

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

**Present: Shri. Preman Dinaraj, Chairman**  
**Shri. S. Venugopal, Member**

In the matter of : Petition for giving relaxation in interest rate on the arrears of M/s Malayalam Chemicals Pvt Ltd under One Time Settlement Scheme.

Petitioner : Kerala State Electricity Board Limited

Petitioner represented by : Shri. K.G.P. Nampoothiri, Executive Engineer,  
Sri. Rajesh R, Asst: Executive Engineer  
Sri. Edward P Bonafice, Asst: Executive Engineer  
Sri. Sujith T R, Asst: Executive Engineer,  
Sri Koruthu Samuel, Accounts Officer  
Sri Thankachan N J, Senior Superintendent  
Sri. Sreekumar C, Senior Superintendent  
Sri. Anoop Mathew, Senior Assistant

**Order dated 07.02.2020**

1. Kerala State Electricity Board Limited (herein after referred as KSEB Ltd or the petitioner) filed a petition on 20.11.2019, with the following prayer.

*“Hon. Commission may kindly approve 50% relaxation in the applicable interest rates on the theft amount of the consumer M/s Malayalam Chemicals under One Time Settlement Scheme, considering it as a special case.*”

2. A brief background of the issues raised in the petition is given below;
- (i) M/s Malayalam Chemicals was a HT consumer of KSEB Ltd, with a contract demand of 500 kVA under Electrical Section, Edayar.
- (ii) Anti Power Theft Squad, of KSEB inspected the consumer premises on 09.11.2005 and detected illegal abstraction of energy by way of meter tampering. Accordingly, the connection was disconnected on 09.11.2005 and dismantled on 07.10.2006. A criminal case was also registered against the firm and penal bill amounting to Rs 40,51,639/-

was also issued to the consumer . The consumer challenged the bill in the Court and finally the Court disposed the matter on 23.11.2012 (WPC 8550 of 2008). The operating portion of the order is extracted below:

*“ 5. I have gone through the impugned orders passed by the statutory appellate authority as well as by the assessing authority. There is no material on record to come to a different view with regard to the period of tampering meter. I do not find any merit in this writ petition and accordingly it is dismissed.*

*6. However, the learned standing counsel for KSEB Mr. Sajeev Kumar K Gopal submits that there is a One Time Settlement Scheme floated by the KSEB and the petitioner can avail the benefit of the scheme. The petitioner can avail the benefit of the above said scheme by making proper application, after approaching Special Officer (Revenue), if they desire to do so.*

- (iii) Revenue Recovery (RR) action was initiated against the consumer on 20.03.2007 for recovery of arrears. The premises of the said company was part of the Industrial Development Area of Kerala Government and there are no movable and immovable properties of the consumer left in the premises. Later, as per the direction of the District Collector, Ernakulam, fresh RR action has been initiated on 21.02.2012 against the partners of the firm. The requisition form; Form-24 was issued in the name of the partners (1) Sri. Vellaiswami, Door No, 8/69, Maniyachi PO, Kovil Petty Taluk, Thuthucorin, Tamilnadu - 628902 (2) Sri. B.Guruswamy, Door No. 8/69, Sivalar Petty PO, Pudoor Taluk, Thuthucorin, Tamilnadu-628906. Since the partners were not living in the address and revenue officials of Tamil Nadu could not trace out their whereabouts, the arrear amount could not be realized till date.
- (iv) In the meanwhile, the firm vide its submission dated 8<sup>th</sup> September 2018 informed KSEB Ltd that, they are ready to pay the arrear in respect of theft of electricity if the benefit of OTS 2018 is extended to the company.

KSEB Ltd did not allowed the request of the consumer M/s Malayalam Chemicals Pvt Ltd, since the settlement of theft cases was not considered under the OTS scheme 2018.

- (v) The consumer approached the Hon'ble High Court of Kerala against the decision of KSEB Ltd and the Hon'ble High Court vide the Judgment dated 09.11.2018 in WPC 34366 of 2018 disposed the case directing the competent authority of the KSEB Ltd to consider the representation of the consumer and to take decision. The relevant portion of the judgment is extracted below.

"In the afore circumstances, I order this writ petition and direct the 2nd respondent to place Ext.P20 representation of the petitioner before the appropriate Authority which is authorised to consider it, within a period of one month from the date of receipt of a copy of this judgment and the competent Authority will, thereafter, consider the same, after affording an opportunity of being heard to the petitioner and adverting to all judgments and inputs as are relevant, within a further period of two months from the date on which the representation is placed before them by the 2nd respondent.

