

**KERALASTATE ELECTRICITY REGULATORY  
COMMISSION  
THIRUVANANTHAPURAM**

PRESENT : Shri K.J.Mathew, Chairman  
Shri Mathew George, Member  
Shri P.Parameswran, Member

No. 005/CEX/2010

Dated, March 16, 2011

In the matter of non-compliance of the Kerala Electricity Supply Code,  
2005 and Kerala State Electricity Board Terms & Conditions of  
Supply,2005.

**ORDER**

**Background**

A complaint was received on 14-10-2010 from Sri. S.Sreekumaran Nair, Devahari, ATL Road, Venjaramoodu, Thiruvananthapuram Dist., a consumer under Electrical section, Venjaramood, Thiruvananthapuram regarding demand and collection of substantial additional amounts from many consumers in the locality.

Commission examined the complaint and it was decided to conduct an enquiry through the Compliance Examiner of the Commission. Accordingly he conducted an inspection in the above section on the 18<sup>th</sup> of October, 2010 and submitted a report pointing out the following irregularities found during the inspection.

(1) Additional Security Deposit was demanded and collected without giving 30 days notice as prescribed under clause 13(5) of the Kerala Electricity Supply Code, 2005 (hereinafter referred to as the "Supply Code") and clause 15(4) of the Kerala State Electricity Board Terms & Conditions of Supply,2005 (hereinafter referred to as the "Terms and Conditions of Supply") .

(2) Additional Security Deposit was demanded through the regular electricity bills issued to the consumers without providing advance intimation. In many cases, additional security deposit (termed as ACD) was demanded as 'arrear amount'.

(3) As per clause 15(4) of the Terms and conditions of Supply, the adequacy of the security deposit of all consumers is to be reviewed in the first quarter of the financial year and based on the review, demand for shortfall or adjustment of excess deposit is to be done in the first quarter itself by giving 30 days' notice to the consumer.

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This was not seen followed in the demand and collection of additional deposit from the consumers of the above section. Additional Security Deposit (ACD) was seen demanded through the bills issued even in the month of October.( ie; in the 3<sup>rd</sup> quarter).

(4) The amounts demanded in certain cases, on verification, were seen to be more than what was required based on the consumption for the previous financial year.

The Commission viewed these violations of the provisions of the Supply Code and the Terms and Conditions of Supply seriously and decided to initiate an inquiry and take evidence in the matter from the officials of the licensee responsible for the violation. Accordingly notices were sent to Shri.Radhakrishnan, Executive Engineer, Electrical Division, Nedumangad, Shri.A.M.Hashim,Sub Engineer-in-charge and Shri.R.Ravindran,Senior Superintendent of the Venjaramood Electrical Section office who were found prima facie responsible for the violation to appear before the Commission at 11.00 A.M on 09/11/2010 for giving evidence in the matter. Accordingly they appeared before the Commission.

The Compliance Examiner explained the violation he noticed during the inspection. He specifically pointed out certain cases where demand for ACD was raised through the regular bills issued to consumers (Consumer nos.2401, 758, 6776, 3297 etc.) as 'arrear amount'. The consumers were not given 30 days' time for remittance as prescribed under clause 13(5) of the Supply Code and clause 15(4) of the Terms and Conditions of Supply. ACD was seen demanded even during the month of October (i.e. in the 3<sup>rd</sup> quarter), contrary to the directions issued to carry out the same in the first quarter itself.

The Chairman and the Member sought the reasons for the above lapses on the part of the officers in complying with the provisions of the Supply Code and the Terms & Conditions of Supply.

The Sub Engineer-in-charge of AE of the Section, Shri.Hashim submitted that he did not always see the bills and the mistakes occurred were due to faults of the computer system. He could not, however, substantiate the fault in the system. Whenever mistakes were brought to his notice, they were corrected.

He agreed that even though the Senior Superintendent is in charge of the billing wing, it is the duty of the AE ,as the head of the office, to exercise control over the functioning of the section as a whole. He admitted that there were lapses and has further stated that all steps would be taken to ensure that such things are not repeated in future. He requested that further action against him may be dropped.

The Senior Superintendent Shri.R.Ravindran submitted as follows.

The section was computerised in 8/2008. The Senior Assistant is responsible to feed data into the computer and only random checks are done by the Senior Superintendent. During the last year, collection of ACD was done after issue of separate demand notices. But this year, ACD was demanded in the regular bills issued noting the amount as 'ACD' with pen and it was shown in the column meant for arrears. In certain cases, this noting could not be done and the amount remained against arrears in the bills issued. Consumers who came to the section with complaints were given clarifications on the issue and correction in the amounts was also done in cases where mistakes were brought to notice.

