loss to KSEB because of the addition of this load, as KSEB is not getting the fixed charge portion of the tariff for this additional connected load which is unauthorized. Complying with the provisions of the Act, two times fixed charges can be collected for a period up to 12 months. But KSEB can never collect proportionate energy charge for the unauthorized additional load.
- 1.4 KSEB is collecting huge amounts from consumers because of faulty meters. They will test the meter and find out the error and calculate proportionate charges for previous consumption. This is against Sec 55 of Electricity Act, 2003 which states that ‘ No licensee shall supply electricity , after 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.’

2. Prayer

- 2.1 The Honorable Commission may direct the KSEB to comply with the Directives of FY 2008-09 & 2009-10 for the implementation of TOD tariff system.

2.2 The prescription corresponding to Section (180) Subsection (2) (k) of Indian Electricity Act, 2003 may be published by State Government for which necessary advice may be given to State Government as per Subsection (2) of Section (86) of Electricity Act, 2003.

2.3 A hearing may be conducted immediately and opportunities may be given to the affected Industries (list enclosed as Annexure 1) to adduce their evidence.

2.4 The Honorable Regulatory Commission may direct KSEB not to collect any charge based on Provisional Invoice generated as per Section (126) because the Government has not yet published 'the manner of service prescription'.

2.5 The Honorable Regulatory Commission may direct KSEB not to collect proportionate energy charge for additional loads.

2.6 KSEB may be directed to repay all proportionate energy charges collected through provisional invoices and respective final invoices.

2.7 Prevent KSEB from collecting any charge based on the proportionate percentage error of a meter which is faulty.

2.8 Order may be passed with retrospective effect.

3. Hearing on the matter

3.1 In the hearing on the matter held on 14-10-09 at the Office of the Commission the petitioner has stated that This petition is filed against the non- implementation of the Directives of KSERC pertaining to introduction of TOD tariff in the year 2008-09 and 2009-10 because of which all LT consumers are forced to pay huge and unethical penal charges for consumption of energy which have already been metered and paid. It is mandatory for KSEB as a

licensee to comply with Directives of the Electricity Regulatory Commission. Non compliance of the directives is against the provisions of Act and KSEB can proceed against KSEB under different sections of act. Regulatory Commission has directed KSEB to give proposal for implementing TOD metering system, which is more scientific and practical for LT industries. We have also presented the same matter with KSEB and also Regulatory Commission at several occasions but of no use. This levying of charge is based upon a Board Order, which is against Indian Electricity Act, 2003, and natural justice. Without implementing or taking any steps for complying with a directive KSEB has been unauthorisedly collecting charges.

3.2 This is highly objectionable and the Honorable Commission may direct KSEB to withdraw the order i.e referring a letter given by KSEB. As per Section (180) Subsection (2)(k) Government of Kerala is the authority to make decisions on Subsection (2) of Section (126) i.e.; “the manner of service of provisional order of assessment” and as per Section (181) Subsection (2)(zo) Regulatory Commission is the authority to make decisions on Subsection (1) of Section(127) i.e.; “the form of and preferring the appeal and manner in which such form shall be verified and the fee for preferring the appeal”

3.3 In the letter given by the petitioner to KSEB , the requirement and advantage of TOD metering and ‘maximum demand’ based tariff system is clearly highlighted. The major points to be noted are that TOD is more scientific, accurate, prevents dispute, easy to analyze, most commonly used etc. The complaint is that even after directly approaching KSEB so earlier with a requirement which is beneficial for both KSEB and consumers, it was not yet implemented.

3.4 KSEB is also collecting huge amounts from consumers because of the faulty meter. They will test the meter and find out the percentage of error and will calculate the proportionate energy charge as per their 'whims and fancies' for previous consumption which will be either one year or more than one year. This is against Section (55) of Electricity Act, 2003 which states that "No licensee shall supply electricity after the expiry of two years from the appointed date, except through installation of correct meter in accordance with the regulation to be made in this behalf by the authority"

3.5 Section (126) Subsection (2) clearly states that "the provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed", complying with this section and Clause (50) Sub clause (2) of KSEB Terms and Conditions of Supply, which again states the same, the Board has tried to comply with the Act for the fulfillment of the compliance only, but for execution, the Government of Kerala will have to comply with the Section (180) Subsection (2)(k) which states that, the "manner of service of provisional assessment under Subsection (2) of Section (126)" is to be done by the State Government. The Government of Kerala have not yet decided "the manner of service of provisional order of assessment", hence collecting penal charges in the pretext of unauthorized addition by KSEB is totally illegal and unwarranted. Since the manner of service is not published by the Government, KSEB has no authority to raise a Provisional Invoice. At present KSEB is giving Provisional Invoice according to their 'whims and fancies'.

