

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

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

**In the matter of:** Rectifying the anomalies of the KSEB Order B.O (FB)  
No. 2518/2013 (KSEB/TRAC/S Code/R2/2009)  
Thiruvananthapuram dated 28.11.2013.

**Petitioner**       : Sri. Shaji Sebastian,  
                          Chairman, Industrial Electricity Consumers  
                          Consortium, Manakkat Building, 21/67/A-1  
                          University Road, Kochi University P.O,  
                          Kochi- 682022.  
                          As 'Authorized/Nominated' Representative of Indian  
                          Association of Hallmarking Centres

**Respondents** : 1. The Secretary  
                          Kerala State Electricity Board Ltd,  
                          VydyuthiBhavanam, Pattom,  
                          Thiruvananthapuram,  
                          Pin No. 695 004,  
  
                          2. The Chairman,  
                          Kerala State Electricity Board Ltd,  
                          VydyuthiBhavanam, Pattom,  
                          Thiruvananthapuram,  
                          Pin: 695 004.

**ORDER DATED 05 /06/2014**

**Introduction:**

As per the directions of the Commission in O.P.No.26/2013, the Kerala State Electricity Board Ltd has issued guidelines on measures for preventing unauthorized use of electricity and detailed procedure to be followed during inspection, provisional assessment on detection of Unauthorised Additional Load (UAL), hearing, final assessment, processing of appeal and its final disposal vide B.O. (FB) No.2518/2013(KSEB/TRAC/S Code/R2/2009) dated

28-11-2013. This petition was filed by Sri. Shaji Sebastian, as the Chairman, Industrial Electricity Consumers Consortium and as a representative of the Indian Association of Hallmarking Centres praying for rectification of anomalies in the said Board Order.

- 1) The above petition was filed by the Association on behalf of various consumers seeking clarity in the guidelines issued by KSEB Ltd. after considering the alleged hardship of the consumers and also the fact that those consumers have also approached various Legal Forums where their cases were under consideration.
- 2) In the guide lines issued by KSEB Ltd, it is stated as *“detection of incorrect application of tariff even while there is no change in declared purpose of use of electricity by the consumer shall not be penalized under Sec.126, provided that there is no unauthorized addition in load necessitating a change in tariff. The loss sustained by KSEB due to incorrect application of Tariff alone shall be realized in such cases.”*
- 3) All Hallmarking centers in Kerala are having SSI registration certificates issued by the Government of Kerala and considered as small scale industry. Now as per the tariff order in force, they are categorized under LT VII A commercial and HT IV commercial depending upon the voltage levels at which the supply of power is availed.

### **Prayer of the Petitioner:**

The main submission And arguments submitted by the petitioner on various issues are quoted as follows:

1. *As per KSEB Ltd, the guidelines attached with Board Order No B.O (FB)No.2518/2013(KSEB/TRAC/S Code/R2/2009)Thiruvananthapuram dated 28.11.2013 “the guidelines will come into force from its date of issue’ i.e. from 28/11/2013.” This Board ‘Order / Guidelines’ are made as per the direction of the Regulatory Commission against a petition filed by an Association. The Association has filed the petition on behalf of*

*various consumers who are suffering because of the lack of clarity in KSEB guidelines.*

*Now the guidelines have been revised only after taking into consideration the arguments and facts in the petition and also direction of KSERC. Hence all the guidelines and directions issued earlier may be revised and viewed from the angle of new guidelines and required 'revision/ modification' in the Orders earlier issued in this regard maybe granted considering the request and requirements.*

*Since the petition is filed by the Association taking into consideration the sufferings of the consumers and also the fact that those consumers have also approached various Legal Forums and their cases were under consideration, the present Order/Guidelines can be made applicable at least to the consumers whose matters are not yet settled.*

- 2. As per KSEB Ltd, the guidelines attached with Board Order No: B.O(FB) No. 2518 / 2013 (KSEB/TRAC/S Code/R2/2009) Thiruvananthapuram dated 28.11.2013 'detection incorrect application of tariff even while there is no change in declared purpose of use of electricity by the consumer shall not be penalized under Sec.126, provided that there is no unauthorized addition in load necessitating a change in tariff. The loss sustained by KSEB due to incorrect application of Tariff alone shall be realized in such cases.'*