He further admitted that he could not verify all the bills issued to the consumers. He said that since there was no provision in the computer software to demand ACD and hence it was noted against arrears in the bills and marked as ACD by pen. He also submitted that in certain cases, excess CD was refunded. The Commission directed him to verify individual complaints pointed out from consumer nos 2401,12900,758,6776,7857,620 and 4899 and to submit his remarks in a week's time as to whether excess amounts were collected.

Shri.R.Radhakrishnan, Exe.Engineer, Ele.Division,Nedumangad submitted that instructions were given to issue notices for collection of ACD in all sections under his Division and that there is provision in the present software to print ACD notices for issue to consumers. He said that the system had no defects, but in the present case there were certain lapses. Senior Superintendent has to monitor the issue of bills. Being the section head, the AE has to exercise overall supervision. He also added that instructions on collection of ACD were issued during the monthly meetings.

The direction of the Commission to Shri.R.Ravindran, Senior Superintendent to verify individual complaints from consumer nos. 2401,12900, 758, 6776, 7857, 620 and 4899 and to submit his report in a week's time has not been complied with by him. As such the Commission has arrived at the conclusion that the incorrect assessment of additional security deposit alleged in the complaints of the above consumers are genuine and substantiated.

On reviewing the whole issue, the Commission was satisfied that there was violation of the provisions of the Supply Code and the Terms & Conditions of Supply on the following matters:

1. Additional security deposit was demanded and collected by the officials of the Electrical Section Venjaramood without issuing 30 days notice as prescribed in the Supply Code and the Terms & Conditions of Supply. The Senior Superintendent who is in charge of the Billing and Accounting in the Section office is primarily responsible for this serious lapse.

2. Additional security deposit was demanded as arrears from consumers without initially raising any demand
3. Excessive demand for Additional security deposit (ACD) was made ignoring the amounts already paid by the consumers as well as the actual consumption of the previous year.

The Commission has arrived at the conclusion that this was a fit case for initiating action under section 142 of the Electricity Act. Shri.A.M. Hashim, Sub Engineer-in-charge and Shri.R.Ravindran, Senior Superintendent of the Venjaramood Electrical Section office were found responsible for the violation of the Supply Code and the Terms and condition of Supply. Hence, the Commission issued notice to the above said persons to appear in person before the Commission at 11.00 AM on 31-12-2010 to explain their position in the matter, if they wish to give reasons if any as to why action should not be taken under section 142 of the Act and why a penalty as provided under sec.142 should not be imposed on them.

#### **Hearing on the matter**

The officials did not appear for the hearing posted on 31.12.2010. Instead of presenting themselves before the Commission, Shri.K.Bhuvanachandran, Advocate appeared before the Commission and filed Vakalath on behalf of the officials. He sought adjournment of the proceedings. As per Clause 30 (3) (a) of the Kerala Electricity Regulatory Commission (Conduct of Business) Regulations, 2010 in a proceeding of the Commission for imposing penalty or for taking prosecution steps, the party shall not be entitled for representative appearance unless specifically permitted by the Commission. The permission of the Commission for representative appearance was neither sought for nor obtained by the officials concerned. Moreover, the Commission is of the opinion that the personal presence of the officials is necessary in this case. Hence the Vakalath of the Advocate was not accepted. Advocate was also informed of this legal position. For the same reason, the prayer of the Advocate for adjournment could not be considered by the Commission. The Commission has also taken note of the decision of the Hon'ble High court of kerala in the decision in WP(C)23256 of 2010 in which a notice issued to the Special officer/Secretary, KSEB by the Commission was challenged. The court has held that "*Sec 142 of the Electricity Act clearly contemplates issuance of such notice to 'such person', who has violated the direction/order given by the Commission and it is with this intent, the said notice has been issued to 'such persons'. This being the position, issuance of notice asking the Special Officer or the Secretary cannot be found fault with, as the same is in compliance with the statutory prescription.*" Commission has therefore decided to proceed further as if the officers

have nothing to submit before the Commission against the action proposed against them under sec.142 of the Electricity Act.

Further, Adv.B.Sakthidharan Nair, advocate to Sri. Raveendran ,Senior Superintendent and Shri.A.M.Hashim, Sub Engineer-in -charge ,Ele. Section, Venjaramood through an affidavit dated 11<sup>th</sup> January ,2011, filed before the Commission, submitted that the right to be represented by an advocate before the Commission is the right of his clients and the right not to be condemned unheard is inherent in the concept of natural justice. Since the matter was taken up for orders without rendering the petitioners an opportunity to file statement and argue the matter resulted in denying the above rights of his clients.