3.6 The definition of 'Unauthorized use of electricity' as per Section (126) Subsection (6) of Electricity Act 2003, and Clause (27A) of Supply Code, is as follows;

- (i). by any artificial means; or
- (ii). by a means not authorized by the concerned person or authority or licensee.
- (iii). through a tampered meter
- (iv). for the purpose other than for which the usage of electricity was authorized.
- (v). for the premises or areas other than those for which the supply of electricity was authorized .

From the above it is clear that additional load for the same purpose in the same premises is not unauthorized addition. It is merely an additional load. Hence penalizing for the additional load and its proportionate energy charge consumption for one year is illegal.

3.7 It is true that billing of the charge for LT industries is based on two part tariff. Out of this one component i.e.; Fixed Charge correlates with the developmental charges, capital investment and depreciation of capital assets and Energy charge component correlates to the running cost of Generator supplied which includes fuel cost, salary etc. In order to support our contentions we are enclosing herewith the Supreme Court Order No: 1553 , with “the application and utility of the charges” collected by KSEB, there is clear-cut demarcation i.e.; Fixed Charge for capital investment and Energy charge for the running cost. The KSEB can never penalize a consumer for lapses corresponding to ‘one section or one part’ upon ‘other section or other part’. This means that if any person by mistake adds a load more than what is mentioned in the Completion Report or in the regular bill; it is true that there is some revenue loss for KSEB because of this addition.

3.8 KSEB is never at a disadvantageous position for the respective energy consumed because the energy charge is already

paid along with regular bill with which the KSEB has already met the reasonable profit and running cost. Now the only portion not billed is that relating to the Capital Investment and Developmental Charges i.e.; KSEB was keeping a proportionate installation capacity to cater to the requirement of this particular consumer. Even for this, penalization is not a requirement because KSEB does not have any damage or loss because of this addition. But even then complying with the act, collection of maximum two times the Fixed Charge for a period of one year is possible. KSEB can never collect proportionate energy charge on the above grounds.

3.9 If we take the History of penal charging ,it is seen in Clause (42) Subclause (d) of the 'regulations relating to conditions of supply of electrical energy,1990',which states that "if the consumer exceeds the contracted load without prior permission of the Board of energy supplied for a specific purpose under a particular tariff is used without the board's knowledge and approval for a different purpose not contemplated in the contract for supply and for which higher tariff is applicable coming under misuse of energy without the meaning of the I.E.Act, 1910. Misuse of energy will be billed at three times the rate applicable to the respective tariff for the previous six months from the date of detection of misuse unless there are convincing reasons for adopting different periods and supply disconnected without notice. The imposition of this higher rate will not relieve the consumer from any penalties imposed by law'. Here also the word used was 'tariff' and the penalization was only for the fixed component of the tariff. Now the definition of the additional load is same in Section (126) Subsection (6) which is described earlier. Hence collecting double the proportionate energy charge is not reasonable.

- 3.10** Once TOD is introduced segregation of light and power can be withdrawn and the entire consumption can be measured with the TOD meter in a more scientific manner, for the reasons specified in the 3rd point of letter given to KSEB by KSSIA.
- 3.11 One of the objections for the implementation of TOD meter in Low Tension is high cost of TOD Meter. The same matter was taken up with L & T who is the main supplier of energy meters to KSEB (more than 90%). M/s. Larsen & Toubro was pleased to inform that they are ready to address the difficulties of Small Scale Units and as a special privilege they will be supplying the energy meter complying with the requirement at a rate of Rs.7600/- + VAT. This can be utilized by all consumers and by KSEB for replacement of existing meter and for new connections.
- 3.12 In reply to the pleadings of the petitioner in the public hearing held on 14-10-09 KSEB stated that KSEB has already filed petition before the Hon Commission in the matter of rationalizing existing tariff structure where in , it has been proposed to introduce TOD billing to LT Industrial consumers with connected load above 50 kW.
- 3.13 The Order of the Board produced by the petitioner as Exhibit -1 is only an executive order meant for conveying field officers of the Board about amendments to sub sections (5) and (6) of the principal Act. It has been directed to make assessments under this section as per Sec 11 of the Electricity (Amendment) Act, 2007 which came into force on 15th June, 2007. Charging penalty for energy charge and fixed charge has been effected in KSEB after obtaining clarification from Hon Commission. It has been clearly stated that penalty is applicable to both fixed and energy charges. The same has been upheld by Hon High Court of Kerala through Judgment dated 21-05-09 in WP(C) No 12068 of 2009

