

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Sri.T.M. Manoharan, Chairman
Sri. K.Vikraman Nair, Member

Petition No. 2346/Com. Ex/KSERC/14

In the matter of complaint reporting contravention of provisions of Electricity Act, 2003, rules and regulations made thereunder as well as non-compliance and non-performance committed by the respondents and the request for action under Section 43 (3), 57 (2), 142, 146 and 149 of Electricity Act, 2003.

Sri. Thomas John Muthoot : Petitioner
Managing Director,
MPG Hotels and Infrastructure Ventures Pvt. Ltd.
Muthoot Centre, Punnen Road,
Thiruvananthapuram 695 034.

1. Sri. P. Anil Kumar
Assistant Engineer, KSEBL,
Electrical Section, Sreevaraham
Thiruvananthapuram and the persons who were
in the office of Assistant Engineer, Electrical Section
KSEBL, Sreevaraham with effect from 11.09.2012 up to
the date on which Mr. P. Anil Kumar took charge of
the Assistant Engineer. } Respondents

2. KSEB Limited,
Vydythi Bhavanam, Pattom, Thiruvananthapuram- 695 004 }

Petition No. 2347/Com. Ex/KSERC/14

In the matter of complaint relating to contravention of provisions under clause 4 (4) of general conditions of licence under part III of KSERC (Licensing) Regulations, 2006 and prayer for appropriate action against the respondents.

Sri. Jeevan Varghese : Petitioner
Company Secretary and Compliance Officer,
MPG Hotels and Infrastructure Ventures Pvt. Ltd.

Muthoot Centre, Punnen Road,
Thiruvananthapuram 695 034.

1. Assistant Executive Engineer,
Electrical sub-division, Beach, KSEBL
Thiruvananthapuram.

2. Executive Engineer,
Electrical Division, Kazhakatam,
Thiruvananthapuram.

3. Deputy Chief Engineer
Electrical Section (Urban)
KSEBL, Thiruvananthapuram

} Respondents

Petition No. 2348/Com. Ex/KSERC/14

**In the matter of complaint relating to contravention of the provisions of
Electricity Act, 2003, rules and regulations made thereunder
relating to regularization of additional load**

Sri. Thomas John Muthoot : Petitioner
Managing Director,
MPG Hotels and Infrastructure Ventures Pvt. Ltd.
Muthoot Centre, Punnen Road,
Thiruvananthapuram 695 034.

Sri. P. Anil Kumar : Respondent
Assistant Engineer, KSEBL,
Electrical Section, Sreevaraham
Thiruvananthapuram.

Common Order Dated : 30.06.2015

1. The basic facts presented by the petitioners in all the three cases are more or less similar. They are summarised hereunder,-
2. The 'Muthoot Sky Chef' and 'Villa Maya Heritage Restaurant' are two ventures of the company namely, MPG Hotels and Infrastructure Ventures Pvt. Ltd., Muthoot Centre, Punnen Road, Thiruvananthapuram 695 034. Sri. Thomas John Muthoot is the Managing Director of the Company and Sri. Jeevan Varghese is its

Company Secretary and Compliance Officer. M/s Muthoot Sky Chef and M/s Villa Maya Heritage Restaurant function in the same compound under the jurisdiction of Electrical Section, KSEBL, Sreevaraham. M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., constructed a new building and erected a 630 kVA 11/0.4 kV indoor substation and executed agreement No.19/2003-04 with M/s KSEBL (the licensee) and obtained HT electrical connection with a contract demand of 350 kVA at the voltage level of 11 kV. The consumer No. is LCN-6/3923. M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., has thereafter started an air catering unit namely, M/s Muthoot Sky Chef. There was a heritage building in the same compound where M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., started M/s Villa Maya Heritage Restaurant. The Electrical Inspector had, on 20.03.2012, approved the electrification scheme for the heritage building for Villa Maya Heritage Restaurant. The said scheme was for extending LT connection from the existing 630 kVA 11/0.4 kV substation at the Muthoot Sky Chef building using 120 M of 3.5 C x 240 sq. mm AYFI cable to the heritage building. Electrical Inspector had issued energization sanction on 14.06.2012 for connecting 156 kW plus 35 kVAR additional load. The Electrical Inspector had also communicated copy of the said order to the respondent. According to the petitioners neither the licensee nor the respondents had raised any objection. Sri. Thomas John Muthoot, Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., thereafter submitted application on 11.09.2012 to the respondent for enhancing the contract demand by 100 kVA. The Assistant Engineer, KSEBL, Sreevaraham refused to accept the application on the plea that the applicant had not submitted preliminary application for power requirement and obtained a sanction. As per the averments of Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., the action of the Assistant Engineer was in accordance with the in-house administrative order No.BO (FB) (Genl) No. 510/2010 (DPC-II/AE/T&C of Supply).02/2009 dated 24.02.2010. When the Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., submitted the application, the Assistant Engineer had collected Rs.10/- towards application fee and Rs.10,000/- under the head "on advance estimate for PA". In spite of several enquiries by the applicant, the power requirement order was not issued. The Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., thereupon extended the electric supply to Villa Maya Heritage Restaurant from Muthoot Sky Chef without any authorization from the licensee or any of its officer. Admittedly by Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., *"when it was not allowed to connect additional load with authorization, the only option available to the petitioner was to connect additional load without authorization since electricity supply was essential for the continued business activity."* The Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., further states that the licensee never objected to

