

Ernakulam
16/7/2013

FORM 2
[See Regulation 24(5)]

**BEFORE THE KERALA STATE ELECTRICITY
REGULATORY COMMISSION**

Petition No.

IN THE MATTER OF:

The harassment of Consumers by KSEB, including collection of huge amounts as penal charges, in the pretext of Sec. 126 of the Electricity Act 2003, due to the lack of clarity in jurisdiction of the licensee and Electrical Inspectorate, and non jurisdiction of CGRF and Ombudsman in the matter relating to Sec. 126 of the Electricity Act 2003. ‘Illegal and Unauthorised Disconnection’ of supply without giving statutory period for remitting the Penal Charges or filing Appeal.

**NAMES AND FULL ADDRESSES
OF PETITIONERS/ APPLICANTS :**

Shaji Sabastian,
Electricity Committee Convenor,
Kerala State Small Industries
Association,
3rd Floor, Penta Estate,
Palarivattom-682025,
Ph: 0484- 2333428, 9447157323

NAMES AND FULL ADDRESSES
OF RESPONDENTS

- : 1. Kerala State Electricity Board,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram.
Pin No. 695004.
Represented by the Secretary.
- 2. The Chairman,
Kerala State Electricity Board,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram.
Pin No. 695004.

Affidavit verifying the petition

I, Shaji Sebastian, son of M. C. Devasya aged 51, residing at Ernakulam do solemnly affirm and state as follows:

- 1. I am the Petitioner in the above matter.
- 2. The statements made in the pages of petition application herein now shown to me and marked with page no **1** to **20** are true to my knowledge and the statement made in **20** nos. of pages are based on information received and I believe them to be true.

Solemnly affirmed at
on this day of that the content of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

Petitioner/ Applicant/ Respondent.

Shaji Sabastian,
Electricity Committee Convenor,
Kerala State Small Industries
Association,
3rd Floor, Penta Estate,
Palarivattom-682025,
Ph: 0484- 2333428, 9447157323.

Identified before me

Notary

FORM 1
[See Regulation 24(3)]
General Heading for petitions

**BEFORE THE KERALA STATE ELECTRICITY REGULATORY
COMMISSION**

PETITION NO:

IN THE MATTER OF:

The harassment of Consumers by KSEB, including collection of huge amounts as penal charges, in the pretext of Sec. 126 of the Electricity Act 2003, due to the lack of clarity in jurisdiction of the licensee and Electrical Inspectorate, and non jurisdiction of CGRF and Ombudsman in the matter relating to Sec. 126 of the Electricity Act 2003. ‘Illegal and Unauthorised Disconnection’ of supply without giving statutory period for remitting the Penal Charges or filing Appeal.

Fees Rs. 10,000/- (Rupees Ten Thousand only) as per Annex II schedule of fees See Regulation 64(1) of Kerala State Electricity Regulatory Commission (Conduct of Business) Regulation 2003, is enclosed as DD drawn in favour of the Secretary, KSERC, payable at Trivandrum from Bank.

REFERENCE:

1. Electricity Act 2003.
2. Supply Code 2005.
3. CEA Measures Relating to Safety and Electricity Supply Regulations, 2010.
4. Kerala State Electricity Regulatory Commissions (Licensing) Regulation 2006.
5. Kerala State Electricity Regulatory Commission (Conditions of License for Existing Distribution Licensees) Regulations 2006.

6. The Kerala State Electricity Regulatory Commission (Conduct of Business) Regulation, 2003.
7. The Indian Electricity Act 1910.
8. The Electricity (Supply) Act, 1948.
9. Conditions of Supply of Electrical Energy by KSEB, 1990

**NAMES AND FULL ADDRESSES
OF RESPONDENTS**

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1. Kerala State Electricity Board,
Vydyuthi Bhavanam, Pattom,
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Pin No. 695004.
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Kerala State Electricity Board,
Vydyuthi Bhavanam, Pattom,
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Pin No. 695004.

