

**BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

**Present** : Shri. T.M. Manoharan, Chairman  
Shri. Mathew George, Member  
Shri. K.Vikraman Nair, Member

**No.2175/Com.Ex/KSERC/2014**

**In the matter of:** Request to penalise Kerala State Electricity Board Limited for non compliance of Electricity Act 2003 [Reg.97 (2), Reg.149 (2)], and Kerala Electricity Supply Code 2014.

Sri. Saju Jose,  
Tropicana World Trade Pvt.Ltd,  
XI/148-A (III/192), CMS Cheriya Kadavu,  
Kannamaly P.O. KOCHI-682 008

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**Petitioner**

**Versus**

1. The Secretary, Kerala State Electricity Board Ltd, Vidyuthi Bhavanam, Pattom, Thiruvananthapuram
2. Asst. Engineer, Electrical Section, Kannamaly

- **Respondents**

**Order dated: 23.01.2015**

**Background of the Case:**

1. Tropicana World Trade Pvt Ltd, an industry with MSME registration is the petitioner. During the beginning of the year 2014 i.e. on 17.01.2014, the Company had received a stop memo from the Chellanam Panchayath which

was in force for 10 months. After investigation, the petitioner was absolved of the accusation.

2. The APTS of KSEBL along with officials of Electrical Section inspected the premises on 28.10.2014. A provisional Bill for Rs. 21, 25,719/- was issued on 30.10.2014, under Section 126 of the Electricity Act, 2003 alleging misuse of energy. The Complainant objected the same and was heard by the Assistant Engineer on 27.11.2014. The Assistant Engineer issued the final order of assessment on 28-11-2014. Subsequently the final bill for Rs.16,14,894 /- was issued to the complainant on 29-11-2014.
3. This petition has been filed to penalize Kerala State Electricity Board Limited for non compliance of provisions of Electricity Act 2003, and Kerala Electricity Supply Code 2014

#### **Averments of the petitioner in the petition:**

4. The petitioner submitted the following for the consideration of the Commission.
5. The petitioner submitted that the Company does not have any new machinery other than what was available at the time of starting the industry. Hence without providing a prior notification in compliance of sub regulation (2) of Regulation 97 of the Kerala Electricity Supply Code, 2014, KSEBL cannot arbitrarily change the Tariff to LT VII A. The Supply Code 2014 prohibits the reclassification of the Tariff arbitrarily by the Licensee. Regulation 97 of the Supply Code 2014, "Suo Moto reclassification of consumer category by the licensee", state as follows:
  1. *'If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has*

*changed consequent to a revision of Tariff Order, the licensee may suo moto reclassify the consumer under appropriate category.'*

2. *'The consumer shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections if any.'*

Since there is no change of purpose, and the load limit of 100kVA for LT has not been exceeded or added or changed any machinery which were available at the time of effecting the supply, there is no ground for the initiation of Proceedings under section 126 of Electricity Act, 2003.

6. The petitioner also submitted that their site was not inspected by the Assistant Engineer who, as per the Government Order GO(P) No. 4/05/PD dated 02.03.2005 is the Assessing Officer. According to Reg. 149(2) (i) of the Kerala Electricity Supply Code 2014, *'Entry, Inspection, and further proceedings under sec. 126 of the Act shall be done only by the Assessing Officer as designated by the Government under the said Section'*. As per Board Order (FB) No.2518/2013 dated 28.11.2013 *'Assistant Engineer of the respective Electrical Section is the only official designated as Assessing Officer in terms of sec 126 (6) of the Electricity Act 2003. The order of the provisional assessment shall only be issued by the respective assessing officer.'*

7. The petitioner further submitted that the objections filed before AE, Electrical Sec. Kannamaly, was heard on 27.11.2014, following which the AE put forward an order without considering any of their objections. The Assessing Officer failed to consider the following points as quoted in paragraph 6 of the petition.