the said extension of electric supply or took any action to regularize it or to remove it. The maximum demand of the Muthoot Sky Chef was more than its contract demand. The Assistant Engineer or any officer of the licensee never issued any notice to the Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., asking to execute fresh agreement for increased contract demand and did not take action for regularizing the excess contract demand. Consequently the Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., was being billed at penal rates at 150% of tariff rates for demand charges for the excess maximum demand over the contract demand as per clause (15) of the agreement No.19/2003-04. The Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., apprehends that the license was trying to use the in-house administrative order of KSEBL dated 24.02.2010 as a tool for not supplying electricity to the applicant within the time frame as stipulated under Section 43 (1) of the Electricity Act, 2003. One Sri. M.Shiva Kumar, Sub-Engineer of Electrical Section, Sreevaraham inspected the premises of the M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., on 20.09.2014 as per the directions of the Chief Vigilance Officer, KSEBL. The inspection was conducted in the presence of Anti Power Theft Squad (APTS), Thiruvananthapuram and a Mahazar was prepared. Consequently the Assistant Engineer, Sreevaraham, in his capacity, as the Assessing Officer under Section 126 of the Electricity Act, 2003, issued a provisional assessment order to Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., informing him the details about the provisional assessment of electricity charges payable amounting to Rs.1,07,62,180/-. The above provisional assessment order was issued on the ground that the petitioner had unauthorizedly extended the connection from Muthoot Sky Chef to Villa Maya Heritage Restaurant. It is alleged that the Assistant Engineer directed to remove the unauthorized extension and threatened that the service would be disconnected. The Managing Director, M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd., had submitted a statement of defence during the hearing conducted by the Assessing Officer and submitted objection statements. The Assessing Officer after hearing the consumer issued the final assessment order for an amount of Rs.1,07,62,180/- by assessing charges at the rate of two times Rs.65/- per day for the unauthorized extension for 780 days to the load of 106 kW in Villa Maya Heritage Restaurant.

3. The petitioner in the Petition No. 2346/Com. Ex/KSERC/14 is Sri. Thomas John Muthoot, Managing Director, MPG Hotels and Infrastructure Ventures Pvt. Ltd. Muthoot Centre, Punnen Road, Thiruvananthapuram 695 034. According to him M/s KSEBL had created separate regulations for supply of electricity in disguise in the form of in-house administrative orders. The Assistant Engineers who were holding charge as Assistant Engineer, Sreevaraham from 11.09.2012 including

Sri. P.Anil Kumar, Assistant Engineer, Sreevaraham and the licensee failed to supply electricity to the petitioner even after submitting applications on 11.09.2012 and on 25.09.2014 resulting in denial of supply of electricity to him. It is also alleged that the licensee failed in reporting breach of statutes and non-compliance of the subordinate to the Commission, thereby violating Section 43 (1) of the Electricity Act, 2003, and clause 4 and clause 6 (1) under part III General Conditions of Distribution Licence under KSERC (Licensing) Regulations, 2006. According to the petitioner the issues raised in this petition require action under Section 43 (3),57 (2), 142, 146 and 149 of Electricity Act, 2003, and also under KSERC (Licensee's Standard of Performance) Regulations, 2006. The petitioner has further stated that none of the opposite parties have signed under their name and designation in any of the documents available to him and therefore he requested the Commission to take action against the appropriate opposite parties as decided by the Commission. The petitioner has also requested to issue orders prohibiting KSEBL from issuance of in-house administrative orders as in the case of the order issued on 24.02.2010.

