

BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

O.P. No. 28/2013

In the matter of punishment as per Section 142 of the Electricity Act for contravention of the provisions of Electricity Act, 2003 and the Regulations made there under as well as for the non-compliance of the direction of KSERC by the Deputy Chief Engineer, Electrical Circle, KSEB, Palakkad and Assistant Engineer, Electrical Section, KSEB, Kanjikode.

Petitioner : 1. M/s Pyarelal Foams (P) Ltd, consumer code 26/4422, Koyyamarkkad, Kanjikode-678621, Palakkad.
2. M/s Aditya Fabrics, consumer code 8/4798, Koyyamarkkad, Kanjikode-678621, Palakkad.

Respondents : 1. The Assistant Engineer, Electrical Section, KSEB, Kanjikode-678621.
2. The Deputy Chief Engineer, Electrical Circle, KSEB, Palakkad-678001.
3. The Secretary, Kerala State Electricity Board, Vyduathi Bhavanam, Pattom, Thiruvananthapuram.

Order Dated : 20th November, 2013

Introduction

1. M/s. Pyarelal Foams (P) Ltd (First Petitioner) and M/s. Aditya Fabrics (Second Petitioner) had filed a Writ Petition No. 17125 of 2013 before the Hon'ble High Court of Kerala in which they had challenged the Order No. 04/2013-14/AE/KJD dated 04.06.2013 (Exhibit P4 in Writ Petition) issued by the Fourth Respondent therein namely the Assistant Engineer, Kanjikode Section of KSEB in Palakkad District, in exercise of powers conferred under Section 126 of the Electricity Act 2003. The Petitioners had also sought

for a direction to this Commission from Hon'ble High Court to consider and dispose of Exhibit P8 petition produced in the above Writ Petition. The said Exhibit P8 petition dated 29.6.2013, mentioned in the Writ Petition is the Petition No. 28 of 2013 filed by the petitioners before this Commission. The Hon'ble High Court in its judgment dated 8th July 2013 directed this Commission as follows:

“ 5th Respondent to consider and pass appropriate orders on Ext. P8 application in accordance with law, after affording an opportunity of hearing to the parties concerned. It will be appropriate for the 5th respondent to consider Ext. P8 and take a decision thereon at the earliest possible, at any rate within a period of three months from the date of receipt of a copy of this judgment.”

This order is being issued by this Commission in compliance of the direction of the Hon'ble High Court in its judgment dated 8th July 2013 in Writ Petition No. 17125 of 2013. A copy of the Judgment dated 8th July 2013 was received by the Commission on 07.08.2013 and therefore the order disposing of the petition No. 28 of 2013 should have been issued on or before 07.11.2013. But the Commission could not issue the order on or before 07.11.2013 after completing the necessary formalities such as receiving counter affidavits, obtaining remarks of the petitioner on the counter affidavit and hearing. Therefore the Commission has already arranged to move the Hon'ble High Court for enlargement of time.

2. M/s. Pyarelal Foams (P) Ltd (First Petitioner) and M/s. Aditya Fabrics (Second Petitioner) had filed Petition No. 28/2013 before this Commission seeking the following reliefs:
 - i. *The Hon'ble Commission may suitably punish the Dy. Chief Engineer Shri. Kumaran and Asst. Engineer Shri. Suprabhath along with KSEB for non compliance of the directions as per Section 142 and 146 of the Indian Electricity Act 2003.*
 - ii. *Hon'ble Commission may declare all penal bills including the present impugned bill void and null.*
 - iii. *Hon'ble Commission may declare the disconnection of the electric supply by the Asst. Engineer Sri. Suprabhath as unauthorised disconnection and illegal.*

- iv. *The Hon'ble Commission may arrange for an urgent hearing so that the consumer will be relieved from the mental agony and financial loss occurred due to the unauthorised disconnection of the supply and illegal penal bills.*
- v. *The Hon'ble Commission may evaluate the losses occurred to the consumer due to the illegal disconnection of supply direct KSEB to compensate the same along with interest at the earliest.*
- vi. *Since Civil Court as per Section 145 has no jurisdiction over the proceedings as per Section 126 and 127, and if the Hon'ble Commission does not have the authority for deciding the compensation, the Hon'ble Commission may help the consumer with any other suitable solution.*

The Petitioners have also submitted an interim prayer as quoted hereunder:

“Since the consumer is always getting subjected to the threat of disconnection, and a letter in the pretext of disconnection notice has been given by the Asst. Engineer with the probable disconnection date as 6.7.2013, the Hon'ble Commission may given an interim direction to KSEB not to disconnect the supply till hearing and disposal of the petition.”

Brief History of Case

3. M/s Pyarelal Foams, the First Petitioner, is a high tension (HT) consumer of Kanjikode Section of KSEB in Palakkad District (consumer code. 26/4422) with connected load of 309 KW and contract demand of 400 kVA. M/s Aditya Fabrics, the Second Petitioner is another high tension (HT) consumer (consumer code. 8/4798) with connected load of 436 KW and contract demand of 300kVA. Both are different consumers working in different premises in the same industrial estate belonging to District Industries Centre (DIC), Palakkad. The First Petitioner had applied for HT connection as early as on 23.09.2005. Power allocation was given to the First Petitioner on 02.05.2006. Energisation sanction was issued by the Electrical Inspector, Palakkad on 16.06.2006 for energising connected load of 309.16 KW. After executing the HT agreement the power supply was given to

First Petitioner on 11.07.2006. The Second Petitioner had obtained energisation sanction only on 08.04.2008 and executed high tension agreement on 04.06.2008. The power connection to Second Petitioner was given on 23.06.2008. Therefore at the time of availing HT connection by the First Petitioner, the Second Petitioner was not a consumer of the Respondent, KSEB.