*(1) The AE has stated that the original electricity connection was for running fried snacks and savories manufacturing unit. Since the licenses for manufacturing was issued by government bodies like Panchayath, Sales tax department, Factories and Boilers act, FSSAI and APEDA etc and all these Govt. bodies states that each licenses should be renewed every*

*year without fail during the beginning of each financial year or calendar year or they can fine us or stop us from continuing the production. Whereas Sales tax department specifically states that each item should be added along with the existing list of items dealt with from time to time on a monthly basis and we are updating with the same. Whereas there is no such system or policy or law with KSEBL otherwise we would have added each items to the list as and when we started dealing with the same. Also the submission or updating of the license is not warranted in the Supply Code for obtaining industrial connection.*

*(2) Normally seafood processing or Porotta processing happens during the early working hours of a day. The AE in his order states that while inspection team arrived at our premise at 7.00pm they saw only Banana chips production. At one point of time we can produce or process only one item. Either Seafood processing, or Porotta Processing or Snacks processing. We cannot do all the three products together. Had the inspectors came with a pre information, we could have planned processing and production of any of the items of the Assessing Officers choice. Arriving at our premise by 7pm in the evening nobody can expect processing of fish or porotta or items like that. If the AE conducts a site visit at our premises during morning hours, only then he will be able to see the processing of seafood, Porotta etc. Therefore the decisions of the AE under assumptions have gone wrong in our case.*

*(3) In the order AE has stated that APTS found packaged Ribbon fish and Paratta of different Brand names were stores. We have many buyers (more than 10 buyers) All 10 buyers 10 different brands and no buyer require our brand when they are established in their own brand. APTS cannot expect every product what we process and produce has to be in our own brand. Both the brand he saw in our cold store belongs to our buyers.*

- (4) *The APTS should have been done the inspection while our production supervisor or myself was present who has full knowledge of production of processing.*
- (5) *In the second paragraph of the order, AE has stated that in order to issue a provisional bill of Rs. 21, 25,719/- the AE's evidence was that the inspection team found the electric supply as MAINLY USED FOR FREEZING AND COLD STORAGE. Of course we are using electricity mainly for freezing what we process or produce and for storing all what we process. How can a processing unit or a Manufacturing unit, who has got a license to manufacture and process Paratta, Process Seafood products, having license as a manufacturer from different Govt departments expected to do its business without Freezing what they process and store what they freeze?? The seafood processing is separately categorized as an industry in the tariff order of Hon. Commission.*
- (6) *In the order AE stated under Analysis of findings that "During the inspection procedure, no processing of fish items could be detected. But it was seen that the consumer has storing Ribbon Fish inside his cold storage." Even though AE did not inspect the site, we fully agree with the findings of the APTS. AE failed to consider the facts that, when APTS visits a manufacturing unit they could see many products in their godown or cold storage at a particular point of time. But it is not fair and just from the part of AE/APTS to expect the manufacturer to keep manufacturing all the items exactly at the time of APTS inspection.*
- (7) *We were forced to process, freeze and store all the items manufactured by us when the Panchayath issued stop memo. Irrespective of whether there is a stop memo or whether there is production or no production, we cannot stop the cold storage because the product inside has to be maintained at – 18 degree Centigrade till it is sold out. Otherwise the product will become stale and rotten.*
- (8) *The statement of the Assessing Officer of his absence is unacceptable, because he could have done the inspection on some other day when he*

*was available. Thus he himself is accepting his absence and non involvement in inspection and preparation Site Mahazer. This is a clear violation of Electricity Act Sec 126 and Supply Code Reg. 149(2).*

8. The petitioner has also stated that even though they approached CGRF Ernakulam, with a complaint for fixing the tariff as LT-IV, they could not meet the Chairperson of CGRF. The lady who may be a clerk at the office of CGRF, had gone through the petition thoroughly and after that went into the chamber of the Chairperson, CGRF. She came out and returned the complaint without accepting or acknowledging the same.