4. The petitioner in the Petition No. 2347/Com. Ex/KSERC/14, is Sri. Jeevan Varghese, Company Secretary and Compliance Officer, MPG Hotels and Infrastructure Ventures Pvt. Ltd. Muthoot Centre, Punnen Road, Thiruvananthapuram 695 034. The sum and substance of this petition is that the action of the Assessing Officer and Assistant Engineer, Electrical Section, Sreevaraham in having issued the provisional and final assessment orders is not sustainable since it was issued on the basis of the inspection done by APTS under the directions of Sri. Rishi Raj Singh IPS, Chief Vigilance Officer, KSEBL. The petitioner has also stated that the Assistant Engineer, Sreevaraham had not taken any action to regularize the unauthorized extension. It is alleged that the opposite parties namely, the Assistant Executive Engineer, Electrical Sub-Division, Beach, the Executive Engineer, Electrical Division, Kazhakutam and the Deputy Chief Engineer, Electrical Circle (Urban) Thiruvananthapuram, were also aware of the irregular action taken by the Assistant Engineer, Sreevaraham and therefore the petitioner requested the Commission to take action against the above supervisory officers, who according to the petitioner "independently and jointly aided and abetted Mr. P. Anil Kumar, Assistant Engineer in his assessment by their silence." The above officers never reported this material breach of statute either to the higher authorities of the licensee or to the Commission, thereby indulging in non-compliance with the statutory provisions.
5. Sri. Thomas John Muthoot, Managing Director, MPG Hotels and Infrastructure Ventures Pvt. Ltd. Muthoot Centre, Punnen Road, Thiruvananthapuram-695 034 (the petitioner) is the petitioner in the Petition No. 2348/Com. Ex/KSERC/14 filed on 01.12.2014 alleging contravention of provisions of Electricity Act, 2003, rules

and regulations made thereunder by Sri. P. Anil Kumar, Assistant Engineer, KSEBL, Electrical Section, Sreevaraham, Thiruvananthapuram (the respondent). The petition was submitted for and on behalf of the company namely, MPG Hotels and Infrastructure Ventures Pvt. Ltd., which was previously known as Muthoot Hotels and Tourism Ventures Pvt. Ltd. The petitioner has assailed the proceedings of the respondent under Section 126 of the Act on many grounds. The important grounds among them are that,-

- (i) The respondent has initiated action under Section 126 of the Electricity Act, 2003, consequent to the inspection of APTS and as tutored by the APTS.
- (ii) The statutory function under Section 126 of the Act is not a function of the licensee and it is the function of the Government since the assessing officers under Section 126 of the Act are appointed by the Government.
- (iii) The assessing officer is an independent administrative officer of the licensee and shall not function in a biased manner.
- (iv) The assessing officer under Section 126 of the Act has no unfettered power.
- (v) The impugned proceedings of the respondent is biased since he is acting as an employee of the licensee.
- (vi) Since the assessing officer was acting under the instructions of APTS, he had no freedom to perform his duties.
- (vii) The respondent and his predecessor in office did not act upon the application dated 11.09.2012 for enhancing contract demand as required under regulation 99 of the Kerala Electricity Supply Code, 2014.
- (viii) The respondent did not conduct annual review of contract demand and never acted as required under clauses (1) and (2) of regulation 101 of Kerala Electricity Supply Code, 2014.
- (ix) The respondent did not inspect and act as required under clause (1) (i) of regulation 149 and did not prepare mazahar as required under clause (2) (b) of regulation 150 and clause (1) of regulation 151 of Kerala Electricity Supply Code, 2014.
- (x) The Electrical Inspector had approved the scheme for connecting additional load of 156 kW with the existing 630 kVA 11/0.4 KV substation at the building of Muthoot Sky Chef.
- (xi) There are many consumers under KSEBL who avail HT and EHT connections given at single points and extended LT lines to other buildings.
- (xii) The impugned extension was for the same purpose in the same compound.