JURISDICTION/ MAINTAINABILITY

1. The Electricity Act entrusts the Regulatory Commission with the responsibility of specifying the procedure, formalities, and measures to prevent and control unauthorized use of electricity. The procedure and formalities of recovery of electricity charges, disconnection of electric supply for non-payment, and disconnection of electric supply for unauthorized use, etc. The Sec. 50 along with the Central Govt., Ministry of Power Order No. S.O. 790(E) dated 8/6/2005 also entrusts the above responsibility. Because of this, entire violations coming under the KSERC Regulation will also come under the jurisdiction and purview of CGRF and Ombudsman. Hence, CGRF and Ombudsman is the only Authority where a consumer can approach if there is misrepresentation and severe harassment in the pretext of Sec. 126 by KSEB employees. Before 2005, Electrical Inspector was the authority for interfering in the disputes and also in the non-observation of procedures by KSEB for disconnection of supply. During that time, the consumer was at a liberty to file a petition before Electrical Inspector for almost all disputes, penalization, disconnection and harassment from the part of KSEB. At

present, CGRF and Ombudsman is the only forum for filing a complaint against KSEB.

2. The petition is being filed complying with chapter (III) proceedings before the Commission, Clause 22, initiation of proceedings, sub clause (d) upon a petition filed by an 'affected party' as per Kerala State Electricity Regulatory Commission, (Conduct of Business) Regulation 2003.
3. The Electricity Act entrusts the Regulatory Commission with the responsibility of specifying the procedure, formalities and measures to prevent and control unauthorised use of electricity. The procedure and formalities for recovery of electricity charges, disconnection of supply of electricity for non payment, and disconnection of supply of electricity for unauthorised use, etc. The Sec. 50 along with the Central Govt. Ministry of Power Order No. S.O. 790(E) dated 8/6/2005 entrusts the above responsibility.
4. Grave violation of the above proceedings is causing heavy damages to the consumers and for the irrevocable losses and damages and for continuing wrongs, the consumer does not have any other forum other than Electricity Regulatory Commission.
5. The Petitioner, Shri. Shaji Sebastian is representing District Unit of KSSIA. The Petition is general in nature requesting the amendments in clause 50 and 51 of Terms and Conditions of the Supply, which came in force from 2007 onwards. From 2010, with the implementation of 'CEA Measures Relating to Safety and Electricity Supply Regulations, 2010', Procedure and Proceedings in relation to energisation of new connection and addition of new loads was simplified and hence, the corresponding changes have to be incorporated in the Terms and Conditions of Supply.
6. Complying with the proceedings before Commission, the Electricity Act Section 50, Order No. S.O. 790(E) of 2005 of Power Ministry, and the fact that the petition is being filed by an Association pointing out the requirement of changes in 'Proceedings and Procedures/ Regulations' due to the change in Legal position with the advent of 'CEA Measures Relating to Safety and Electricity Supply Regulations, 2010', we humbly request that the Hon. Commission may accept the petition in file and numbered.

JURISDICTION OF ELECTRICAL INSPECTORATE

7. With the Electricity Act 2003, the authorities of Electrical Inspectors have been enhanced in the matters relating to safety, especially with regards to the energisation of new/ additional Electrical Installations. For energising new LT installations as well as additional installations in LT, the Completion Report/ Test Certificates signed by a Licensed Electrical Contractor is made compulsory and mandatory. The requirement of inspection by the licensee is not compulsory and the licensee is permitted to use the data being filed by the consumer included in the test certificates, as the required information for their records. For energising HT premises, and additions in HT premises, the inspection and approval of Electrical Inspectorate is made mandatory. As in case of LT, the formality with the Licensee is ending up with a Completion Report/ Test Certificates signed by a contractor submitted along with the approval of Electrical Inspectorate.