It was further requested to post the matter for another hearing and render an opportunity to the aforesaid persons to file statement, to adduce evidence and to hear them or in the alternative to pass a speaking order as to why such an opportunity was denied to them so that they can move before Higher Forums.

Taking a lenient view on the matter and to provide every opportunity to the officers to defend themselves, the Commission decided to give them another opportunity of being heard in the matter. Accordingly, the above officers along with their advocate Shri B.Sakthidharan Nair appeared before the Commission at 11.00 A.M on 22/02/2011.The advocate ,on prior request by the officers , was allowed to represent and argue on their behalf. The advocate, pointed out that the original notice dated 25/10/2010 was defective and opportunity should have been given to the officers to file objections against the allegations levelled against them. On his request, the advocate was granted one week's time to file a detailed argument note.

The argument note filed by the advocate and the written explanation submitted by the officers were examined in detail. In the written explanation, the officers had nothing more to submit than what they had told at the time of taking evidence.

In the detailed argument note filed by the advocate, the main contentions are as follows.

1. The officers were not given opportunity to file written replies and rejoinders as contemplated under Regulation 23(2) of the KSERC(Conduct of Business) Regulations,2003.
2. Proceedings were initiated based on a complaint received by the Commission and a copy of the complaint was not served to them.
- 3.Commission had converted the proceedings commenced based on a complaint into a suo moto proceedings.

4. The Hon'ble High Court of Kerala in the decision in WP(C) No.241/2001 has justified the action of demanding ACD even after the first quarter of the financial year.

### **Analysis of the Commission**

Though the Commission had not asked the officers to file written replies, they were free to file their written version before the Commission at the time when enquiry was conducted after notice and their statement was made.

They havenot even demanded it at the time of the enquiry and while taking their evidence. Therefore there is no violation of the Regulations as alleged.

Though action was initiated on a complaint, the Commission had decided to take action as suo moto proceedings. No prejudice had been caused to the officers on this account. It is for the complainants to raise such an issue since they did not get an opportunity to participate in the proceedings. Commission observed that it has the power to initiate suo moto proceedings even if it is based on a complaint.

Though there is justification by the Hon'ble H.C in demanding additional cash deposit even after the first quarter, the other violations are established.

After carefully considering all the arguments raised by the counsel for the officers, the Commission has come to the conclusion that the objection raised by the delinquent officers and their counsel are devoid of any merit. It is proved beyond doubt that Additional Cash Deposit (ACD) was collected without issuing the prescribed notice, that in some cases ACD was collected against arrears in the regular bills and that excess collection was made from certain consumers. For the belated collection in the 3<sup>rd</sup> quarter, though not provided for, is not however treated as a deliberate violation as there may have been administrative reasons. The Commission decides to ignore this lapse for the time being and no penal action will be taken on this score.

The Commission is convinced that there is violation on the part of the officials in complying with the provisions of the Supply Code and the Terms & Conditions of Supply. The Senior Superintendent Shri.R.Ravindran who is in charge of the Billing and Accounting activities in the Section office is primarily responsible for this. Also Shri.A.M. Hashim, the Sub Engineer in charge of the Assistant Engineer failed in exercising his supervisory role in ensuring that the demands for Additional Security Deposit are raised in accordance with the provisions of law and that the consumers are not unnecessarily harassed .Both the delinquent officials were given ample opportunity to explain their positions and to be heard in person.

The irresponsiveness and indifference of the licensee's officials to honour commitments made before the Commission and notices issued by the Commission are disconcerting. The insensitivity of the officials towards consumer interests calls for corrective action.

### **Order of the Commission**

Accordingly the Commission pronounces the following orders in the matter.

1. Shri.R.Ravindran ,Senior Superintendent Electrical Section office Venjaramood shall pay a penalty of Rs.15,000/-(Rupees Fifteen Thousand only) and Shri.A.M. Hashim, Sub Engineer-in-charge, shall pay a penalty of Rs.2000/-(Rupees Two Thousand only) within two weeks from the date of this order.
2. The amount shall be paid by the officers themselves and need not be borne by the licensee.

This order is appealable to the Appellate Tribunal for Electricity, New Delhi under sec 111 of the Electricity Act, 2003 within a period of 45 days.

Sd/-  
Chairman

Sd/-  
Member

Sd/-  
Member

Approved for issue



(K.S.PremachandraKurup)  
Secretary