**9. It is therefore prayed before the Commission that the Commission may.-**

- 1) Punish the Assistant Engineer complying with Electricity Act Sec 142 for non compliance of Supply Code Reg 97, 149(2) and Board Order 2518/2014.*
- 2) Direct KSEBL to cancel the impugned bill and to retain our tariff as LT – IV itself.*
- 3) A direction may also be given to KSEBL not to disconnect the supply till hearing and disposal of the petition.*
- 4) Direct CGRF to accept and acknowledge the complaints being submitted by a consumer.*

## **Response of KSEBL**

10. The counter to the contentions of the petitioner submitted by KSEBL are as follows:

- (1) On 28/10/2014 the Anti Power Theft Squad Regional Unit, Kalpetta, Wayanad attached to the KSEB Ltd., conducted a surprise inspection in the premises of the petitioner, which falls within the jurisdiction of the second respondent. The Squad was assisted by the Sub Engineer of Electrical Section, Kannamaly. On inspection, it was revealed that the electric supply pertaining to the petitioner, with consumer no. 8821, was mainly used for freezing and cold storage activities. Whereas in the inspection it was found that, other than cutting of banana for making chips, no manufacturing activities were carried out by the petitioner in the said

premises with the said connection, which was availed under LT IV A tariff. The case is one where the petitioner had intentionally and deliberately misused the energy which falls within the ambit of Section 126 of the Electricity Act, 2003. Accordingly a site mahazar was prepared in the presence of the employees of the petitioner and a provisional bill was issued to the consumer on 30/10/2014 as contemplated under law.

- (2) The site mahazar which was prepared pursuant to the inspection conducted on 28/10/2014 was properly made with the assistance of the Assistant Engineer attached to the squad, which was witnessed and acknowledged by the employees/workers of the petitioner.
- (3) As against the provisional bill issued to the consumer, the petitioner had preferred detailed objection. Authorised representative of the petitioner/consumer was heard on 27/11/2014 and after considering the submissions and argument notes submitted on behalf of the petitioner, the second respondent had dismissed the objections raised by the petitioner as per order dated 28/11/2014. However, by order dated 28/11/2014 KSEBL had revised the provisional bill amount to Rs. 16, 14,894/- and also furnished a detailed calculation statement to the consumer/petitioner.
- (4) With regard to the contention of the consumer that their site was not inspected by the Assistant Engineer in the capacity as assessing officer and that the entire proceedings therefore is vitiated and that the respondent may be punished under section 142 of the Electricity Act 2003 for non-compliance of statutory provisions since the proceedings under section 126 of the Act are initiated without any basis. In a similar set of facts wherein a provisional assessment was challenged on the pretext that the inspection was not conducted by the assessing officer, the Hon'ble High Court of Kerala in Syriach Kurain Vs. Union of India, reported in 2014 (2) KLJ 883, held that assessment proceedings can be initiated on the basis of conclusion arrived depending on the materials collected on an inspection conducted by any competent authority other than the assessing officer. It was further categorically held that there is no stipulation that assessing officer himself should conduct inspection.

## Hearing of the Petition:

11. Hearing on the matter was held on 7-01-2014 at the Commission's office at Thiruvananthapuram. The petitioner was represented by Adv. N. Sasidharan Unnithan and the respondents by Adv. B. Sakthidharan Nair. On behalf of the petitioner Adv. N. Sasidharan Unnithan presented the facts of the case as narrated in the petition and argued that change of tariff can be effected only in accordance with the provisions of Regulation 97 of the Kerala Electricity Supply code, 2014. Therefore, the proceedings and order of the assessing officer namely Assistant Engineer, Electrical Section, KSEB Limited, Kannamaly, Kochi are in violation of sub-regulation (2) of regulation 97 and sub-regulation (2) of regulation 149 of the Kerala Electricity Supply Code, 2014. He therefore argued that the respondent may be proceeded against, under section 142 of the Electricity Act, 2003. Adv. Sasidharan Unnithan also presented an application during the course of arguments, praying for an interim order not to disconnect supply to the premises of the petitioner till the disposal of the petition.