8. In addition to the matters relating to safety, the Electricity Act, 1910 entrusts the Electrical Inspectorate with the authority to look into the matters in relation to the 'disputes, difference, accuracy of meters, and finally the disconnection of Electric Supply'. At present, the above referred jurisdiction is shifted from Electrical Inspectorate to CGRF and Ombudsman, but due to the lack of clarity, or in the pretence of lack of clarity, there are several incidents in which the consumer is being made to run due to the 'illegal and unauthorised disconnection of Electric supply' by KSEB employees. When Electrical Inspectors were entrusted with the sole responsibility of 'illegal and unauthorised disconnection of Electric supply', the consumer was having a very convenient approachable forum from where the direction 'not to disconnect the supply' or 'to reconnect the supply' was very easy to receive. Since the Electrical Inspectors have been located in every district headquarters, with sufficient number of Dy. Electrical Inspectors and Asst. Electrical Inspectors, the approach for a consumer was very easy. An application submitted by the consumer was considered immediately and order released, directing not to disconnect the supply or to reconnect the supply with, hearing date posted. **Since the Electrical Inspectorate was a totally independent statutory body, constituted directly by the Govt. of Kerala, they were at a liberty to take an independent decision without having any influence by higher officials, authority or anybody from any section of the society.**

9. While the consumers were enjoying the facility of Electrical Inspectorate as a decision making body, in matters relating to disconnection of supply, connection of equipments, dispute in reasonable expenditure for providing supply, accuracy of meter, etc. and the availability of Electrical Inspectorate in all districts which are accessible for consumers, the Electricity Act, 2003 came into force. The statutory power enjoyed by Electrical Inspectorate were shifted from them to CGRF, Ombudsman, Assessing Officer, Authorised Officer, etc., who were supposed to execute their powers and responsibilities as per the regulations formulated by respective Regulatory Commissions under their supervision, control, and monitoring with occasional guidelines and directions.

CGRF/ OMBUDSMAN/ ASSESSING OFFICER/ AUTHORISED OFFICER – JURISDICTION CROSSOVER AND GREY AREAS

10. Although the intention of Act 2003 was to reduce the suffering of the consumer, and to enhance the harmonious relationship with the licensees, the faith of the consumer has hit rock bottom and the employees of the licensees are bundled with exhaustive powers and free hand for harassing the consumers. The CGRF is located only in 3 places and the accessibility of a common man is difficult. More than that, when CGRF Chairman, an employee of KSEB gets retired, transferred or sacked by the Board, the consumer will not have a proper Authority to approach. There is no provision for transfer, the jurisdiction of the logistics, as being done in other legal forums. Most of the time, there will not be even a staff to receive and to acknowledge a complaint being filed by the consumer. CGRF will always have a fear about their employment because they can be transferred at any time and even sacked because they are always under the direct control of the licensee. It is quite common for CGRF, keeping a complaint filed by a consumer without taking any decision or direction to the Board not to have coercive steps till hearing and disposal of the petition. As the prime, and one and only body available for the consumer to approach with his grievance in relation to electricity, holding of entire proceedings against the consumer during the pendency of the complaint before CGRF is only a primary requirement of the consumer. The consumer is barred from approaching other legal forums and authorities like Ombudsman, CDRF, Civil Courts, KSERC, etc. while the complaint is pending before CGRF. Approaching Hon. High Court is generally ending up with a direction for disposing the complaint within a specific period of time by CGRF. It is also difficult for a common man to have Writ Petitions filed before Hon. High Court every time for getting justice.

11. After the Order of Hon. Supreme Court in the case Seetharam Mills, elaborating Sec. 126 of the Act and its jurisdiction, it became a thorn on the side of the hapless consumer, further adding to his miseries. The Board officers indiscriminately started adding Sec. 126 in all their Site Mahezers, Penal Bills, and Demand Notices, so that the CGRF will not interfere after seeing 'Section 126'. They will simply keep the complaint with them till KSEB ends up with their proceedings of harassment and penalisation, and after disconnection of the supply the CGRF will come out with an order that they are not having the jurisdiction and hence not interfering.
12. Because of the procedural problems as elaborated above, the consumers are forced to succumb to the 'whims and fancies' of the employees of KSEB. It is quite normal and natural to have some loads added or connected to the system in almost all commercial and industrial installations having two part tariff. There are also the chances of minor extensions in every installation which can be located by examining the installation thoroughly and comparing it with the original Completion Report. Other than directing the consumer to regularise the same by submitting proper Completion Report through a contractor, or to disconnect the same, a consumer does not know on what authority the penalty is being imposed and in certain cases the penalty being continued.