*Since the facts and circumstances of the Order of the Hon. Commission on petition filed by Vianney enterprises in OP 13/2012 dated 28.01.2013 (where the commission decided that 'recovery of arrears from the respondent M/s Vianney Enterprises demanded by the petitioner under LT VII A (Commercial) Tariff considering the nature of activity of filtering, refilling, and packing of oil brought from outside, from the date of detection of error i.e. 10-03-2008 only. Since there is lapse on the part of KSEB Officials in fixing the Tariff category at the appropriate tariff, interest for arrear shall not be charged') the same as that elaborated by*

*KSEB The commission may direct the KSEB to have the change of tariff from the date of detection only.*

- 3. All Hallmarking Centers in Kerala are engaged in melting of gold, silver and their alloys, assaying of precious metals, Laser/ Hallmarking of gold and silver Jewellery articles, Production and sale of laser machine cut gold and silver Jewellery articles, such as medals, lockets etc., laser engraving on various articles of PVC such as pen, buttons etc., wooden items such as pen stand etc, metal items such as coining dies, bearings, machine components, etc. The Hallmarking Centers are having SSI registration certificates issued by Govt. of Kerala and considered as Small Scale Industry. The activities as elaborated earlier are also coming under the category of industry. The machineries used like Furnaces, Blowers, Heaters, Laser Machines etc. are also machineries used in an industry. They are also having Bureau of Indian Standards approval.*

*Since the KSEB have re categorized the Tariff as LT VII the Hallmarking Centers are finding it difficult to survive. The Hon. Commission was even kind enough to create a new category of tariff as LT IV B for service sectors like 'IT and IT enabled services'.*

*In the above circumstances the Hon. Commission may consider Categorizing Hallmarking industries in 'LT IV A or LT IV' B Tariff.*

**Relief Sought:**

- 1. Hon. Commission may direct KSEB Ltd to make applicable the present Order No B.O (FB)No.2518/2013(KSEB/TRAC/S Code/R2/2009 Thiruvananthapuram dated 28.11.2013 with retrospective effect.*
- 2. Hon. Commission may direct KSEB Ltd to have change of tariff of the consumers from the date of detection of the change only.*

3. *Hon. Commission may direct KSEB Ltd to reconsider the Tariff of Hallmarking Centers in 'LT IV A / LT IV B' after examining the registrations, licenses etc. and also the process."*

**Summary of written statement submitted by respondent:**

Main points of written statement submitted by KSEB Ltd are quoted below:

1. *The Petition has not been filed based on any legal provisions in the Electricity Act, 2003 or provisions under KSEB (Conduct of Business) Regulations, 2003 and thus cannot be entertained.*
2. *The first prayer of the Petitioner is to make certain modifications in the Board Order issued by the Respondent on 28-11-2013. The version of the Petitioner that the B.O. was issued based on the petition filed by an Association is not correct, because the Association withdrew the said petition and the Hon'ble commission has disposed the petition accordingly. In case the petitioner has any grievance on any of the provisions in the said Board Order, the proper course of action is to approach KSEB Ltd. listing out grievances, if any.*
3. *It is humbly submitted that the Petitioner has so far not approached KSEB Ltd. requesting for any corrections. There exists ample opportunity for the Petitioner to do so instead of filing petition before the Hon'ble Commission. The Petitioner has not pointed out any inconsistency with the Act or Regulation or Orders or directions of the Hon'ble Commission in the issuance of the said Board Order and thus the petition is not maintainable on such grounds also.*
4. *It is also not clear how M/s Indian Association of Hallmarking Centres is affected or aggrieved by the said B.O. Since the Association has not pointed out any violation of provisions of the Act, Regulations or Orders of the Hon'ble Commission and has not made out how they are affected by the Order, the petitioner has no locus standi for filing a petition before the Hon'ble Commission.*