Adv. B. Sakthidharan Nair, on behalf of the respondents, argued that as per the proviso under sub-regulation (5) of regulation 97 of Kerala Electricity Supply Code, 2014, the proceedings under section 126 of the Electricity Act, 2003, initiated by the Assistant Engineer, Kannamaly is perfectly in order. He further argued that the assessing officer is protected under section 168 of the Electricity Act, 2003, for anything done in good faith in accordance with the provisions of the Act or the rules or regulations made there under. He emphasized that even if the assessing officer fails to comply with the provisions of the Act or the rules or regulations made there under, he can be proceeded against only if *malafide* is proved against him. Adv. Sakthidharan Nair requested for time to file written statement of defence on behalf of the respondents. On the query raised by the Commission, the Assistant Engineer, Kannamaly informed that the supply to the petitioner has not been disconnected in view of the pendency of this petition.

After hearing both sides, the Commission issued the following interim orders;



1. The supply of electricity to the premises of the consumer shall not be disconnected till the disposal of this petition based on the issues under consideration in this petition. It is clarified that this order will not prevent the respondent from disconnecting the supply on any other ground in accordance with the provisions in regulation 138 and 139 of the Supply Code, 2014.
2. The respondents are granted time till 16.01.2015 to file written statement of defence.

**12.** Accordingly, KSEBL submitted their written statement of defence. The averments submitted by KSEBL are as quoted below

- (i) *The petition is filed to initiate proceedings under Section 142 of the Electricity Act 2003 against the assessing authority (Assistant Engineer) relating to an assessment for un-authorized use of Electricity under section 126 of the Electricity Act, 2003, alleging that the inspection and assessment are not in accordance with the procedures laid in the Act and Regulation. The said allegation and other objection raised by the consumer were heard by the assessing Authority and after hearing the consumer a final decision has been taken by the assessing officer as per Section 126(3) of the Electricity Act 2003 and the order was duly communicated to the consumer. If the consumer was aggrieved by the Order he may file appeal u/s 127 of the Electricity Act 2003. When a statutory appeal remedy is provided under Section 127 of the Act the consumer must redress his alleged grievance only through the mechanism provided under section 127 of the Act 2003. Thus the petitioner has no cause of action under Section 142 of the Electricity Act, 2003 against the assessment u/s, 126 of the Act, especially the assessing authority under Section 126 of the Act is a public officer appointed by the State Government by Notification and his final decision is a quasi judicial decision. The Honourable Supreme Court in Maharashtra Electricity Regulatory Commission and others in versus Reliance Energy Ltd and others (2007) 8 S.C.C 381 held that where the state concerned has created a*

*proper forum for redressal of grievances of consumers – the State Electricity Regulatory had no jurisdiction upon such matter.*

*The above principle is applicable in this case also. Hence the petition is not maintainable.*

*(ii) The petition to initiate proceedings u/s. 142 of the Electricity Act 2003 against the assessment officer is barred by Section 168 of the Electricity Act 2003.*

*(iii) Without prejudice to the above contentions, it is respectfully submitted as follows:-*

*(a) The statement that the APTS unit conducted inspection at the premises of M/s. Tropicana World Trade Pvt Ltd during June 2014 is not correct. The inspection conducted by APTS Ernakulam unit was on 11.02.2014. Eventhough the panchayath issued a stop memo, for 10 months, the electricity consumption was normal during that period which shows that electricity is only used for freezing and cold storage.*