- (xiii) The provisional assessment was done in the capacity of Assistant Engineer of the licensee and hence violated clauses (3) and (5) of regulation 155 of Kerala Electricity Supply Code, 2014.
 - (xiv) The news about the detection of the irregularity was posted in the face book of KSEBL in a slanderous manner on 20.09.2014 and thereafter the news was telecast on visual media and appeared in print media.
 - (xv) The inspection conducted by APTS and the assessment of penal charges were product of deep routed conspiracy to malign the petitioner.
6. The petitioner prayed that the Commission may take appropriate action as envisaged under law and statute against the respondent and others and appropriate orders may be issued to remove the bad name pasted on the face of the petitioner by KSEB Limited.

Hearing of the Petitions:

7. The petitions were heard on 21.01.2015, in the Court Room of the Commission after giving notice to the petitioners and the respondents. Sri. K. Anandakuttan Nair, Thusharam, Kanakakunnu Lane, Thiruvananthapuram 695 033 and Adv. B. Sakthidharan Nair, City Chambers, Vanchiyoor, Thiruvananthapuram appeared before the Commission on behalf of the petitioners and respondents respectively. Sri. K. Anandakuttan Nair submitted a copy of the order dated 22.09.2014 issued by Sri. Thomas John Muthoot, Managing Director, Muthoot Pappachan Group Hotels and Infrastructure Ventures Pvt. Ltd., appointing Sri. K. Anandakuttan Nair as the Consultant (Electricity) under mutually agreed terms and conditions. As per the said order the Sri. K. Anandakuttan Nair was authorized to represent the petitioner in appropriate adjudication before KSERC and other statutory bodies except in civil court. It was also indicated in the said appointment order that the appointment was not a bar on Sri. K. Anandakuttan Nair to take up employment elsewhere. Adv. B. Sakthidharan Nair raised a preliminary objection to the effect that Sri. K. Anandakuttan Nair cannot represent the petitioner in this case in view of regulation 30 of KSERC (Conduct of Business) Regulations, 2003. As per regulation 30 of the KSERC (Conduct of Business) Regulations, 2003 only the following persons can represent a party before the Commission in any proceedings,
- (i) In person;
 - (ii) Through an authorized employee; or
 - (iii) Through an authorized professional who may be an advocate or a chartered accountant or a cost and work accountant or a company secretary or a graduate chartered engineer holding a certificate of practice

- (iv) Through an advocate who shall file a *Vakalatnama* duly executed by the person for whom he / she appears.
8. Adv. B. Sakthidharan Nair, the learned counsel for the respondents in all the three compliants, wanted to get a copy of the appointment order pertaining to Sri. K. Anandakuttan Nair so that he could file objection on the point raised by him. In view of the objection raised by Adv. B. Sakthidharan Nair the Commission expressed its view that the case could be heard on merits after deciding on the preliminary objection raised by the Advocate of the respondent. The Commission also clarified that it has no objection to hear the petitioners who are present at the time of hearing, if they appear in person. But the petitioners expressed their desire to be heard through their representative namely Sri. K. Anandakuttan Nair. They also wanted to get copies of the documents filed by the respondent so that they can file their reply. The Commission granted time to the respondents up to 09.02.2015 for filing objections. The respondents were also directed to serve a copy of their objection on the petitioners.

Response of KSEBL:

9. On 07.02.2015, KSEBL filed their objection through their learned counsel, Adv. B. Sakthidharan Nair. The main contentions and submissions of KSEBL were as narrated below.
- 1) *Under the strength of an authorization of the complainant company, a person claims to be a consultant attempted to appear and argue on behalf of the company before the Kerala State Electricity Regulatory Commission on 20-1-2015 against the interdict contained in Regulation 30 of KSERC (Conduct of Business) Regulations, 2003 and also against the interdict contained in the Advocates Act, 1961, which is a Central Act. As per Section 33 of the Advocates Act, 1961 advocates alone are entitled to practice before the Court or before any authority or person. Section 33 of the Advocates Act, 1961 says "except as otherwise provided in this Act or in any other law for the time being in force, no person shall on or after the appointed day, be entitled to practice in any Court or before any authority or person unless he is enrolled as an Advocate under this Act". There is a distinction between the right to appear on behalf of someone, which is only given to enrolled lawyer and the discretion in the Court to permit a non-lawyer to appear before it. Under Section 29 and 33 of the Act only those persons have a right to*

appear and argue before the Court who is enrolled as an Advocate. While under Section 32 of the Act, a power is vested in the Court, in a particular case, a person other than an Advocate to appear before it and argue the case.