5. *The second plea of the Petitioner to make corrections in the said B.O. to realise the difference due to inappropriate application of tariff from the date of detection of error only, without any examination of relevant factors, in turn results in a request for modification in the Supply Code Regulations and hence the request of the Petitioner cannot be entertained through a petition.*
6. *There are provisions in the existing Supply Code, 2005 for reviewing the bill issued in case of detection of wrong application of tariff and to realise the under charged amount as per Clause 24 (5) of Kerala State Electricity Supply Code, 2005. Similar provision exists in 2014 Regulations also. Further, the concerns of revising the bills on retrospective basis over a long period due to incorrect application of tariff is adequately addressed in the new Supply Code, 2014 notified by the Hon'ble Commission, vide sub-clause (3) and (4) of Clause 152. As per the new Code, the period of retrospective revision of bills due to incorrect tariff application is limited by the Hon'ble Commission.*
7. *For amendment in Regulation, the procedure prescribed in the rules notified by the Government of India like, pre-publication and public hearing are to be followed and cannot be allowed through a petition. Further, as pointed out in para 5 , the petitioner has no locus standi for filing such a petition before the Hon'ble Commission.*
8. *The third prayer is to reclassify and reduce the tariff for Hallmarking units. The relief sought for is to reduce the tariff of Hallmarking industries from LT VII to LT IV A or LT IV B category which amounts to redetermination of tariff. Tariff determination has to be done in accordance with the procedures specified for it which include pre-publication of tariff proposal and public hearing. The tariff is determined for all the consumers of the licensee and the tariff petition is not a dispute between two contending parties. The Hon'ble Appellate Tribunal and the Hon'ble Supreme Court have clarified that the tariff determination process is a quasi-legislative*

*process. Therefore petitions of individual consumers against tariff order cannot be considered through a petition. Any person aggrieved by the tariff order issued by the Commission can only approach the Appellate Tribunal by filing an appeal. Therefore it is humbly submitted that the petition is not maintainable on this ground.*

9. *Thus the proper course of action available to Hallmarking units were to file :*

*(i) review petition before the Hon'ble Commission within the time span of 90 days on issuing the tariff order.*

*(ii) an appeal petition before the Hon'ble APTEL challenging the Commission's tariff order.*

10. *The Hon'ble Commission has issued the impugned tariff order on 30.04.2013 in O.P No.2 of 2013. The petition under consideration was received in the Commission on 10.02.2014 after a delay of 285 days from the date of order. The regulation 67 of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003 states as follows:*

*"The Commission may, either on its own motion or on an application made by any interested or affected party, within 90 days of the making or issuing any decision, direction, order, notice or other documents or the taking of any action in pursuance of these regulations; review, revoke, revise, modify, amend, alter or otherwise change such decision, direction, order, notice or other documents issued or action taken by the Commission or any of its officers".*

11. *In view of the above provision the petition is badly delayed and thus the present petition need not be entertained by the Hon'ble Commission. The petitioner has not provided any valid and sufficient reasons for condoning the delay for approaching the Hon'ble Commission.*

12. Moreover, Shri. Shaji Sebastian cannot file such a petition on behalf of the consumers viz., Hallmarking units, since he is not an affected party. Clause 22 of KSERC (Conduct of Business) Regulations, 2003 clearly state that who all can file petition before the Hon'ble Commission. The same is reproduced below:

*“ 22. Initiation of proceedings.- Proceedings may be initiated under these Regulations in one of the following manners:-*

- (a) Suo motu by the Commission,*
- (b) Upon a petition filed by the Board or a licensee,*
- (c) Upon a petition filed by the Government of Kerala,*
- (d) Upon a petition filed by an affected party. “*

*Since, Shri. Shaji Sebastian does not have any claim of being an affected party, this petition cannot be admitted and no proceedings can be initiated as per the Regulations.*

13. Moreover, Sri. Shaji Sebastian cannot represent the Hallmarking units in a proceedings before the Hon'ble Commission. Regulation 30 of KSERC (Conduct of Business) Regulations, 2003 provides for representation at proceedings. Sub regulation (1) of regulation 30 states as follows:

*“ A party to any proceedings under this chapter may be represented before the Commission in one of the following manners, namely:-*

- (a) In person*
- (b) Through an authorized employee*
- (c) Through an authorized professional who may be an advocate or a chartered accountant or a cost and works accountant or a company secretary or a graduate chartered engineer holding a certificate of practice.”*

14. Shri. Shaji Sebastian cannot represent the petitioners in view of regulation 30 of KSERC (Conduct of Business) Regulations, 2003, since he is not an affected party or an authorized employee of the affected party or authorized professional who may be an advocate or a chartered accountant or a cost and works accountant or a company secretary or a graduate chartered engineer holding a certificate of practice.