INCONSISTENCY OF KSEB TERMS AND CONDITIONS OF SUPPLY, 2005 WITH SUPPLY CODE, CEA REGULATION AND ACT, 2003

13. For the purpose of calculating the penalty for additional loads, in LT and HT premises, the Board is depending on the condition 51(5) of the Terms and Conditions of the Supply, 2005. In the said provision, it is provided that, the loads connected in excess of the connected load specified in the agreement shall be treated as a part of the unauthorised MD for charging penalty. It is submitted that the aforesaid provision is not enforceable as it is against the provisions contained in Supply Code. To be precise, said provision runs counter to the provisions of the Supply Code, which is a subordinate legislation, enacted in exercise of powers under Section 50 of the Electricity Act, 2003. Thus, in effect, Regulation 51(5) is altering the definitions of the expression 'Connected Load' as contained in Supply Code, which is not permissible under law. The Regulation 2(1) defines Connected Load which reads as follows *“**Connected Load**” means the sum of rated capacities in terms of KW or KVA of all connected energy consuming devices in the consumer’s installation..... In case of*

HT and EHT connections, the contract demand shall be treated as the connected load'. Subsequent to the above, in the order of the Commission DP 84, the Hon. Commission was pleased to extend the same for LT consumers having TOD facility as elaborated in the paragraph 3.1.3 of the Order DP 84 (Encl 1). The Hon. Commission was kind enough to elaborate the 'Contract Demand' and 'Connected Load' and its applicability as ***'When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence, no case is made out against the principle of linkage of 'Contract Demand' to 'Connected Load' of LT Industrial Consumers opting for Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers'***. Thus, it is evident that in case of HT and LT consumers having TOD metering, the Contract Demand shall be treated as the Connected Load for all the purposes relating to the supply of energy. In other words, the first part of the definition, i.e., the first sentence in clause 2(1) is not applicable to TOD consumers. Therefore, the conditions stipulated in 'condition 51(5)' of the Terms and Conditions of the Supply, is in contrary to the definition of Connected Load as contained in Regulation 2(1) of the Supply Code. Since the Supply Code is being a subordinate legislation, and Terms and Conditions being only a set of conditions, when there is a conflict between the said regulation and the conditions, the subordinate legislation will prevail. Therefore, the condition 51(5) in Terms and Conditions of Supply is unenforceable.

14. The Condition 26 'Extensions, Alterations and Renovation of Installations' in KSEB Terms and Conditions of Supply, 2005 clearly explains the procedure and formalities for adding new load and modifications. It also clearly elaborates *'A test report signed by a licensed wiring contractor should also be produced by the consumer along with his application for extension and alteration. The consumer should remit the testing fee. Failure to give such intimation can disrupt the supply system and will render the supply liable to be summarily discontinued'*. The Clause 51(5), Para 1 is also very clear in procedures in the case of unauthorised loads as *'In case of HT and EHT consumers the unauthorised additional load shall be got disconnected by the consumer within twenty-four hours of detection of the unauthorised load by the Board's officer or take action to regularise the unauthorised additional load. A notice to this effect shall be issued to the consumer by the Board's officer immediately on detection of the unauthorised load. If the consumer fails to disconnect the unauthorised load within the time stipulated, the power to the premises shall be disconnected after the expiry of twenty-*

four hours'. But the 2nd Para *'As per agreement, change in installation should be with the permission of the KSE Board. Hence loads connected in excess of the connected load specified in the agreement shall be the additional unauthorised load and will be treated as unauthorised MD for charging penalty'*, will become infectious as elaborated in this petition Para 13. This clearly shows that if unauthorised load is detected, the Assessing Officer can give an immediate notice of disconnection of that specific load and no penalisation in this regard is possible.