This writ petition is thus ordered."

- (vi) Based on the direction of the Hon' High Court, KSEB Ltd constituted a committee to hear the consumer on the subject issue. Advocate Julian Xavier represented Malayalam Chemicals before KSEB Ltd for the hearing, and reported that if the Board is ready to settle the arrears as below, the firm is ready to restart the unit without any further delay.

*"3(a) The arrears of electricity charges may be calculated in the light of the Board Order dated 01.06.2017 in regard to the implementation of the judgment of the Hon'ble Supreme Court regarding the extension of Pre-92 tariff (for a period of 708 days)*

*3(b) The benefit of the judgment as per ref no. 8 of the Division Bench of the Kerala High Court in W.A No. 2503/2017 and connected cases, extension of Pre-92 tariff for 708 days plus 213 days, may be granted.*

*3(c) The amount collected by way of duty may be refunded in the light of ref no. 1. Judgment for which representation as per ref no. 6 is filed before the Board as well as before the Secretary, Power Department, Govt. of Kerala. (On a proper calculation there will not be any liability by way of electricity charges on the consumer)*

*3(d) Regarding the arrears with respect to the alleged theft of electricity, the company is ready to pay the entire amount if the benefit of OTS is extended to the company though in ref no. 7 Board Order the benefit is excluded.*

*If the Board is ready to settle as per the above, the firm is ready to restart the unit without any further delay.*

- (vii) The Committee constituted by KSEB Ltd, after hearing the legal counsel of the consumer, recommended to grant 50% relaxation in the normal interest rates on the amount involved in the theft of energy considering the difficulty in realizing the arrear amount by way of legal proceedings and also for the sake of settlement of the entire issues with the consumer.

Hence, KSEB Ltd decided to approach the Commission for favour of settling the arrear amounting to Rs 40,51,631/- by way of theft detected

at the consumer premise by giving 50% relaxation in interest rate as a special case. Accordingly the petitioner filed the instant petition.

3. Considering the legal issues involved in the petition, the Commission conducted an admissibility hearing on the petition on 6.1.2020. Sri. K G P Nampoothiri, Executive Engineer and Sri. Thankachan N.J, Senior Superintendent presented the petition on behalf of the petitioner. There was no representation from the part of respondent Malayalam Chemicals.

### **Analysis and Decision of the Commission**

4. The Commission, has examined the petition filed by KSEB Ltd, as per the provisions of the Electricity Act, 2003 and Kerala Electricity Supply, Code, 2014, and other rules, Regulations and orders issued by the Commission.
5. The matter involved in the subject petition is regarding illegal abstraction of electrical energy by way of meter tampering. As per the details submitted before the Commission, the Anti Power Theft Squad (APTS) of KSEB inspected the premise of the consumer M/s Malayalam Chemicals Pvt Ltd, on 09.11.2005 and detected the unauthorized use of electricity by way of meter tampering. KSEB Ltd issued a penal bill amounting to Rs 40,51,439/- to the consumer. The consumer challenged the penal bill before the Hon'ble High Court of Kerala in WP(C) No. 8550 of 2008. Hon'ble High Court vide the judgment dated 23<sup>rd</sup> November 2012, confirmed the penal bill issued by KSEB Ltd. The relevant paragraph of the judgment is extracted below.

*“5. I have gone through the impugned orders passed by the statutory appellate authority as well as by the assessing authority. There is no material on record to come to a different view with regard to the period of tampering of meter. I do not find any merit in this writ petition and accordingly it is dismissed”*

The above judgement of the Hon'ble High Court is not challenged before the Division Bench of Hon'ble High Court of Kerala, and thus the penal bill issued by the KSEB Ltd to the consumer reaches finality.

6. However, the consumer M/s Malayalam Chemicals has not remitted the penal bill till date. KSEB Ltd in the petition dated 20.11.2019 submitted that, now the consumer is ready to pay the entire amount if the benefit of One Time Settlement Scheme (OTS) is extended to the company. Accordingly, KSEB Ltd requested before the Commission to approve 50% relaxation in the applicable interest rates on the theft amount of the consumer under One Time Settlement Scheme, considering it as a special case.
7. Commission examined the proposal of the KSEB Ltd in detail. As per the Section 126 of the Electricity Act, 2003, the usage of electricity through a tampered meter is 'unauthorized use of electricity', which is extracted below.