- 3.14 Manner of service of provisional order of assessment .-The contention of petitioner that the Government of Kerala has not yet decided the manner of service of provisional order of assessment is against facts. As per G.O.(P) No 25/2005 dated 8-08-2005, the State Government has notified the Kerala Electricity (Service of Provisional assessment Order) Rules, 2005 (S.R.O No 776/2005) vide Gazette Notification No 1835 dated 12-08-2005. Hence averments of Petitioner that “KSEB has no authority to raise a provisional invoice” and “at present KSEB is giving Provisional invoice according to their whims and fancies” are totally baseless.
- 3.15 Appeal under Sec 127 - Petitioner has pointed out that State Commission has not yet framed regulations as specified in sub section 2 (zo) of Section 181 of Electricity Act, 2003. It may be noted that the absence of such a rule has not taken away the right of an aggrieved person to file an appeal under sub-section (1) of Section 127. On the other hand , it is advantageous that the person is relieved from payment of fee for filing appeal. As per the Act, an appeal against an order of assessment will be entertained only on payment of an amount equal to half of assessed amount by way of cash or by way of bank draft with the licensee.
- 3.16 Unauthorised additional load sub section 6(b) of Section 126 of the Act specifies that unauthorized use of electricity means the usage of electricity by a means not authorized by the concerned person or authority, or licensee, or for the purpose other than for which the usage of electricity was authorized , or for the premises or areas other than those for which supply was authorized. It may be noted that consumption through an additional load is construed as consumption by means not authorized by the concerned person , authority or licensee . Also the usage of electricity within the premises or area for which supply of electricity was authorized does not mean that a consumer can

connect any equipment , consumption through which may exceed the agreed quantity of supply thereby increasing the liability of licensee to supply more power without prior information or notice to the licensee.

Hence contention of petitioner that additional load for the same purpose in the same premises is not an unauthorized addition and hence cannot be considered as an unauthorized use is not sustainable.

3.17 Proportionate energy charges .- The petitioner has averred that the additional charge collected by KSEB in the pretext of proportionate charges is totally illegal because it is not a metered quantity. In cases of unauthorized use , it is not mandatory that licensee charges only based on meter reading. The consumption has been made without notice and a consumer cannot establish that there has not been any consumption through unauthorized load connected by him. There the procedure adopted by the Board for arriving at penalty limiting to the extent of unauthorized load and the proportion of energy calculated to be consumed by the unauthorized load is in accordance with the Act and on the clarification issued by the Commission. In view of the above , it is humbly prayed before the Hon Commission to issue favourable orders , after taking into consideration above facts.

4. Commissions Findings

4.1 Prayer 2.1 The Honorable Commission may direct the KSEB to comply with the Directives of FY 2008-09 & 2009-10 for the implementation of TOD tariff` system.

KSEB has filed a proposal to introduce TOD Tariff for LT Industrial consumers with connected load above 50 kW vide letter forwarded as petition for rationalizing the existing tariff structure vide letter No

KSEB/TRAC/Tariff Rev 09-10/468 dated 24-07-2009 The petition was admitted vide Proceedings No KSERC/II/TP-66/2009 dated 5-08-2009. The Commission after hearing the views of stakeholders issued Order on Petition TP No 66 of 2009 dated 2-12-2009 allowing optional TOD Tariff having Contract Demand 30 kVA and above. Hence the prayer of the petitioner is already addressed

4.2 Prayer 2.2 The prescription corresponding to Section (180) Subsection (2) (k) of Indian Electricity Act, 2003 may be published by State Government for which necessary advice may be given to State Government as per Subsection (2) of Section (86) of Electricity Act,2003. As per G.O (P) No 25/2005 dated 8th August, 2005 Government of Kerala has notified the Kerala Electricity (Service of Provisional Assessment Order) Rules 2005 (S.R.O No 776/2005) vide Gazette Notification No 1835 dated 12-08-2005. Hence the prayer of petitioner has no relevance at present.

4.3 Prayer 2.3 A hearing may be conducted immediately and opportunities may be given to the affected Industries (list enclosed as Annexure 1) to adduce their evidence. Commission has conducted public hearing on 14-10-09 and all those who are interested in this issue were given an opportunity to be heard in the public hearing held on 14-10-09. Hence prayer of petitioner is already redressed .

4.4 Prayer 2.4 The Honorable Regulatory Commission may direct KSEB not to collect any charge based on Provisional Invoice generated as per Section (126) because the Government has not yet published 'the manner of service prescription'. Since Government has already notified Kerala Electricity (Service of Provisional Assessment Order) Rules 2005 (S.R.O No 776/2005) vide Gazette Notification No 1835 dated 12-08-2005, the prayer of petitioner is has no relevance now..