15. *The petitioner in this case is Vice-President, Indian Association of Hallmarking Centres. The petition has been signed by him as well as by Shri. Shaji Sebastian. Therefore Shri. Shaji Sebastian cannot validly claim that he is the petitioner. Neither is he an authorized employee of the petitioner. Further no document has been produced by Shri. Shaji Sebastian to prove that he is advocate or a chartered accountant or a cost and works accountant or a company secretary or a graduate chartered engineer holding a certificate of practice along with the petition. Therefore it is humbly submitted that Shri. Shaji Sebastian cannot represent the petitioner in this case.*

16. *It may kindly be noted that the Hon'ble Commission has disallowed a similar petition filed by the same Petitioner in the matter of "Requirement of reduction in tariff of LT X (Display lighting and hoarding) consumers which is about 300% above the cost of supply, creating heavy tariff shock to consumers" by the order No.1/CT/KSERC/2014 dated 25/2/2014.*

17. *Thus, the Petitioner is repeatedly abusing the process of law and the institution of the Hon'ble Commission which need to be restrained in an appropriate manner. It is therefore prayed that the Hon'ble Commission may be pleased to accept the facts and statements submitted by the respondents and not to admit the petition and the same may be dismissed with cost to these respondents.*

### **Hearing of petition:**

An admissibility hearing on the petition was conducted on 12-03-2014. The petitioner presented the petition in detail. The respondent challenged the locus-standii of the petition.

### **Analysis and decision of the commission**

- 1) One of the reliefs sought for is to direct KSEB Ltd to make applicable the present Order No B.O (FB) No. 2518 /2013 (KSEB/ TRAC /S Code/ R2/2009 Thiruvananthapuram dated 28.11.2013 with retrospective

effect. The petitioner also seeks the intervention of the Commission to make certain changes in the said Board order. It may not be proper for the Commission to issue direction to the licensee to correct or modify the guidelines issued by them unless such guidelines are in contravention of the Electricity Act, Rules, Regulations or other directions issued by the Commission. The Petitioner could not point out any such violations or contraventions.

- 2) The other relief sought for is to classify the Tariff of Hallmarking Centers bringing them under 'LT IV A / LT IV B' from LT VII A after examining the registrations, licenses etc. In the tariff orders dated 30/4/2013 issued by the Commission the Hallmarking Centers were classified under LT VII A. This was after following all due process including public hearing where representatives of these consumers had also expressed their views and the Commission had taken into account the views expressed by them while issuing tariff orders. The present plea amounts to a review petition of the tariff orders for which the prescribed time limit of 90 days is over as early as 31<sup>st</sup> July 2013 where as the Petition was filed only on 10<sup>th</sup> February 2014, after a delay of 285 days. The Commission is of the view that this plea raised in the petition is not maintainable on this ground itself.
- 3) It is seen that both the issues raised in the petition are totally unrelated and as concluded above, not maintainable as well.
- 4) Regulation 30 of KSERC (Conduct of Business) Regulations, 2003 provides for representation at proceedings. Sub regulation (1) of regulation 30 states as follows:

**“A party to any proceedings under this chapter may be represented before the Commission in one of the following manners, namely:-**

**(a) In person**

**(b) Through an authorized employee**

**(c) Through an authorized professional who may be an advocate or a chartered accountant or a cost and works accountant or a company secretary or a graduate chartered engineer holding a certificate of practice”.**

- 5) The complainant in this case is Shri. James Jose, Vice President, Kerala State Co-ordinator Indian Association of Hall Marking Centres who has authorized Shri.Shaji Sebastian, Industrial Consumers Consortium, Manakkat Building 21/67-A, University Road, Kochi 682022 to represent before the Commission. The petition has been signed by him as well as by Shri. Shaji Sebastian. Shri. Shaji Sebastian cannot validly claim that he is the petitioner nor can he represent the petitioner as per the regulation cited above. Neither is he an authorized employee of the petitioner nor could he produce any document to prove that he is advocate or a chartered accountant or a cost and works accountant or a company secretary or a graduate chartered engineer holding a certificate of practice. Therefore the Commission is of the view that Shri. Shaji Sebastian cannot represent the petitioner in this case as per provisions of the KSERC (Conduct of Business) Regulations, 2003.
- 6) In view of the facts, circumstances and legal provisions explained above, the Commission decides not to admit the petition.

Sd/-  
P. Parameswaran  
Member

Sd/-  
Mathew George  
Member

Sd/-  
T.M. Manoharan  
Chairman

Approved for issue

Sd/-  
Secretary