*(b) The licence produced while availing connection was for manufacturing and storing of snacks and savories and the connection was given for that purpose. Mere possession of licence, SSI registration and certificates of other agencies does not entail a firm to get the industrial tariff. The tariff of a consumer is assigned on the purpose for which electricity is used. The consumer was using electricity for freezing and storing of fish items manufactured by other units and tariff applicable for freezing and cold storage is LT VII A Commercial.*

*(c) This is not a case of misclassification of tariff and hence Supply Code Regulation 97(2) is not applicable. The industrial tariff was assigned for manufacturing and storing of snacks and savories produced in this unit. But the consumer was using electricity for freezing and storing items manufactured or processed in other units and hence this is a commercial activity and the tariff applicable is LT VII A commercial.*

*(d) Before issuing the provisional assessment bill on 30.11.2014, the Asst. Engineer (assessing officer) inspected the premises and was convinced about the misuse of electricity at the consumer premises and it was an un-authorized use of electricity under section 126 of Electricity Act. As per section 135(2) of the Electricity Act 2003 any officer of the license authorised in this behalf by the State Government can enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being used un-authorisedly. Accordingly the state Government as per notification SRO No. 703/2005 authorised the officers of and above the rank of sub engineers of Kerala State Electricity Board to exercise the powers and perform the functions under the said section, within their respective jurisdiction. Hence there is no illegality or impropriety in the inspection conducted by the APTS consisting of the Sub Engineer. In spite of this, the assessing officer made the provisional assessment after conducting an inspection on the next day of the APTS inspection and convinced himself about the un-authorised use of electricity. The statement of the consumer that the final order issued was without considering any of the objections raised by the consumer is not correct. The assessing officer heard and considered the objection filed by the consumer and accordingly the provisional assessment amounting to Rs. 21,26,719/- was revised to Rs. 16,14,894/-*

*(e) As claimed by the complainant, if different brand names are for different buyers, there should be an agreement between the producer and purchaser. No such agreements have been produced by the complainant for establishing his claim before the Assessing Officer at the time of hearing.*

*(f) Industrial Tariff is applicable only if electricity is used for both production and storing. If the electricity is used only for freezing and storing, tariff applicable will be commercial. In case of seafood processing also, if sea food processing is done along with freezing and*

*cold storage industrial tariff is applicable and if only freezing and storing is done without processing, commercial tariff will be applicable.*

*(g) The Asst. Engineer made the assessment only after inspecting the premises and was convinced about the facts mentioned in the site mahazar.*

*It is therefore prayed that this Honourable Commission may kindly accept the above contentions and dismiss the above petition with cost.*

**13. Arguments submitted by the Petitioner are as quoted below:**

- (i) Apart from the permitted manufacturing activities under the industrial tariff, no irregularity or any misuse or unauthorised use of electricity was noticed by the Sub Engineer or by any other official. In the Mahazer, also there was no mentioning of tariff misuse or any un-authorized use of electricity, what so ever, by the petitioner.
- (ii) It is also submitted that the second respondent without any notice or any intimation to the petitioner arbitrarily changed the industrial tariff of the petitioner from LT IV to LT VII A and issued the bill for the month of 12/2014. The above bill is issued in gross violation of the mandatory requirements contemplated under regulation 97 of the Kerala Electricity Supply Code 2014.
- (iii) It is further submitted that the second respondent has committed gross violation of regulation 97(2) and 149(2) of the Kerala Electricity Supply Code 2014. Under regulation 149(2) the inspection of the premises by the Assessing Officer himself is mandatory before initiating proceedings under section 126 of the Electricity Act 2003. Under Section 126(1) of the Electricity Act, 2003 also, the inspection by the Assessing Officer is mandatory before initiating proceedings for unauthorised use of electricity. In this case the second respondent assessing officer did not inspect the premises before initiating the proceedings under section 126

of the Act nor did he inspect the documents maintained by the petitioner. Thus he has also violated Section 126(1) of the Act.