- 2) As per Section 32 of the Advocates Act, 1961, any Court, authority or person may permit any person, not enrolled as an Advocate under this Act to appear before it or him in any particular case. So permission of the Court/Authority is a condition precedent for permitting a non-advocate to appear before the Court/Authority in a particular case.
- 3) The Hon. Supreme Court of India in Venkitachalam Vs. Ajith Kumar C Shah (2011 (3) KLT SN150 held that Forum has the right to prevent an authorized agent to appear in case if it is found and believed that he is using the right as a profession. By applying the above principle laid down by the Hon. Supreme Court, the Kerala State Electricity Regulatory Commission is empowered to judge whether a non-advocate appearing before it is in any manner exercising such privileges granted for any ulterior purposes for professional purposes.
- 4) The complainant/company as per the appointment order dated 22-9-2014 signed by its Managing Director, Mr. Thomas John Muthoot appointed Mr. K. Anandakuttan Nair, Thusharam, Kanakakunn Lane, Thiruvananthapuram as the Consultant (Electrical) of M/s. MPG Hotels & Infrastructure Ventures (Pvt) Ltd., Muthoot Centre, Punnen Road, Thiruvananthapuram under mutually agreed terms and conditions. As per the above appointment order, he is authorized to draft/prepare petitions, appeals and other document for and on behalf of M/s MPG Hotels & Infrastructure Ventures (Pvt) Ltd. and represent the company in person before appropriate adjudicators, State Electricity Regulatory Commission and other statutory bodies, offices as and when necessary, except in Civil Courts and advise the company as and when required on matters relating to electricity supply by KSEB Ltd. The above appointment order also says that the appointment is not a bar on him to take up employment elsewhere.

- 5) *The dictionary (Oxford) meaning of the term 'consultant' is 'a person providing professional advice'. So, from the very terms of appointment, it is very clear that he is not an employee of the company but only an independent adviser of the company. That means he is not an 'authorized employee' within the meaning of Regulation 30 (c). So without any stretch of imagination, one can say that the consultant appointed by the complainant company will not come within the purview of Regulation 30 (c) of KSERC (Conduct of Business) Regulations, 2003.*
- 6) *From the very appointment order, it is very clear that Sri. K. Anandakuttan Nair has been appointed under mutually agreed terms and conditions, which is self explanatory of the fact that he is using the right under Regulation 30 as a profession, which is not permissible under law. Apart from this, the Commission can take notice of the fact that Shri.. K. Anandakuttan Nair who is not authorized to practice in law has been appearing and arguing different cases of different consumers on professional basis before the CGRF (South) and Electricity Ombudsman constituted under Electricity Act, 2003 thereby using the right of consumer to be represented by nominee, as a profession, which is against the interdict contained in the Advocates Act, 1961. By applying the dictum laid down by the Hon. Supreme Court in Venkitachalm's case (2011 (3) KL SN 150), the Commission is empowered to judge whether a non-advocate appearing before it in any manner exercising the privileges under Regulation 30 of KSERC (Conduct of Business) Regulations, 2003 for professional purposes and also the Commission has the right to prevent an authorized representative/consultant to appear in case if it is found and believed that he is using the right as a profession.*

Analysis and decision of the Commission:

10. Shri. K. Anandakuttan Nair, on behalf of the petitioner contended that he is an employee of the petitioner and therefore, he can represent the petitioner as per clause (b) of sub-regulation (1) of regulation 30 of the KSERC (Conduct of Business) Regulations, 2003. As per sub-section (3) of Section 94 of the

Electricity Act, 2003, the Commission may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it. The Commission has, in exercise of the powers under sub section (3) of Section 94 of the Act, decided that four categories of person as specified in sub-regulation (1) of regulation 30 of the KSERC (Conduct of Business) Regulations, 2003, can represent the consumer in any proceedings before it. **The said regulation is quoted hereunder,-**

“30 Representation at proceedings.- (1) A part 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 authorised employee; or***
- (c) Through an authorised 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.***

Provided that an advocate (legal practitioner) appearing and acting in the proceedings on behalf of any person before the Commission shall file a vakalatnama duly executed by a person for whom he / she appears, if not already filed on the record of the case. A person other than a legal practitioner representing a party shall file a Memorandum of Appearance in the Form 4 attached hereto, duly signed by him/ her.