15. The Clause 43(4) and 31(1) of CEA, Measures Relating to Safety and Electric Supply Regulations, 2010, is very clear in defining the procedure for addition or alteration to the installation by the 'owner' of any installation. The Clause 43(4) *'The owner of any installation of voltage exceeding 650V who makes any addition or alteration to his installation shall not connect to the supply his apparatus or electric supply lines, comprising the said alterations or additions unless and until such alteration or addition has been approved in writing by the Electrical Inspector.'* This clearly shows that the statutory requirement for energising LT additions is only the approval from Electrical Inspectorate. KSEB is not having any tariff loss because the tariff is two part, and their fixed charge is based on KVA maximum demand. In the order DP 84/2010 of KSERC (Encl 1), the Para 3.13, Page 5, it is stated that *'When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence no case is made out against the principle of linkage of 'Contract demand' to 'Connected Load' of LT Industrial Consumers opting for Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers.'* This clearly shows that no case can be made out against the principle of linkage of 'Contract Demand' to 'Connected Load'. Similarly, the clause 31(1) of CEA Regulation *'Upon receipt of an application for a new or additional supply of electricity and before connecting the supply or reconnecting the same after a period of six months, the supplier shall either test the installation himself or accept the test results submitted by the consumer when the same has been duly signed by the licensed Electrical Contractor.'* There are also incidents in which the consumers extending the application, along with the approval of Electrical Inspectorate, and KSEB has not bothered to do the inspection or enhance the supply.
16. The Tariff orders of Hon. Commission is very clear in permitting KSEB to collect Penal Charges for excess usage of kVA above the Contract Demand. The Penalisation varies like 1.5 times, 2 times, and even 3 times

during power restriction periods. In certain times, the excess usage is also being permitted upto 30% of the contracted load in different time zones. To have excess demand, the requirement and connection of Additional Load is a prerequisite. As elaborated earlier, if the consumer is connecting this excess Load without application and approval of Electrical Inspectorate, the Board can always direct the consumer to disconnect the portion of the Load so connected. The Board can never have a separate punishment other than the disconnection by way of any kind of penalty, because nobody can be punished or penalised 2 times for the same crime. Since the Board is getting the reasonable payment as tariff as approved by KSERC, and also the penal charges as stipulated by KSERC, the Board cannot extend any further collection of charges in anyway whatsoever it may be.

UNAUTHORISED EXTENSION AND DEFINITION OF PREMISES

17. Definition of the premises in the Electricity Act 2003 as per Sec. 2(51) is, *“premises” includes any land, building or structure*. But in Supply Code Clause 2(ee), after the amendment on 24/10/2008, the definition of the premises is, *“premises” includes any land, building or structure or part of it, situated in an immovable property, details of which have been specified in the applications or agreements prescribed for grant of electric connection*. The enlargement of the specification above the stipulation in the Act is constituting to the harassment of the consumer in many ways. The enlarged portion is, *‘or part of it, situated in an immovable property, details of which have been specified in the applications or agreements prescribed for grant of electric connection’*. If a domestic consumer extends his line from his house to the adjacent cow shed or a small workshop extends the Supply for drilling or welding purpose from his industrial shed to outside, it will become an unauthorised extension, and an opportunity for the licensee to harass the consumers.
18. Most of the cases in relation to unauthorised extension have occurred after the enlargement of the definition of the premises as highlighted above. The extension outside the premises is restricted to prevent accidents. For electrical accidents, the consumer along with the licensed contractor or the authorised persons should have liability. The extension should be restricted only if the line is extended outside the compound wall, fencing or the areas owned by the consumer. The above referred enlargement will prevent a consumer even from extending a connection from the available plug points.