4. The Second Petitioner M/s. Aditya Fabrics had submitted a request dated 19.05.2011 to the Respondent KSEB for additional load of 100 kVA in addition to existing contract load of 300 kVA. In his letter dated 26.5.2011 the Assistant Engineer, Kanjikode had requested the Second Petitioner to submit details such as scheme approved by the Electrical Inspector, approval of Pollution Control Board etc. The Second Petitioner had produced required documents on 12.09.2011. The Assistant Engineer, Kanjikode had forwarded the application to the Executive Engineer who in turn had forwarded the same to Deputy Chief Engineer, Palakkad (Second Respondent) as per letter dated 04.10.2011. On processing the application of the Second Petitioner for additional power, it was found that the heating load amounted to 130 KW out of the total load of 382.56 KW which worked out to 31.76%. As per the norms fixed by KSEB, the electro thermal industry having heating load more than 20% of its total load shall be classified as power intensive industrial unit. The Second Petitioner being an electro thermal industry having heating load above 31% of its total load, it was classified as power intensive units. As per standing orders of KSEB, approval of the Full Board was required for any new connection or additional load to power intensive industries. Therefore the issue was placed before Full Board through the Chief Engineer, (Distribution), Kozhikode and the Member (Distribution) on 21.04.2012. The Full Board after consideration of the request of Second Petitioner decided that the application could be granted only when power position improves. The said decision was communicated on 16.07.2012 to the Second Petitioner by the First Respondent.
5. In an inspection conducted by Anti Power Theft Squad of KSEB it was found that the First Petitioner had given unauthorized extension to the premises of Second Petitioner using an underground cable and was illegally supplying electricity to the Second Petitioner without the knowledge or sanction of the Respondent KSEB. The First Respondent in OP 28/2013 namely Assistant Engineer, Electrical Section, KSEB, Kanjikode, in exercise of

power under Section 126 of the Electricity Act 2003, had issued a provisional assessment order for Rs.1,40,52,500/- as per his order No.DB/2012-13/KJD/70 dated 30.06.2012. Aggrieved by the said provisional assessment the First Petitioner filed objection before the Assessing Officer on 07.07.2012. After hearing on 27.07.2012, the Assessing Officer dismissed the objection filed by the First Petitioner and issued final orders on 28.07.2012.

6. Section 126 of the Electricity Act 2003 empowers the Assessing Officer to provisionally assess to the best of his judgment, the electricity charges payable by such person indulging in unauthorised use of electricity. As per sub-Section (2) of Section 126 of the Electricity Act such provisional assessment shall be served upon the person in occupation or possession of the premises. The person on whom such order is served is entitled to file objection before the Assessing Officer in accordance with sub-Section (3) of Section 126. The Assessing Officer shall afford reasonable opportunity of hearing such person and pass final order of Assessment. The term '*Assessing Officer*' and "*unauthorized use of electricity*" have been explained under sub-Section (6) of Section 126 of the Electricity Act. Any person aggrieved by the final order made under Section 126 may, within 30 days of the said order, prefer an appeal before the Appellate Authority under Section 127 of the Act. As per sub-Section (2) of Section 127, no appeal shall be entertained unless amount equal to 50% of the assessed amount is deposited in cash or by way of Bank Draft with the licensee. As per sub-Section (3) of Section 127 the Appellate Authority shall issue order in the appeal only after affording reasonable opportunity to the parties for hearing. It has been stipulated sub-Section (4) of Section 127 that the order passed by the Appellate Authority shall be final. The Hon'ble Supreme Court in its judgment in Sitaram Rice Mills case (2011 STPL (web) 942) has categorically clarified that Section 126 & 127 are codes in themselves and the orders issued under the said sections cannot be interfered with by any other authorities such as CGRF or Ombudsman or State Regulatory Commissions. This decision has been followed by the Hon'ble High Court, the Hon'ble Appellate Tribunal for Electricity and the State Electricity Regulatory Commissions.
7. In spite of the statutory provision contained in Section 126 & 127 of the Electricity Act 2003 and the judgment issued by Hon'ble Supreme Court in Sitaram Rice Mill case, the Petitioners had filed complaint before Consumer Grievance Redressal Forum (CGRF)

Kozhikode on 04.07.2012 and the CGRF, Kozhikode had dismissed of the same vide its order in OP No. 29/12-13 dated 11.07.2012. Against the decision taken by the CGRF the First Petitioner preferred an appeal before the Electricity Ombudsman. In its order dated 28.12.2012 in appeal petition no. P/291/2012, the Electricity Ombudsman disposed of the appeal stating that the main dispute relating to unauthorized power supply from the one premise to another and connecting unauthorised additional load tantamount to unauthorized use of electricity under Section 126 of the Electricity Act 2003. Any dispute or complaint pertaining to such unauthorized use of electricity cannot be adjudicated by the CGRF & Electricity Ombudsman in view of the clause 2(1)(f)(vii)(1) of KSERC (CGRF and Electricity Ombudsman) Regulations 2005 and the judgment of the Hon'ble Supreme Court in Sitaram Rice Mill case. The Hon'ble High Court has also made it clear that when there is specific provision in the Act itself, to hear such cases by designated Appellate Authority the same are excluded from the purview of Electricity Ombudsman. Hence it was decided that appeal petition filed by the Petitioners before the Electricity Ombudsman was not maintainable.

8. The Petitioners had filed O.P. No.35/2012 before this Commission also on 06.08.2012. They had also made additional submissions on 03.11.2012, 05.11.2012, 15.11.2012 and 21.11.2012. In their original petition and additional submission, the Petitioners had submitted the following prayers:

The Commission may appoint an adjudicating officer as per Sec 143 for imposing penalty as per Section 43 for non-enhancing the connection for a period of more than one year. The Commission may punish KSEB as per Section 142 and 146 of Act. The Commission may fix either the compensation as 1.5 cores or at least a set off may be granted against the impugned penal Bill. The Commission may declare the date of application ie; 19.05.2011 or one month from that date as allotted of power/sanction and direct KSEB to withdraw all proceedings against the consumers in the pretext of unauthorized usage. The Commission may pass any order what so ever it may be which will be helpful to the consumer to have a relief. The Commission may punish KSEB with penalty @ Rs.1000/- per day from 19.05.2011, the date on which the application was given completed in all respects till the date of effecting connection. Direct the respondent to compensate the