(2) The presentation of a party at the proceedings shall include the right to act and plead on his / her behalf, subject to such terms and conditions as the Commission may specify from time to time.

11. The Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, also contains corresponding provisions relating to the authority to represent a person before it. Regulation 23 of the said regulations, is quoted hereunder,-

“Regulation 23 “Authority to represent.- A person may authorize an advocate or a member of any statutory professional body holding a Certificate of Practice as the Commission may from time to time specify, to represent him and act and plead on his behalf before the Commission. The person may also appear himself or may authorize any of his employees to appear before the Commission

and to act and plead on his behalf. The Commission may from time to time specify the terms and conditions subject to which a person may authorize any other person to represent him and act and plead on his behalf.”

12. Though the petitioner was present in the hearing he did not opt to appear in person. There is no claim that Shri. K. Anandakuttan Nair will fall under the categories mentioned at (iii) and (iv) in paragraph 5 of the petition. Now the question to be decided is whether or not Shri. K. Anandakuttan Nair is an employee of the petitioner. As per the definition of Employees State Insurance (Amendment) Act, 1989, Employee means a person employed for wages in or in connection with the work of a factory or establishment. It is also well known that the employer, who employs an employee for wages, shall have the power for appointment and power for supervision of the works of the employer. The employer will also have disciplinary powers over the employee. Usually the terms and conditions of employment will be in place before the appointment of an employee.
13. In this case, Shri. K. Anandakuttan Nair, is a pensioner of KSEB Limited. **It is also informed that Shri. K. Anandakuttan Nair is representing several consumer before the CGRF and the Electricity Ombudsman.** As per the copy of the order dated 22.09.2014, issued by Shri. Thomas John Muthoot, Managing Director, Muthoot Pappachan Group Hotels and Infrastructure Ventures Pvt. Ltd., Shri. K. Anandakuttan Nair has been appointed as the Consultant (Electricity) on mutually agreed terms and conditions and has been authorized to represent the petitioner in appropriate adjudication before KSERC and other statutory bodies except in Civil Court. Sri. K. Anandakuttan Nair has also been given freedom to take up other assignments in any other institutions. Consultant is a person, who provides expert advice professionally and consultancy is a professional practice that gives expert advice within a particular field. **As per clause (c) in regulation 2 of the CERC (Appointment of Consultants) Regulations, 2008,**

“A consultant includes any individual, firm, body or association of persons, not in the employment of the Commission, who or which possesses or has access to any specialized knowledge, experience or skill.”

In the case of Shri. K. Anandakuttan Nair, the terms and conditions of his service are as per the mutual agreement between him and M/s Muthoot Pappachan Group Hotels and Infrastructure Ventures Pvt. Ltd. All the above facts indicate that the terms and conditions of service of Shri. K. Anandakuttan Nair are not the same as the terms and conditions of the other employees of M/s

Muthoot Pappachan Group Hotels and Infrastructure Ventures Pvt. Ltd. Further there is no mention in the appointment order about the various benefits which are eligible to an employee under the labour welfare laws in force. As per the provisions of the KSERC (Conduct of Business) Regulations, 2003, any employee of M/s Muthoot Pappachan Group Hotels and Infrastructure Ventures Pvt. Ltd., can be authorized to represent the petitioner. But a consultant who is authorized to represent the petitioner only in the adjudication before KSERC and other statutory bodies except in Civil Court cannot be called an employee. **Further, in the normal course, a consultant is not a regular employee as can be seen from the definition of the term consultant as given in the CERC regulations cited above.**