19. It is true that the consumer should not make any alteration or addition or substitution or transfer which may either increase the obligation or cause any damage to the electrical system of the supplier. The increase in obligation in case of TOD consumer is measured in KVA Maximum Demand and when it exceeds the contracted demand, a consumer is liable to pay penalty. This penalty is being decided by the Hon. Commission and varies from 1.5 times to 3 times depending on the availability of the supply and power restrictions. Once penal charges are collected for an offence, there cannot be another punishment whatsoever it may be in any other way. After the arrival of new electronic gadgets, there was tremendous increase in system harmonics. There are also several incidents in which the damages occurred to the electrical line especially due to heavy current in neutral circuit. This type of damages have occurred not due to unauthorised load, but due to the inherent property of certain online Stabilisers, UPS, Rectifiers, and other electronic gadgets without online filters. Certain Block Reactors used along with the capacitors for the protection of capacitor bank, designated as harmonic filters are also making problems. These system damages can be rectified only by installing proper online filters or Block Reactors in the system at suitable places. The only remedy available for the licensee to locate the problem is to have a harmonic analyser with recording facilities fitted in the metering equipment of the licensee. The Energy Conservation Building Code also warrants the same. In short, if the licensee insists for metering and monitoring the input supply to a consumer, they can easily locate the excess usage and also find out the garbage being put back into the system of the licensee by the consumer. Suitable penal provisions can be included in the tariff orders in due course for both excess usage and for misuse of energy by connecting gadgets causing power system disturbance and damage.
20. The prime objective of the licensee complying with the Act should be to provide the consumer with quality supply and to collect reasonable tariff for the same. The licensee should focus mainly on their core competency and should be able to make reasonable profit. While monitoring and recording devices are available for finding out the excess usage and misuse, the calculation of the load by inspecting merely the nameplates of the equipments or gadgets is not scientific and it is causing wastage of time, unnecessary disputes and unwanted litigations. The responsibility and liability of the safety aspects of the electricals inside the consumer premises should be vested upon the consumer and respective licensed contractor and its supervisory control and monitoring should be vested upon Electrical Inspectorate as envisaged in the Act and CEA

Regulations. The ‘Generators, Transmitters, and Distributors’ of electricity should focus in their core competencies and the safety aspects and its control should be entrusted with the respective Authority, ‘the Electrical Inspectorate’, as per CEA Regulations.

**NON COMPLIANCE OF THE PROCEDURES AS PER SEC. 126 OF
THE ACT**

21. As per amendment of Sec. 126(3) of the Act, w.e.f 15/6/2007, ‘the reasonable opportunity of hearing’ was made mandatory. Earlier, it was ‘*the assessing officer, who **may** after affording reasonable opportunity of hearing to such person*’, but at present, it is ‘*the assessing officer, who **shall** after affording reasonable opportunity of hearing to such person*’. The change of “**may**” with “**shall**” as an amendment in the Act. clearly proves the requirement of proper hearing. When the opportunity of personal hearing is mandatory, it is the bound duty of the Assessing Officer to provide with the same to the consumer. Instead of acknowledging and accepting the consumer, and creating a sound cordial environment, normally, the Assessing Officers is acting as superpowers and most of the time, they are questioning the consumer and the poor consumer will be forced to reply for the same which will be recorded by the Assessing Officer as per his will and wish. After that, the result of the same need not be explained because it will give a clear opportunity to the Assessing Officer to rectify any defects in Site Mahazer, Provisional Bill, the Provisional Assessment Order and finally the Final Order confirming the same penalised amount.

22. Instead of giving an opportunity of hearing and recording the statement with a copy to the consumer, the Assessing Officers generally deny the basic right of the consumer to adduce the evidence properly during the first opportunity before the appropriate forum. **Without recording the statement, and examining the witnesses, the Assessing Officer can never issue an order giving reasons and with discussion of the evidence on record. The Assessing Officer should deliberate about merit and adjudge it before confirming, enhancing, reducing, or setting aside the penalty. Then only, the order of the Assessing Officer can be treated as ‘a speaking order’.** The ‘reasonable opportunity of hearing’ is the personal hearing and first opportunity of the consumer for supplementing the detailed evidence. The consumer should get an opportunity for proper recording of the statements, cross-examination of witness pointing out demeanour of those witnesses with personal appeal to the Assessing Officer, to

appreciate the merit and weakness of the opposite party. The consumer will not get this opportunity before the Appellate Authority because at that stage, the Authority is merely to take his decision from the records before him. The personal hearing is intended to be a necessary requirement for the concept of reasonable opportunity to show cause only at the stage when evidence is to be led, cross- examination of the witness is to be done, and the demeanour of the witness is to be watched, ie.,before Assessing Officer and not upon the appeal with Appellate Authority.