- consumer all legal expenditure, loss of production, compensation for mental agony, etc and in order to analyse the same and to assess the quantity, appoint an investigating authority as per section 128 and also appoint an auditor through the investigating authority so that the quantity can be assessed accurately. The Commission may initiate criminal proceedings for fabrication of documents as per IPC and punish the concerned officer and initiate proceedings for punishing the concerned officer with an imprisonment for 3 months.
9. The Commission after a detailed analysis of all the issues raised by the Petitioners and the Respondent issued orders in O.P.No.35/2012 on 13.12.2012. The operative portion of the said order is quoted here under.
- i. The contract demand of Second Petitioner Aditya Fabrics shall be deemed to be raised to 400kVA with effect from 19.06.2011, one month after the application for power requirement is submitted to KSEB and penal charges if any demanded from the consumer thereafter on this account shall be withdrawn.
 - ii. The Deputy Chief Engineer, Electrical Circle, Palakkad, who is the agreement authority for HT consumers, shall issue formal power allocation/Cost Estimate to the Second Petitioner based upon the application dated 19.05.2011, within 15 days from the date of receipt of this order and formalize the additional load receipt of the required documents, executing the required agreement etc.
 - iii. The Commission declines to interfere into the issues raised by the Petitioners related to the penalization under Section 126 of the Electricity Act 2003 and directs the First Petitioner Pyarelal Foams to seek remedy under Section 126 and 127 of the Electricity Act 2003.
10. O.P. No.28/2013 has been filed by the Petitioners with the prayers as mentioned in paragraph 2 of this order on the ground that the Respondents namely the Assistant Engineer, Electrical Section, Kanjikode, the Deputy Chief Engineer, Electrical Circle, Palakkad and the Secretary, KSEB, Vidyuthi Bhavanam, Pattom, Thiruvananthapuram had disobeyed the orders of the Commission in O.P. No.35/2012 and had failed to implement the same. They have also raised the following grounds in support of their

prayers. It was contended by them that the factories of the Petitioners are located in the same premises with a single precinct, that the Directors of both the companies are the same, that the cases are connected since the owners of the companies are the same, that there is only one site mahazar for the irregularities charged against them, that two different names have been given to the factories under same management for ease of operation, that tariff applicable to both the factories are the same (HT1-Industrial), the total load on KSEB feeder is the same since it is a sum of the loads of both the factories, that they had energized additional load after getting the approval of Electrical Inspectorate etc. The Petitioners had further contended that the Commission had issued directions to the Respondents to issue formal power allocation and cost estimate to the Petitioner based on the application dated. 19.05.2011 and to treat the contract demand of the Second Petitioner as 400kVA from 19.06.2011 and to withdraw the penal charges demanded from the consumer thereafter on this account. They had further submitted that the Ombudsman had issued orders favorable to them while disposing of Appeal Petition no. P-291/2012 and observed that *“had KSEB sanction the additional load requested by the consumer in time, the KSEB could charge the consumer under HT1 Tariff only.”* The Ombudsman had clearly stated that the observations are intended only for applying mind to look afresh into the case. It was submitted by the Petitioner that the Assessing Officer should have relieved them from the penalties after withdrawing the allegation of temporary extension and applying industrial tariff. It was submitted by them that the Assessing Officer had revised the provisional assessment subsequently and had arranged for personnel hearing. When the Petitioners along with their authorized representative appeared before the Assessing Officer for recording their statements, the Assistant Engineer who is the Assessing Officer had brutally denied their right and passed final orders with intention and ulterior motive of harassing the Petitioner. The service of the Petitioner was also disconnected on 14.06.2013 and same was reconnected on 17.06.2003.

Counter statement of the Respondents (K.S.E.B):

11. In the counter statements, the Respondents KSEB submitted that the petition is prima facie not maintainable in law for several reasons. A joint petition by two different persons having different cause of action is not maintainable before any court or forum or authority.

12. KSEB has submitted that the disputes between an individual consumer and a licensee are not maintainable before the Commission. The First Petitioner is a private limited company and the Second Petitioner is a proprietary concern. All the statutory licenses, registration, the land allotment and the accounting system of the first and Second Petitioners are different. The First Petitioner has no locus standi in matters concerning the Second Petitioner and vice versa. From the petition it could be seen that some of the cause of action and reliefs sought is concerning the First Petitioner only and not in any way connected with the Second Petitioner. The rest of the causes of action and reliefs sought are concerning the Second Petitioner only and not in any way connected with the First Petitioner. It is settled law that a joint petition by two or more persons, before any forum or authority, cannot be entertained except when the relief claimed is founded on the same cause of action. There must be jural relationship between the petitioners, the cause of action must be the same and the reliefs sought ought to be concerning common grievances only. The cause of action of the petitioners is not the same. Whereas the First Petitioner is allegedly aggrieved by a proceeding against it under Section 126 and the consequences thereof, the Second Petitioner is allegedly aggrieved by non granting of its application for additional power. The reliefs sought are also different.
13. It has been further submitted by KSEB that the Commission has no jurisdiction to adjudicate this matter, which is a dispute between a consumer and a licensee. The adjudication of a dispute by the Commission under Section 86(1)(f) does not cover a dispute between a consumer and a licensee. This position has been settled very clearly by the Hon'ble Supreme Court of India as well as by the Appellate Tribunal for Electricity in various judgments enumerated hereunder. The consistent position taken by the Apex Court as well as the Appellate Tribunal for Electricity is that the State Regulatory Commission has no jurisdiction to entertain a petition filed by a consumer against a licensee under Section 86. Admittedly, both petitioners are ordinary consumers of Electricity. Hence, this petition is not maintainable before the Commission. This is an incurable defect and hence this petition may be dismissed in the admission stage itself.
14. KSEB has submitted that all the grounds pointed out in the petition are pertaining to an assessment served on the First Petitioner under Section 126 of the Act consequent to the detection of unauthorised use of Electricity. The Commission had also expressly directed

the petitioners in the order in OP 35/2012 to seek remedy under Section 126 and 127, which implies that the petitioner may prefer appeal under Section 127 if the Petitioner is not satisfied with order under Section 126. The First Petitioner miserably failed to comply with that order and willfully disobeyed that order with disdain. The petitioners claim to have filed this petition under Clause 22(d) of the KSERC (conduct of business) Regulations, proclaiming it to be the “affected party”. As held by the Apex Court and APTEL the powers of the Commission to adjudicate under Section 86 or any other Section does not cover a dispute between a consumer and a licensee. The petitioners being consumers will not come under the purview of the term “affected party” referred to in clause 22(b) and hence the petitioners are out of the scope of clause 22(b).