4.5 Prayer 2.5 The Honorable Regulatory Commission may direct KSEB not to collect proportionate energy charge for additional loads. As per provisions of Sec 126 of Electricity Act, 2003

Sec 126 (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under subsection (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity has taken place , and if, however , the period during which such unauthorized use of electricity has taken place

cannot be ascertained such period shall be limited to a period of 12 months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

As per Sub Clause 6 above, the assessment shall be made at a rate equal to twice the tariff rates.

As per sub section (3) of Section 45 of the Electricity Act, 2003 “ the charges for electricity supplied by a distribution licensee may include (a) a fixed charge in addition to the charge for actual electricity supplied.”

Since Tariff includes both fixed and variable charges Commission clarified KSEB that penalty rate is applicable for both fixed and energy charges and based on this clarification vide B.O. dated 7/02/2008 penalty is levied for energy charges as well.

In the Judgment on WP(c) No 12068 of 2009 Maria Palana Society vs KSEB the Hon High Court of Kerala up held the above order.

Now the dispute is regarding the method of billing adopted by the KSEB. For imposing the penalty on energy charges the total energy is apportioned in proportion to the additional load detected and penalty is imposed for that part of energy which is assumed to be consumed because of the unauthorized additional load.

The method can be made more logical if 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 is used for charging the penalty for energy charges

4.6 Prayer 2.6: KSEB may be directed to repay all proportionate energy charges collected through provisional invoices and respective final invoices. Since the concept of two part tariff is approved by the Hon High Court of Kerala an alternate method for estimating energy corresponding to unauthorized portion of fixed charge to charge penalty as mentioned in para 4.5 may be adopted.

4.7 Prayer 2.7 Prevent KSEB from collecting any charge based on the proportionate percentage error of a meter which is faulty.

Section 55 of the Electricity Act, 2003 mandates sale of electricity through properly working meters only. This was again emphasized through the National Electricity Policy (NEP) of the Government of India, notified on 12.02.2005. Relevant extracts of the NEP are given below:

“5.4.8 The Act mandates supply of electricity through a correct meter within a stipulated period. The Authority should develop regulations as required under Section 55 of the Act within three months.

5.4.9 The Act requires all consumers to be metered within two years. The SERCs may obtain from the Distribution Licensees their metering plans, approve these, and monitor the same.”

As per Clause 42 Accuracy of Meters of Terms and Conditions of Supply of Kerala State Electricity Board the procedure to be followed in case of the consumer disputes the accuracy of meter is detailed. KSEB shall be directed to follow the procedure strictly in all such cases. (Annexure- 1)

5. Commissions' Decisions

5.1 Prayer 2.1 The Honorable Commission may direct the KSEB to comply with the Directives of FY 2008-09 & 2009-10 for the implementation of TOD tariff system. The Commission issued Order on Petition TP No 66 of 2009 dated 2-12-2009 allowing optional TOD Tariff

for LT Industrial Consumers having Contract Demand 30 kVA and above. Hence the prayer of the petitioner is already addressed

5.2 Prayer 2.2 As per G.O (P) No 25/2005 dated 8th August, 2005 Government of Kerala has notified the Kerala Electricity (Service of Provisional Assessment Order) Rules 2005 (S.R.O No 776/2005) vide Gazette Notification No 1835 dated 12-08-2005. Hence the prayer of petitioner is not relevant now.

5.3 Prayer 2.3 Commission has conducted public hearing on 14-10-09 and all those who are interested in this issue were given an opportunity to be heard in the public hearing held on 14-10-09. Hence prayer of petitioner is already addressed.

5.4 Prayer 2.4 Since Government has already notified Kerala Electricity (Service of Provisional Assessment Order) Rules 2005 (S.R.O No 776/2005) vide Gazette Notification No 1835 dated 12-08-2005 the prayer of petitioner is without ground.

5.5 Prayer 2.5 For imposing the penalty on energy charges the total energy is apportioned in proportion to the additional load detected and penalty is imposed for that part of energy which is assumed to be consumed because of the unauthorized additional load.

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.

5.6 Prayer 2.6 Since the concept of two part tariff is approved by the Hon High Court of Kerala an alternate method for estimating energy to charge

penalty corresponding to unauthorized portion of fixed charge as per 5.5 above shall be followed.

5.7 Prayer 2.7 As per Clause 42 Accuracy of Meters of Terms and Conditions of Supply of Kerala State Electricity Board the procedure to be followed in case of the consumer disputes the accuracy of meter is detailed (Annexure-I). KSEB shall follow the procedure strictly in all cases of faulty meters.

The petition is disposed off accordingly

Sd/-
M.P. Aiyappan
Member (Finance)

Sd/-
K.J.Mathew
Chairman

Approved for issue

Secretary