14. In the decision reported in 2001 (3) KLT SN 119 the Hon'ble Supreme Court has held as follows,-

“The Legislature and the Courts have distinguished a “recognised agent” from a “pleader”. The expression “pleader” wherever used in the Code including in R.I has to be understood as per the definition clause contained in S.2(15) of the C.P.C which defines pleader as to include an Advocate, Vakil & Attorney of the High Court. The expression “appearance, application or act” in or to any Court in Order 3 R.1 of CPC does not include pleading. The recognised agent under Power of Attorney from the party in his favour may appear, file an application or act on behalf of the party in the proceedings as “recognised agent” of the party. Such power or authority to appear, file application and act is also available to a ‘pleader’, but to plead in the case, that is to do something for the party in the case other than what the ‘recognised agent’ can do, that is to practice law or plead for the client, is the monopoly right only of a pleader or a registered Advocate. A ‘recognised agent’ appointed by a party may be holding a duly executed Power of Attorney cannot be said to be a ‘pleader’ and can have no right to plead. The provisions of Advocates Act, 1961 confers a monopoly right of pleading and practicing law only on enrolled or registered Advocates. S. 30 of the Advocates Act confers such a right to practice on a ‘pleader’ and/or ‘Advocate’ after he gets himself enrolled as such.

15. Further in 2011 (3) KLT SN 150 the Hon'ble Supreme Court has, while considering the issues relating to engaging authorized agents to appear before the District Consumer Forum and State Commission in the cases under Consumer Protection Act, 1986, held as follows,-

In the very nature of things, the disputes under the 1986 Act can involve claims for small amounts of money by way of

compensation. Engagement of advocates in all such matters may not be economically viable. It is equally possible that the claim may involve professional expertise. To illustrate: A person may sue a hospital for medical negligence or an Architect for a faulty design or a building contractor for defective work. In such cases a professional like a doctor, architect or an engineer may be more suitable than an advocate. Thus, both the parties have been given an option to choose from an advocate or any other person who may even be a professional expert in the particular field. Such an interpretation is not only literally correct but also promotes the declared objective of the statute. It helps the claimant and the defendant equally. It does not violate any provision of the Advocates Act. It is the bounden duty and obligation of the Court to carefully discern the legislative intention and articulate the same. In the instant case we are not really called upon to discern legislative intention because there is specific rule defining the agents and the provisions of permitting them to appear before the Consumer Forums. The agents have been permitted to appear to accomplish the main object of the act of disposal of consumers' complaints expeditiously with no costs or small costs. These provisions are enacted for providing proper guidelines and safeguards for regulating appearance and audience of the agents. The aforesaid regulation in our considered opinion is a reasonable restriction on the right to appear by an agent. Such reasonable restrictions as provided for are to be strictly adhered to and complied with by the Consumer Forum hearing cases under the Consumer Protection Act so as to rule out any misuse of the privilege granted. In terms of the said regulation and other regulations as provided and framed by the National Commission and as approved by the Parliament of India the Consumer Forum has the right to prevent an authorised agent to appear in case it is found and believed that he is using the said right as a profession. The Consumer Forums being empowered with such Regulations would be in a position to judge whether the agent appearing before it is in any manner exercising such privileges granted for any ulterior purpose. Many statues and Acts in India permit non-advocates to represent the parties before the authorities and forums. In other jurisdictions also, non-advocates are permitted to appear before quasi-judicial fora or subordinate courts. In most of these jurisdictions, specific rules have been framed for the regulation of qualifications, conduct and ethical behaviour of the non-advocates appearing in these fora. In most jurisdictions, the statutes or court

rules impose some form of restrictions on appearances of non-advocate representatives in quasi-judicial fora or subordinate courts. Restrictions on non-advocates agents vary significantly in terms of their specificity, but most forums have rules granting them some discretion in admitting or refusing the appearance of a non-advocate representative. In order to ensure smooth, consistent, uniform and unvarying functioning of the National Commission, the State Commissions and the District Forums, we deem it appropriate to direct the National Commission to frame comprehensive rules regarding appearances of the agents, representatives, registered organisations and/or non-advocates appearing before the National Commission, the State Commission and the District Forums governing their qualifications, conduct and ethical behaviour of agents/non-advocates/representatives, registered organisations and/or agents appearing before the consumer forums.

In view of the provisions of Advocates Act and judgments of the Hon'ble Supreme Court cited above, it can be found that non-advocates can also be engaged to represent persons before quasi-judicial fora or subordinate courts. But there should be restrictions relating to the qualification, conduct and ethical behaviour of non-advocates. Depending upon the nature of cases coming up before such fora, qualification, conduct and ethical behaviour of non-advocates who can be permitted to appear and represent other persons can be fixed by such fora. The regulation 30 of the KSERC (Conduct of Business) Regulations, 2003 is perfectly in tune with the directions contained in the judgments of the Hon'ble Supreme Court, cited in earlier paragraphs.