15. The Respondents have argued that the Section 142 is not enforceable on the respondents in the present matter for several reasons. The term “person” in that Section means a person specified under Section 86(1) (f) and no one else. The petitioners have no right to file this petition seeking enforcement of Section 142 on the respondents.
16. The respondents have submitted that they did not willfully disobey the order of this Commission in OP 35/2012. The respondents are aggrieved by the orders of the Commission in OP 35/2012, for the reason that the respondents believe that the Commission went beyond its jurisdiction by entering upon and adjudicating a dispute between a consumer and a licensee, which is not intended by law. For this reason, KSEB filed an appeal against the orders of the Commission in OP 35/12 with the Appellate Tribunal for Electricity and that appeal is pending before that Tribunal. The future course of action of the respondents, therefore, will depend on the result of that appeal.
17. The Respondents have submitted that they had inspected premises of the Second Petitioner on 01.11.2012 and had detected that the Second Petitioner has connected and was using 385 KW of unauthorized additional load to KSEB supply system. A mahazar was prepared at site as per rules and a provisional bill amounting to Rs.26,53,825/- was served upon the Second Petitioner on 30.11.2012, in consequence of this detection, under Section 126. When the Commission gave it's orders in OP 35/2012 on 13.12.2012, allowing the increase of contract demand by 100 KVA and giving retrospective effect from 19.06.2011 for regularization of the additional load of the Second Petitioner, the load that was detected as unauthorized on 01.11.2012 would

become authorized as per the orders of the Commission. Thus, even though the respondents preferred appeal against that orders of the Commission, the respondents kept all proceedings in furtherance of the provisional assessment dated 30.11.2012 in abeyance till disposal of the appeal by Hon'ble Appellate Tribunal of Electricity.

18. KSEB has submitted that the other provision being relied upon by the petitioners is Section 146 of the Act, alleging non compliance of orders in OP 35/2012. This Section starts with "Whoever fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abates the contraventions of any of the provisions of this Act. The punishment enumerated under this Section is squarely enforceable on the First Petitioner, for having contravened Section 12(b) and (c) of the Act which says "Authorised persons to transmit, supply etc. Electricity – No person shall (a) transmit electricity; or (b) distribute electricity; or (c) undertake trading in electricity unless he is authorized to do so by a license issued under Section 14, or is exempt under Section 13". It has been established that the First^t petitioner was illegally supplying huge quantum of electricity to the Second Petitioner factory through an unauthorized underground cable. Therefore, the above action of the First^t petitioner amounts to unauthorized distribution and trading of energy. This is in absolute contravention of Section 12(b) and (c), for which the First Petitioner is liable for punishment stipulated in Section 146. Therefore, the First Petitioner and not the KSEB is liable for punishment under Section 146.
19. KSEB has also submitted that the Ombudsman dismissed the appeal petition no.P/291/2012 as not maintainable. It however made an observation that HT tariff will be more appropriate for assessment and remanded the matter to the Assessing Officer for fresh consideration. It is true that the Ombudsman has no jurisdiction to adjudicate Section 126 matter. It is also true that the order of the Ombudsman was only clarificatory in nature and not binding on the assessing officer to revise the assessment. The assessing officer thought it fit to recall that final bill and issue a revised provisional bill for the sole reason that the order of the Ombudsman was beneficial to the consumer. Even at the time of revising the bill, the Assessing Officer issued a revised provisional bill, and not a revised final bill, because the assessing officer deemed it fit to afford a further

opportunity of hearing to the First Petitioner to rebut the revised bill. This shows that the allegation of the petitioners that the assessing officer showed an inimical attitude towards the petitioner is wrong.

20. KSEB has further submitted that the First Petitioner was liable for Rs.1.40 Crore by the original final bill. Thanks to the revised provisional bill, the liability stands revised downward to Rs.52.76 Lakh. Even the Hon'ble High Court, which examined the matter, did not find fault with the revised provisional bill. The First Petitioner is abundantly benefited by the action of the Assessing Officer in issuing the revised bill. No prejudice is caused to the First Petitioner due to the issue of the revised provisional bill. First Petitioner did not raise an objection before the Assessing Officer in the personnel hearing that the Act does not support such a revised provisional bill. Had the First Petitioner believed that the Assessing Officer cannot revise the bill after final bill is issued, it ought to have objected to the same before the Assessing Officer.
21. KSEB has further submitted that it is incorrect to say that the Assessing Officer refused to record the statement of the First Petitioner. The First Petitioner did not make any statements before the Assessing Officer. It is not possible to record a statement that is never made. The First Petitioner tried to subvert the Section 126 proceedings as will be described herein. The Assessing Officer provided all reasonable opportunities to the First Petitioner, but the petitioner failed to rebut the bill. Therefore, the statement of the petitioner that the Assessing Officer passed the order without hearing is wrong.
22. It has been submitted by KSEB that the final order of assessment along with the final bill and a covering letter was served on the First Petitioner on 06.06.2013 under due acknowledgement. In the final bill, the bill dated is shown as 06.06.2013. The due date is shown as 13.6.2013. The covering letter very clearly stated thus "You are requested to pay the amount in full on or before the stipulated time, failing which due action as per law including disconnection of service connection will be initiated against you". It is amply clear from the above that the due date before which payment has to be made for avoiding disconnection is 13.6.2013. This letter is the due disconnection notice.
23. KSEB has further submitted that the final bill and this disconnection notice are in possession of the First Petitioner from 06.06.2013. Had the petitioner any ambiguity or dispute regarding anything in the final bill or the disconnection notice, it ought to have

contacted the Assessing Officer immediately and sought clarification. It did not file anything showing its intention to file Appeal under Section 127. It did not remit anything as stipulated for by the Act for preferring Section 127 Appeal. Assessing Officer had no other option than to disconnect the service upon completion of notice period. Therefore, the allegation that disconnection was carried out without issuing prior notice is wrong.