(iv) It is contended by the petitioner that the arguments of the respondents was that no proceedings by the Commission can be taken under section 142 of the Electricity Act against the Assessing Officer for anything done by him on good faith, in view of the protection under Section 168 of the Act, will not sustain and the 2<sup>nd</sup> respondent is liable to be proceeded against on the following grounds.

*(a) A thing is said to be done in good faith only if it is done with sincerity and honesty, without leading to any undue advantage or loss to any person. In this case even though the Assessing Officer is an officer of the licensee he is an independent authority. Before proceeding with, on the basis of an inspection report (Mahazar) of the officials of the licensee itself, it is the mandated of the duty of the Assessing Officer to inspect the premises and satisfy himself as to whether the fact and findings depicted in the mahazar agree with the factual situation in the premises. He should also inspect the relevant documents regarding the supply and usage of electricity maintained by the consuer. Then only it can be said that the assessing officer has come to a reasonable conclusion and assessment is made to the best of his judgment as contemplated under section 126 of the Act.*

*(b) The inspection assessment etc, of the assessing officer should be independent and uninfluenced by the other agencies of the licensee like APTS. Anything done in gross vilation of the statutory provision cannot be said to be done in good faith.*

*(c) In this case, the Assessing Officer, simply on getting an inspection report prepared by another official of the licensee issued an order stating that the energy was used for commercial purpose under LT VII A. But in the provisional order he did not state at all for what*

*commercial activity was doing by the petitioner with the use of energy. This also shows arbitrariness and bias on the part of the AE.*

*(d) The argument of the respondents that the petitioner did not produce agreement if any, for packing the finished food products for other in their brand name is absolutely cryptic and irrelevant. These agreements are the records maintained by the petitioner at his premises which were to be inspected by the assessing officer at the time of spot visit. As he did not visit the premises he had no occasion to verify the same. However the copy such agreements are produced herewith.*

*(e) It is further submitted that it is not the agreement made with other parties that governs the usage of energy and tariff, but the actual activities and purpose of usage of electricity in a premises. Even if there is no such agreement with the buyers of an industrial consumer, the tariff applicable is based on the actual usage of electricity in the premises.*

*(f) If the respondents seek protection under section 168, they also cannot question the proceedings of this Honourable Commission before the Honourable APTEL. But KSEBL have questioned many orders of this Honourable Commission before the Honourable APTEL. So, Section 142 is express and independent of other sections in the Act and the same is enforceable, untrammelled by other sections, provided there is violation of the provisions of the Act or regulations by any person. The term 'any person' is wide enough to include an Assessing Officer. More over a complaint under section 142 cannot be construed as a 'suit, prosecution or other proceedings' contemplated under section 168 of the Act.*

*(g) As the second respondent has contravened 97(2) and 149(2) of the supply code, he is liable to be punished under section 142 of the Electricity Act 2003.*

## Analysis and decision of the Commission

14. Regulation 97 of the Kerala Electricity Supply Code, 2014 stipulates that:

- (1) *If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo motu reclassify the consumer under appropriate category.*
- (2) *The consumer shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections, if any.*
- (3) *The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately.*
- (4) *Arrear or excess charges shall be determined based on the actual period of wrong classification and the account of the consumer shall be suitably adjusted.*
- (5) *If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter:  
Provided that in the case of reclassification consequent to change of the purpose of supply by the consumer without due authorization, the licensee may examine each case and initiate proceedings under Section 126 of the Act if found necessary.*

This is not a case of miss-classification of tariff and hence Regulations 97 (2) is not applicable. The industrial tariff was assigned to this unit. But it was alleged by the licensee that the consumer was using electricity for freezing and storing items manufactured or processed in other units and hence it is a commercial activity and the tariff applicable is LT VII A commercial and the licensee has proceeded as per the proviso of sub regulation (5) of Regulation 97 of the Kerala Electricity Supply Code, 2014.