*“unauthorised use of electricity” means the usage of electricity –*

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

Further, as per the Section 135(1)(b) of the Electricity Act, 2003, ‘tampers a meter, installs or uses a tampered meter and use electricity through a tampered meter’ is included under ‘Theft of electricity’. The relevant portion of the Electricity Act, 2003 is extracted below.

*“135. Theft of electricity (1) Whoever, dishonestly, --*

*(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or*

*(b) **tampers a meter, installs or uses a tampered meter**, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or*

*(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, or*

*(d) **uses electricity through a tampered mater, or***

*(e) use electricity for the purpose other than for which the usage of electricity was authorised.*

As extracted above, the illegal abstraction of electricidal energy by way of meter tampering is (a) unauthorized use of electricity as per Section 126 of the Electricity Act, 2003, and (b) theft of electricity as per Section 135 of the Electricity Act, 2003.

8. In the present case, it is established that, the consumer M/s Malayalam Chemicals Private Ltd was unauthorized using electricity through a tampered meter. Accordingly, as per the provisions of the Electricity Act, 2003, KSEB raised a penal bill of Rs 40,51,639 /- as per the assessment made by the assessment of the licensee. Hon’ble High Court vide the judgment dated 23<sup>rd</sup> November 2012 in WP(C) No. 8550 of 2012 confirmed the penal amount assessed by the licensee.

As per the Section 127(6) of the Electricity Act, 2003, the consumer is liable to pay the assessed amount within thirty days from the date of order of

assessment. The date of order of assessment is 09.11.2005. Hence the consumer is liable to pay the assessed amount within 30 days from the date of the order, i.e., by 22.12.2005. However, the consumer till date has not remitted the assessed amount.

Further as per the Section 127(6) of the Electricity Act, 2003, if the consumer defaults in making payment of the assessed amount, in addition to the assessed amount, the consumer is liable to pay interest from the date of order of assessment, at the rate of sixteen percent per annum compounded every six months. The relevant Section is extracted below.

*“127(6) When a person default in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months.”*

As extracted above, the Electricity Act, 2003 itself specifies the interest rates when the consumer defaults in making payments of the assessed amount as per the Section 126 of the Electricity Act, 2003.

9. However, in the present petition, KSEB Ltd request before the Commission to approve 50% relaxation in the applicable interest rate on the theft amount of the consumer M/s Malayalam Chemicals Private Ltd under OTS, considering it as a special case. The applicable interest as per the Section 127(6) of the Electricity Act, for the defaults in making payment of the assessed amount is 16% per annum compounded every six months. Thus, KSEB Ltd has requested to approve the interest rate @8% per annum compounded every six months instead of 16% per annum provided in the Electricity Act, 2003.
10. The pertinent issue here is that, whether the Commission has the power to relax the interest rate which is specified in the Electricity Act, 2003, and is applicable to a person who defaults in making payments of the assessed amount as per Section 126 of the Electricity Act, 2003.

The Commission is a statutory body functioning as per the provisions of the Electricity Act, 2003 (Central Act 36 of 2003). The Commission has no power or authority to relax any of the provisions of the Electricity Act 2003 unless and otherwise mentioned to do so by the Act. Further, Section 126 of the Electricity Act 2003 deals with the unauthorized use of electricity and Section 135 deals with the theft of electricity. The Hon'ble Supreme Court in its order dated 20.10.2011 in *Civil Appeal No 8859 of 2011, the Executive Engineer v. M/s Sri Seetaram Ricemill* held that the Section 126 and 135 constitute a complete code in itself. Hence the Commission do not have any power to relax any of the provisions in the Section 126, 127 and Section 135 of the Electricity Act 2003.

11. Considering the provisions of the Electricity Act, 2003, and other facts and circumstances of the case as detailed in the preceding paragraphs, the

petition filed by KSEB Ltd for relaxing the interest rate provide under Section 127 (6) of the Electricity Act, 2003, is not admissible. Hence the petition is dismissed at the admission stage itself.

Petition disposed off.

Sd/-  
**S.Venugopal**  
**Member**

Sd/-  
**Preman Dinaraj**  
**Chairman**

Approved for issue

C R Satheesh Chandran,  
*Administrative Officer,*  
*(in charge of the Secretary)*