24. KSEB has also submitted that the Section 126 specified a time limit of seven days for making payment against a provisional bill. This time period of 7 days is lower than the 15 day period specified in Section 56. The Section 126 is covered under Part XII of the Act titled "Investigation and enforcement". This is a special subject. The final bill is issued under this Section. Therefore, for all matters under this Section, the time limit specified in this Section will alone apply. It will override any general time limit specified elsewhere wherever there is inconsistency. When a seven day period is specified for making payment against a provisional bill, there is no reason to apply a different yard stick for a final bill, which is made through a quasi judicial process from the provisional bill. The time limit allowable for making payment of the final bill can never be different than the 7 day period specified for the provisional bill.

25. KSEB has also submitted that the Section 127 of the Act specifies a period of 30 days for filing Appeal under that Section if the consumer is still aggrieved by final order under Section 126. There is no provision in the Act to condone delay in filing the appeal thereafter. The Section 127 comes into operation only when the consumer prefers the appeal. Where no appeal is filed, the matter attains finality in Section 126 itself. It is submitted that the appeal under Section 127 is a statutory right and not a fundamental right. The statutory right is automatically extinguished upon non-compliance of provisions, which the statute stipulate as prerequisite for acquiring such right. The Section 127 prescribes that (1) the consumer has to remit 50% of the assessed amount and (2) prefer appeal within 30 days of the final order as prerequisites. This time limit of 30 days is for filing the appeal and not for making the 50% payment. The time limit for making the 50% payment is seven days, since no other longer time limit has been stipulated by Section 126 or Section 127. The Section 127 specifies a period of 30 days for remitting the assessed amount, after the appeal is decided by the Appellate Authority. The time limit of 30 days for filing the appeal ended on 06.07.2013. The Petitioner has not preferred any

appeal till that day and even thereafter. Thus the Petitioner has failed to comply with both the conditions stipulated by law and willfully allowed the remedy under Section 127 to extinguish. The matter has attained finality in Section 126 on 6.7.2013.

26. KSEB has also submitted that the Assessing Officer gave ample opportunities to the First Petitioner to rebut the bill. If the petitioner failed to utilize it, it is not the fault of the Assessing Officer. The First Petitioner did not file any witness list for examination of any witness whom it would like to examine. It did not give any oral statement. It did not file any written statement or argument note. The Assessing Officer therefore adjudicated the matter based upon the evidence on record.

27. KSEB has also submitted that calculation of the proportionate energy charges in the method suggested in DP 75 of 2009 requires that the energy consumed before the date of installation of the unauthorized load and the energy consumed after the date of installation of the unauthorized additional load must be known. This requires that the exact date of installation of the unauthorized additional load must be known. In this case, it is evident that the First Petitioner has been supplying energy unauthorizedly to the Second Petitioner for much longer than a year. However, since the exact date of installation of the unauthorized additional load cannot be ascertained, the period of penalization has been limited to 12 months immediately preceding the date of inspection as per Section 25(5). Since the date of installation of the unauthorized additional load cannot be ascertained exactly, it is not possible to find out the units consumed before the installation of the unauthorized additional load. For this reason, the scientific calculation possible is to take the ratio of unauthorized additional load to total load of the total energy consumed. This is the method employed here. It is incorrect to state that prior disconnection notice was not served. As stated before, the disconnection notice has been served on the First Petitioner on 6.6.13 under the acknowledgement. The Second Respondent, upon request from the First Petitioner dated 15.6.2013 for reconnection, heard the First Petitioner 30 days from 6.6.13 and directing the First Respondent to issue fresh disconnection notice showing the date of disconnection as 6.7.2013 is produced hereby the petitioners as enclosure 13. The Second Respondent ordered reconnection, not as a matter of right of the First Petitioner, but showing a consumer friendly attitude.

Immediately upon receipt of the order on 17.7.2013, the First Respondent complied with the same.

28. KSEB has also submitted First Petitioner is trying to misuse various provisions in the statutes to frighten the respondents by seeking penalties from the respondents, in an effort to get waived the penalty imposed on the First Petitioner under Section 126 of the Electricity Act 2003. This petition is only an instrument used by the First Petitioner to achieve this dubious end. The allegations raised against these respondents by the petitioners are false, frivolous, vexatious, vicious and malafide and intended to achieve undue and unlawful gains by extracting undue sympathy from the Commission.
29. The Respondents have prayed that the Commission may accept the contentions and statements of respondents and the petition may be dismissed with cost to respondents. It is also prayed that the First Petitioner may be suitably punished under Section 146 for contravention of Section 12 of the Electricity Act, 2003.

Hearing of the Petition

30. Hearing on the matter was held on 27-08-2013, 01-10-2013, and 25-10-2013 at the Commission's office at Vellayambalam, Thiruvananthapuram. Sri. Shaji Sebastain, representing M/s Pyarelal foams (P) Ltd., and Aditya Fabrics presented the case in detail after submitting a rejoinder on 25-10-2013. Sri. B. Pradeep Executive Engineer presented the position of K.S.E. Board on the matter.