**15.** Sub Regulation (2) of Regulation 149 stipulates that

*“The entry, inspection and initiation of proceedings under Section 126 and Section 135 of the Act shall be done only by the officers specifically authorized by the Government or by the Commission, for the purpose of the said Sections as stated hereunder:-*

- i. Entry, inspection and further proceedings under Section 126 of the Act shall be done only by the assessing officer as designated by the Government under the said Section;*
- ii. ...*
- iii. ....*

In this case, the Sub Engineer of Electrical Section, Kannamaly has prepared the site mahazar. The Sub Engineer is the inspecting authority authorized by the government for the purpose of sub section (2) of Section 135 of the Electricity Act, 2003. Hence there is no illegality or impropriety in the inspection conducted by the Sub Engineer of the Electrical Section, Kannamaly. The assessing officer can proceed under section 126 of the Electricity Act, 2003, after perusal of relevant records and convincing himself about the irregularity committed by the consumer, as recorded by the inspecting authority.

**16.** The dispute is over the allegation to the effect that the electricity availed for industrial purpose was used for commercial purpose. Only if electricity is used for manufacturing processes and other processes ancillary to it, industrial tariff can be claimed. If the consumer has actually engaged in manufacturing process, he should have the following documents.

- (I) Bills & vouchers relating to purchase of raw materials for manufacture.
- (ii) Bills and vouchers relating to sale of products
- (iii) Documents relating to payment of wages to employees, attendance register etc.
- (iv) Documents relating to payment of Sales Tax for the products sold
- (v) Documents relating to payment of Excise duty for the products manufactured, if applicable



- (vi) Registers relating to production
- (vii) Such other details and records

17. The petitioner has produced several documents such as Sales tax and Excise duty certificates, bills and vouchers relating to purchase of raw materials and sale of products, memorandum of understanding, agreements executed with various firms to substantiate that they had used electricity only for manufacturing processes and its ancillary processes such as freezing and cold storage of the finished products and raw materials. Freezing and storage activity is an integral process of a food processing industry. The argument of KSEB Ltd that the consumer was using electricity for freezing and storing items manufactured or processed in other units on a rental basis could not be conclusively proved by the respondents.

18. The contention of the 2<sup>nd</sup> respondent that the petitioner is using the electric supply for freezing and cold storage activity only since at the time of inspection at 5.30 PM it was found that other than cutting of banana for making chips, no manufacturing activities were seen carried out by the petitioner in the premises, cannot be taken as sufficient reason for changing the tariff of the petitioner from industrial to commercial. The documents produced or arguments put-forth by the respondents are not sufficient to substantiate that the petitioner had misused energy as alleged by the respondents. The veracity of the documents produced by the petitioner has not been doubted or questioned by KSEBL.

### **Decision of the Commission**

- i. The allegation of KSEB Ltd is to the effect that, the energy availed for industrial purpose was used unauthorizedly for commercial purpose. The documents produced or arguments put-forth by the respondents are not sufficient to substantiate that the petitioner had misused energy as alleged by the KSEB Ltd. The petitioner has produced several documents to substantiate that they have not misused energy as alleged by KSEB Ltd. The veracity of the documents produced by the

petitioner has not been questioned by KSEBL. Therefore the Commission is of the considered view that ,a case of unauthorized use of energy under Section 126 of the Electricity Act, 2003 has not been conclusively proved against the petitioner.

- ii. There is no case to proceed against the officers of Kerala State Electricity Board Ltd under Section142 of the Electricity Act, 2003 for the non-compliance of sub regulation (2) of Regulation 97 and sub regulation (2) of Regulation 149 of the of the Kerala Electricity Supply Code, 2014.
- iii. The petition is disposed off accordingly.

**Sd/-**

**Mathew George**  
Member

**Sd/-**

**K.Vikraman Nair**  
Member

**Sd/-**

**T.M. Manoharan**  
Chairman

*Approved for issue*

*Secretary*