23. Hon. Commission may kindly formulate procedures and formalities in details complying with Sec. 50 of the Act and Removal of Difficulty Order 2005, detailing the recordings of hearing, witness examination and cross examination. The Commission may also formulate procedures confirming the basic right of the consumer for 'reasonable opportunity of hearing.' The opportunity available for a consumer to defend the penalisation as per Sec.126 is very limited. Most of the time, since the Assessing Officer is the lowest rank Officer of the licensee , he is always restricted by higher authorities and forced to take decision as per the direction of the higher Officers. For filing an appeal before Appellate Authority, half of the assessed amount is to be remitted. Most of the time this amount will be very huge and unaffordable. If the case is not properly presented and recorded there is no further opportunity for a consumer to have a relief.

**ASSESSMENT BY THE ASSESSING OFFICER IN THEIR OWN WAY
WHILE DP 75 IS CHALLENGED AND PENDING BEFOR HON.
COMMISSION.**

24. The procedures for assessing the penalty by the Hon. Commission is upon the Order of petition DP 75, (Encl 2) filed by the same petitioner Shri.ShajiSebastian on behalf of KSSIA. The same is challenged in OP 15 by KSEB and the petition is admitted by Hon. Commission. The hearing is going on. At present only KSSIA is representing as defended. After challenging the proceedings and directions in DP 75 now Assessing Officers are issuing provisional bill as per the calculations made according to their 'whims and fancies'. Even though Hon. High Court have given directions in several cases to have the calculations based only on DP 75, the Assessing Officers are not calculating the penal charges as per DP75, and Appellate Authority is also not correcting it. The consumer is burdened unnecessarily.

25. **The Order DP75** is *'The difference between the average monthly energy consumption for last 12 normal months before the additional unauthorized load is connected and the monthly energy consumption after the unauthorized load is connected shall be used for charging the penalty'*. **The prayer of KSEB in OP15 (Encl 3) after revision of the petition by KSEB** is *'Considering the facts submitted at the time of hearing, it is prayed that in the case of unauthorized additional load connected by a consumer, the assessing officer may be permitted to take appropriate decision independently as envisaged in the Act, based on the merits of the case and to clarify that the Order dated 19-01-2010 in DP 75/2009 shall not be made applicable to all cases where unauthorized loads are detected'*. The KSEB was also vehemently emphasising in all hearings that they are not for penal charges or they are not seeing the collection of penal charges as an income. Their botheration and fear is only about harms that can be caused to their electrical system due to the presence of unauthorized load. If the presences of unauthorised load are harmful, how can they permit the usage of the same load, collecting the penal charges? The solution is only constant monitoring of the load using suitable meters as elaborated earlier.

NON IMPLEMENTATION OF LT IV, TOD TARIFF FROM 1/1/2013

26. The Hon. Commission was kind and favourable to all LT Industrial consumers by facilitating the facility of TOD system from January 2013 onwards. The LT, TOD was introduced for LT Industrial consumers as 'Optional Demand Based Tariff' from 2010 onwards. Our Association KSSIA has arranged the TOD meter from L & T at a reduced rate and KSEB was kind enough to extend its testing at various labs especially at Angamaly testing lab. A lot of Industrial Consumers, especially in Ernakulam District Industrial Belt's 'Kalamassery, Edayar, Aluva, Angamaly, Kalady and Perumbavoor', using this opportunity and facility have got converted to TOD tariff installing TOD meter and executing the supplementary agreement. While this system was going smoothly, KSEB themselves have taken up the responsibility of the conversion of the meters with TOD meters and they have even released several orders facilitating the same so that the conversion will be effected before January, 2013.
27. KSEB was also kind enough to introduce a voluntary disclosure scheme for additional loads from December 15th of 2012 to January 15th of 2012 to facilitate any problems which may arise during the transfer of metering from 'connected load based tariff' to 'maximum demand based tariff'