Rejoinder Petition

31. During the hearing on 1.10.2013 the Petitioner sought time for filing a revised petition with modified prayers. The revised petition dated 21.10.2013 was submitted on 25.10.2013. In the modified petition the Petitioner submitted that the appeal filed by KSEB before APTEL was summarily rejected by the APTEL on 05-10-2013.
32. The Petitioners have submitted that, after rejection of the petition KSEB accepted the Order of the Commission and executed the agreement for additional load of Aditya Fabrics, accepting the effective date of agreement and connection as 19-06-2011. By executing the agreement the grievance of the Consumer is only partially redressed because if the connection was effected from 19-06-2011, as directed by KSERC the Consumer would not have been put to the present embarrassing situation and would not have subjected to the severe continuous harassment involving heavy financial loss and

causing defamation and loss of good will. The Hon'ble Commission may also consider the fact that in case of physically connected unauthorized load or unauthorized extension identified, the Assessing Officer should verify the same and confirm whether there is any revenue loss or damage to the Board and if there is any revenue losses or damage it should be quantified with specific deliberations and calculations avoiding assumptions and presumption.

33. The Petitioners have further submitted that since the penal bill was prepared as per assumption, the Assistant Engineer was forced to work out the same and Hon'ble Commission may evaluate whether it is fair and just to have a revised provisional assessment as done in case of Pyarelal. All statutory departments like, Sale Tax, Service Tax, Income Tax, property Tax, Building Tax, Professional Tax, ESI, PF, etc., collect penal charge only when there is seepage or damage or loss of revenue and the concerned person should be a willful defaulter and there should be conscious, deliberate, disregard for legal obligation. Pollution Control Board, Factories and Boilers, Food and Safety, Forest, Local Self Governments etc., close down the Factory, Establishment or Institution, when there is any breach of law creating harm to the employees, public properties etc. They collect compensation for non-registering and for non-payment of application fee, 'monthly/yearly' license fees, etc, and will also direct for compensation if there is loss or damage.
34. The Petitioners have also submitted that the proceeding, especially the hearing and recording of the statement of the consumer and witness is at present done in a haphazard or shabby manner, preventing the first and last opportunity of the consumer for adducing the evidence. The Assistant Engineer, who is the Assessing Officer, does not have knowledge and concept of compensation, penalty, fine etc. In case of consumers having TOD Tariff the electricity charge along with compensation for excess usage has already been collected as per the tariff order itself. This collection and compensation includes all machineries and gadgets connected to the system by the consumer.
35. The Petitioners have further submitted that connecting the motors and other loads without giving the test certificate of the contractor or the approval of the Electrical Inspectorate is a clear violation of a Central Electricity Authority (Measures relating to safety and electric

supply) Regulations 2010, Clause 31 and 43, and in no way connected with the licensee in the matter of tariff and electricity charges payable (the charges including compensation has already paid as per the meter reading. Since the connection without testing and intimation to the Board may constitute to accidents and other technical hazards the Electricity Board can immediately disconnect the extension/additional load, and without a loss or damage they cannot have a claim for compensation, penalty, fine.

36. The Petitioners have also submitted that the unauthorized additional load and unauthorized extension is only a violation of Central Electricity Authority (Measures relating to safety and electric supply) Regulations 2010 and it is not a violation of Electricity Act or Rules, other than disconnecting them in grounds of safety, the penalization is not possible. If there is any financial loss for KSEB due to the 'Tariff change, Higher Tariff for higher consumption, Calculation of Tariff based on connected load' etc, then only it is possible to operate Sec.126 and subsequently Sec.127 of the Act, in case of unauthorized extension and Load.

37. The Petitioners have submitted that, taking into consideration the requirement of suitable relief for fairness and justice, the Commission may in addition to the earlier relief requested, grant the following relief also.

- i. Punish Deputy Chief Engineer Shri. Kumaran and Assistant Engineer Shri. Suprabhath along with KSEB for non compliance of the directions causing severe and heavy damage to the Consumer.
- ii. Since the alleged extension was removed by the Consumer to comply with CEA regulations and also considering the facts that there is no financial loss for KSEB, Hon'ble Commission may direct KSEB to dispense with proceedings against Pyarelal as per Sec.126.
- iii. The Commission may punish Dy. Chief Engineer Shri. Kumaran and Asst. Engineer Shri. Suprabhath for conducting inspection without jurisdiction causing various damages to the consumer.
- iv. The Commission may direct KSEB to compensate the losses of the Pyarelal for illegal disconnection, damages due to the same and the reconnection after the same.

- v. The Commission may direct KSEB to conduct hearing as per the Section 126, by recording the Statement of Consumer, Statement of Witness, and also the Statement of the cross examination of the Witness etc.
- vi. The KSEB have collected Rs.26,28,400/- from Pyarelal after threatening the consumer with disconnection. The consumer has paid the same in fear of disconnection, when the petition seeking not to disconnect the supply was pending before Hon'ble Commission, and hence Hon'ble Commission may direct KSEB to refund the collected amount because a detailed hearing by the Accessing Officer is a requirement for further proceedings.

Analysis of the Commission

38. The Commission carefully examined all the contentions of the petitions and the respondents on the various issues involved and scrutinized the documents submitted by all the parties in detail. It is noticed that the Petitioners have submitted many irrelevant facts and contentions along with the relevant facts and contentions. Consequently the Respondents have also submitted objections against them. Such irrelevant facts and contentions are not being analyzed by the Commission.
39. The Respondent KSEB has raised an objection on the jurisdiction of the Commission on taking up the issues raised by the Petitioner. It is true that the Commission has no jurisdiction to entertain a petition by a consumer against a licensee under Section 86 of Electricity Act. It is also true that the Commission has no jurisdiction on the issues related to assessment and other provisions under Section 126 and Section 127 of the Electricity Act 2003. But in this petition, the petitioners have requested that action may be taken against KSEB under Section 142 and Section 146 of the Electricity Act 2003 for the non-compliance of the directions of the Commission and for the harassment against the consumer. The petitioner has also prayed for imposing punishment and compensation on KSEB for the alleged non-compliance of the various sections of the Electricity Act 2003 and the Supply Code issued by the Commission thereunder. Hence the petition and the pleadings of the petitioners, though arising out of actions of the Respondents under Section 126 and Section 127 of the Electricity Act 2003, cannot be seen as an attempt to settle grievance. The Commission is empowered and duty bound to protect the legitimate interests of the consumers and to look into all allegations of harassment and non-

compliance. Hence the objection of KSEB is not sustainable and the merits of the case have to be necessarily examined.