16. In Muir Mills Case [(2007) 1 SCC 491] the Hon'ble Supreme Court has distinguished the difference between a professional and a worker and it has been held as follows,-

Paragraph 38 – Furthermore, if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge and usually has a professional association, ethical core and process of certification or licensing. Classically there were only three professions: ministry, medicine and law. These three professions each hold to a specific code of ethics and members are almost universal required to swear to some form of oath to uphold those ethics, therefore professing to a higher standard of accountability. Each of these professions also provides and requires

extensive training in the meaning, value and importance of its particular oath in the practice of that profession

Paragraph 39 – A member of a profession is termed as a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one's living, so in that sense sport is a profession.

Paragraph 40 – Therefore, it is clear that the respondent 1 herein is a professional and never can a professional be termed as a work man under any law.

17. In judgment of Hon'ble Supreme Court in A. Sundarambal Vs Government of Goa, Daman and Diu, [(1988) 4 SCC 42], it has been held that a teacher employed by an educational institution who imparts education (whether at primary, secondary, graduate or post graduate level) cannot be called a workman since imparting education which is the main function of a teacher is in the nature of an noble mission or a noble vocation which cannot be considered as skilled or unskilled manual work or supervisory technical or clinical work.
18. In the judgment in Employees State Insurance Corporation Medical Officers Association Vs Employees State Insurance Corporation (ESIC) and another [AIR 2014 SC 1259] the Hon'ble Supreme Court has held that distinction between occupation and profession is of paramount importance. An occupation is a principal activity related to a job, work or calling that earns regular wages for a person and a profession on the other hand, requires extensive training, study and mastery of the subject, whether it is teaching students, providing legal advice or treating patients or diagnosing diseases. **In view of the judgments of the Hon'ble Supreme Court in the above cases it can easily be seen that persons teaching students, persons providing legal advice, persons treating patients, persons engaged in engineering works etc., are professionals, who will not come under the category of worker. Further a professional engaged for special services in view of his specialized knowledge, experience or skill is only a consultant and not an employee.**
19. In view of the facts and circumstances stated above, it is found that,
- (i) **A consultant is a professional and a consultant engaged for a specific purpose will not come in the ambit of the term employee as envisaged in regulation 30 of KSERC (Conduct of Business) Regulations, 2003.**
 - (ii) **Shri. K. Anandakuttan Nair has been engaged by the petitioner as a consultant for rendering a professional service and that he is not in the regular service of the petitioner.**

- (iii) **Sri. K. Anandakuttan Nair cannot be considered as an employee of the petitioner as envisaged in regulation 30 of KSERC (Conduct of Business) Regulations, 2003 and therefore he cannot represent the petitioner in the proceedings before the Commission.**

20. Further the subject matter of the case is assessment under Section 126 of the Electricity Act, 2003. In view of the decision of the Hon'ble Supreme Court in 2011 STPL (WEB) 942 SC Seetharam Mill Case, the Commission cannot interfere in the proceedings under Section 126. Any consumer who is aggrieved by the order issued by the Assessing Officer under Section 126 can prefer appeal before the Appellate Authority under Section 127 of the Electricity Act, 2003.

21. Decision of the Commission:

- 1) Sri. K. Anandakuttan Nair cannot be considered as an employee of the petitioner as envisaged in regulation 30 of KSERC (Conduct of Business) Regulations, 2003 and therefore he cannot represent the petitioner in the proceedings before the Commission.**
- 2) In view of the decision of the Hon'ble Supreme Court in 2011 STPL (WEB) 942 SC Seetharam Mill Case, the Commission cannot interfere in the proceedings under Section 126.**
- 3) PetitionNo.2346/Com.Ex/KSERC/2014, PetitionNo.2347/Com.Ex/KSERC/2014 and Petition No.2348/Com.Ex/KSERC/2014 are dismissed on the above grounds.**

Sd/-
K. Vikraman Nair
Member

Sd/-
T.M.Manoharan
Chairman

Approved for issue

SECRETARY