40. The Respondent KSEB has raised a contention that a petition filed jointly by the First Petitioner and Second Petitioner cannot be entertained for various reasons cited by KSEB. It is true that the First Petitioner and the Second Petitioner are totally different and independent entities and they have different HT connections. There are ample proofs to this effect. The case against the First Petitioner is that unauthorized extension was given to the Second Petitioner and electricity was supplied illegally by the First Petitioner to the Second Petitioner after connecting unauthorized additional load. As per sub-section (1) of Section 126 action can be taken against this illegal activity. Sub-section (1) of Section 126 has authorized the Assessing Officer to *“provisionally assess to the best of his judgment the electricity charges payable by such person or any other person benefitted by such use”*. Therefore the Assessing Officer can proceed against the First Petitioner and/or the Second Petitioner as per his best judgment. The grievance of the Second Petitioner was to the effect that his request for additional load was not granted in time without avoidable delay. Action under Section 126 and Section 127 of the Electricity Act for the unauthorized use of electricity as explained under the Section 126 and action with regard to grievance against denial or delay in granting additional load are totally different, independent and mutually exclusive activities. Therefore, in the usual course a joint petition cannot be entertained. But the Petitioners had moved the Hon’ble High Court also in a joint Writ Petition and the Hon’ble High Court in its judgment dated.08.07.2013 in WP(C) No.17125 of 2013 had directed this Commission to dispose of this petition. The Respondents in this petition were also Respondents in the Writ Petition and such contentions are not seen raised by the Respondents before the Hon’ble High Court. This Petition is being considered by the Commission under the above facts and circumstances.

41. While issuing orders on OP 35/2012 filed by the same Petitioners, the Commission had unequivocally stated that *‘The Commission declines to interfere into the issues raised by the Petitioners related to the penalization under Section 126 of the Electricity Act 2003 and directs the First Petitioner Pyarelal Foams to seek remedy under Section 126 and Section 127 of the Electricity Act 2003.’*

42. The Commission reiterates the above position once again, even though the petitioner had been repeatedly trying to drag the Commission to sit upon judgments on the issues related to Section 126 and Section 127 of the Electricity Act 2003. The Commission also notes with displeasure the repeated attempts made by the Petitioners to involve the statutory fora like CGRF and Ombudsman in the disputes related to implementation of Section 126 and Section 127 of the Act, in spite of the fact that the statutes, as clarified by the Hon'ble Supreme Court in Sitaram Rice Mill case, state that CGRF and Ombudsman have no jurisdiction on issues related to section 126 and Section 127.
43. The Petitioners have raised some other matters in the present petition. These can be classified into two groups and are examined below:
- (i) Non-compliance of Commission's order dated 13.12.2012 in O.P. No.35/2012
 - (ii) Proceedings under Section 126 including disconnection of service, undertaken by Assistant Engineer, Electrical Section, KSEB, Kanjikode in accordance with the order of Electricity Ombudsman dt.28.12.2012 in Appeal No. P 291/2012.
44. Commission had issued the following directives on 13.12.2012 in the order in O.P. No. 35/2012 to KSEB :
- a. *The contract demand of 2nd Petitioner Aditya Fabrics shall be deemed to be raised to 400KVA with effect from 19/6/2011, one month after the application for power requirement is submitted to KSEB and penal charges if any demanded from the consumer thereafter on this account shall be withdrawn.*
 - b. *The Deputy Chief Engineer, Electrical Circle, Palakkad, who is the agreement authority for HT consumers, shall issue formal Power allocation/ Cost Estimate to the 2nd Petitioner based upon the Application dated 19/05/2011 within 15 days from the date of receipt of this order and formalize the additional load on receipt of the required documents, executing the required agreement etc.*
45. The Petitioners' allegation is that the above directives were not complied with by the Deputy Chief Engineer, Electrical Circle, KSEB Palakkad and by the Assistant Engineer, Kanjikode Section, KSEB in time. KSEB reported that they had filed an appeal against the order of the Commission in OP 35/2012 before the Hon'ble Appellate Tribunal of Electricity and that this appeal was dismissed on 05.10.2013. KSEB also pointed out that even though an inspection was conducted in the premises of the Second Petitioner on

28.11.2012, before the Commission issued its order dated 13.12.2012, all punitive actions against the unauthorized additional load were held back in view of the Commission's order. More over once the appeal before APTEL was rejected; all the directives of the Commission on regularization of the additional load in the premises of the Second Petitioner were complied with. The petitioner has also admitted the above fact. But the fact remains that the Deputy Chief Engineer, Electrical Circle, Palakkad had not implemented the directions issued by this Commission within the time frame stipulated therein. This fact has not been controverted by the Respondents. The Respondents have attempted at justifying their failure to comply with the directions of this Commission stating that they had not willfully disobeyed the order of the Commission in O.P.No.35/2012. It has been further stated that the Respondents believed that the Commission went beyond its jurisdiction by entering upon and adjudicating a dispute between a consumer and licensee, which is not intended by law and therefore they filed an appeal before the Appellate Tribunal. They have also stated that the future course of action of the Respondents, therefore, will depend on the result of the Appeal. This statement of the Respondents in their written statement of defense clearly shows that they had scant respect to the directions issued by the Commission.

46. One Sri.Shaji Sebastian, claiming himself to be the authorized representative of M/s Pyarelal Foams (P) Ltd and M/s Aditya Fabrics, had submitted a petition before this Commission on 08.02.2013 alleging non-compliance of the order of this Commission by the Deputy Chief Engineer, Electrical Circle, Palakkad. The Deputy Chief Engineer, Electrical Circle Palakkad was directed by this Commission on 15.02.2013 to offer his remarks on the said petition within 15 days from the date of receipt of the said letter. The Deputy Chief Engineer, Electrical Circle, Palakkad did not submit any remarks within the period stipulated by the Commission. Therefore a reminder was sent to him on 05.04.2013 directing him to submit the remarks within 10 days from the date of receipt of the reminder. Since the Deputy Chief Engineer, Electrical Circle, Palakkad did not submit any reply even to the reminder, a show cause notice was issued as per this office letter no.312(A)/Com. Ex/KSERC/2013/630 dt.30.05.2013 directing him to show cause why action should not be taken against him under Section 142 of the Electricity Act, 2003. The Deputy Chief Engineer, Electrical Circle, Palakkad submitted a reply to the said

notice as per his letter DB1/HT/Aditya Pyarelal/13-14/848 Dt.19.06.2013 requesting for 15 days time for furnishing his reply. In the said letter he had also informed that KSEB had decided to challenge the directives of KSERC in O.P 35/2012, before the Appellate Tribunal, New Delhi. Accordingly time was granted as requested for by the Deputy Chief Engineer, Electrical Circle, Palakkad as per Commission's letter no.312(A)/Com. Ex/KSERC/2013/630 dt.24.06.2013. Subsequently as per letter dt.09.07.2013 Sri.P.Kumaran, Deputy Chief Engineer, Electrical Circle, Irinjalakuda (formerly Deputy Chief Engineer, Electrical Circle, Palakkad) submitted a letter to the Commission intimating that the KSEB had filed an appeal no.1370 of 2013 before the Appellate Tribunal. He had also informed that he could not do anything to comply with the order dt.13.12.2012 since the Board had decided to file appeal before the Appellate Tribunal and that KSEB is awaiting the result of the appeal. He had therefore requested to keep in abeyance, the action contemplated as per the show cause notice dt.30.05.2013.

47. It is only a matter of elementary knowledge of law that if an order issued by a competent authority is not stayed or quashed by a competent appellate authority, the order will be in force and operative. The Respondents have every freedom to challenge the order of the Commission in an appeal. But they ought to have implemented the order of the Commission, since it was not stayed by the Appellate Tribunal. Alternatively the Respondents could have moved this Commission for enlargement of time for compliance of the orders of the Commission. Nothing has been done by the Respondents in this regard. In the absence of a stay order from the Appellate Tribunal, the proper course of action on the part of Respondents was to implement the order of the Commission subject to the condition that the final decision would be subject to the result of the appeal. The Respondents have not expressed any regret for their failure in this regard, in any of the statements submitted by them in this petition. Neither have they requested to condone such lapses and delays on their part. Under the above circumstances the Commission is of the view that the Respondents had shown only scant respect to the orders issued by this Commission and that they have failed to comply with the directions of this Commission for which separate action will be taken against the Respondents.
48. The second issue is related to certain allegations against the Assistant Engineer Kanjikode. The Assistant Engineer is alleged to have denied the opportunity of hearing

the consumer on the provisional assessment under Section 126. The Petitioner states that the statement of the consumer was not recorded, witnesses were not allowed to be examined and cross examined etc. KSEB has denied these allegations. KSEB stated that the petitioner did not make any statements and tried to subvert the proceedings under section 126. KSEB has also reported that the Petitioner had requested before the Assessing Officer that all proceedings on the matter had to be kept in abeyance since they have filed a complaint before CGRF Kozhikode. This was not allowed. Sri. Chandrasekharan represented the consumer in an adjourned hearing on 03.06.2013 but did not make any statements nor submit any written objections on the assessment. Consequently the Assistant Engineer issued a detailed speaking order on 04.06.2013 confirming the assessment. Under the above circumstances and in view of the fact that consumer had been trying to subvert the proceedings under section 126, the allegation that 'reasonable opportunity of hearing' was not provided against the provisional assessment cannot be accepted. The Assessing Officer i.e, the Assistant Engineer, Electrical Section, Kanjikode had issued a final bill only after providing opportunity for hearing and filing objections, even though the consumer had not used the opportunity as per the provisions of the statutes.

49. The Assistant Engineer, had issued final bill on 06.06.2013 with due date to pay on 13.06.2013. The final bill was forwarded to the consumer along with a communication dated 06.06.2013, in which the Assistant Engineer had intimated the consumer that if the payment is not made before the due date 13.06.2013, 'action as per law including disconnection of service connection' will be initiated. KSEB states that the consumer had neither informed his intention to file appeal under section 127 nor remit the part payment enabling the appeal. Hence disconnection was effected as per the notice dated 06.06.2013. The consumer argues that since the Act provided one month time for filing appeal, punitive action cannot be initiated during the time. The Commission is inclined to accept the views of the consumer in this aspect. The action of the Assistant Engineer in disconnecting the HT service was not proper. But the consumer on receiving the notice dated 6.6.2013 could have raised objections on the disconnection and intention to file appeal on time, and prevented such developments. The consumer did not file any appeal

on time, but tried to move Commission and Hon: High Court against the assessment, without success.

50. In conspectus of the entire facts and circumstances, the action of the Assistant Engineer cannot be termed as correct and fair and therefore Commission would take appropriate action after giving notice to him and after obtaining his explanation

51. All the other arguments of the Petitioners against the assessment under section 126, inspections by the KSEB officials, contentions on and interpretation of CEA regulations, etc are rejected being not relevant to the issue. The contention of the petitioner that the extension of supply from one industry to another industry was necessitated due to denial of additional power required by the Second Petitioner cannot be taken as an excuse for their illegal action. Even if the Second Petitioner was having sufficient additional power allocation, the unauthorized extension and supply of electricity by the First Petitioner to the premises of the Second Petitioner would tantamount to unauthorized use of electricity which is liable to be proceeded under Section 126 and Section 127 of the Electricity Act 2003.

Order of the Commission

52. After carefully examining the documents produced by both the parties and considering all the contentions of the Petitioners and Respondents, the Commission decides that the prayers made by the Petitioners except for the action against the Respondents for non-compliance of the orders of this Commission, need not be granted. Separate action will be taken against the Respondents for non-compliance of the orders of this Commission after giving them notice and obtaining their explanation.

The petition is disposed of accordingly.

Sd/-
P.Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
T.M. Manoharan
Chairman

Approved for Issue

Sd/-
Secretary