and to accommodate all consumers comfortably in TOD system. Even though the employees of KSEB have put their maximum effort for the conversion, they were not able to do the same in the stipulated period. The problem mainly attributes to the non availability of sufficient number of good quality TOD meters which was earlier provided by the consumers when the TOD scheme was optional. KSEB was also kind enough to extend the voluntary disclosure period for one more month and upto February. Even now, KSEB was not able to convert all eligible consumers to TOD system. When the situation is remaining the same, KSEB has started large scale inspection through its machinery, 'APTS' and started imposing huge penalty for additional load which the consumers were most of the time in the process of installing to be regularised along with the process of TOD conversion. On objecting the same, the Board officers were telling that the Hon. Commission has extended the compulsory implementation of TOD up to 1/9/2013 with a strict warning that, if there is non compliance (as usual), it will attract Sec. 142 of the Electricity Act 2003. Since the above privilege is an exemption given to KSEB by the Hon. Commission to cover up the handicaps of KSEB, it cannot be binding to LT IV Industrial consumers who have legitimate expectation of TOD metering from January 2013. Hence Hon. Commission may direct KSEB to consider all LT IV consumers above 20 kW connected load as TOD consumers and may abstain from penalisation towards unauthorised load including disconnection. They may also be directed to expedite the conversion proceedings and to finish off with the same at the earliest.

PROTECTION OF CONSUMER'S INTEREST

28. The Electricity Act seeks to encourage competition with appropriate regulatory intervention. Here, it is true that there is no competition but the requirement of Regulatory intervention is very high. Before the advent of Electricity Act 2003, Supply Code 2005 and Terms and Conditions 2007, the Assessment for unauthorised load was being done as per KSEB 'Conditions of Supply of Electrical Energy' and the punishment and penalty for unauthorised additional load was elaborated in Conditions of Supply framed taking into consideration the clause 78, 79 and 49 of the Electricity (Supply) Act, 1948. Since the Board was framing the Conditions of Supply under direct control and supervision of the Government, the penalty for unauthorised load was restricted as multiples of fixed charge only and it varied from 1.5 times to 3 times in various periods. Subsequently, after the arrival of the Regulatory regime, fixing the responsibility of tariff upon Regulators, the concept of proportionate

energy charge came into existence. It is pertinent to note that the two part tariff was prevailing in the state for all consumers except domestic even before the Regulatory regime, came into force from 2005 along with Supply Code. The concept in Sec. 126 of the Act is not new and the tariff calculation is also not new. The approach towards unauthorised load got deferred when the legal position, facts, and circumstances were remaining the same, is not conceived by a common consumer.

29. The National Electricity Policy and Plan aims at accelerated development of Power sector, protecting the interest of the consumers and other stakeholders. The Act, Plan or Policy never aims or warrants the harassment of the consumer especially when a licensee confirms that they are not aiming at any financial benefits by implementing penal charges for unauthorised load. Any kind of misuse including unauthorised load is to be restricted or controlled scientifically as explained earlier by introducing scientific, elaborate and accurate measuring systems. The consumer education and development of awareness about Electricity Regulatory System is very essential in this era of technological explosion. The National Electricity Policy clause 5.13.4 , *'The Central Government, the State Governments and Electricity Regulatory Commissions should facilitate capacity building of consumer groups and their effective representation before the Regulatory Commission. This will enhance the efficacy of regulatory process.'*, aims at capacity building of the consumer groups which means their training, opportunity for their interaction etc. Since the responsibility is entrusted with the Regulatory Commissions also, the Hon. Commission may kindly arrange for interactive seminars and programmes in association with various consumer groups. This is a very essential requirement because a lot of consumers due to the lack of awareness, knowledge and opportunity are made to suffer and to make payment in excess of what is genuine. It is also a true fact that a poor single consumer will never be able to cope up with the highly efficient, well established, huge, internal and external legal framework the KSEB is having, with an army of very senior legal practitioners from High Court to all small legal forums like CDRF's in all nook and corners of Kerala.

IMPLEADING CONSUMERS

1. **Kunnath Paper Mills Pvt. Ltd.**, is an affected HT I Industrial consumer with Consumer Code 18/34, of Electrical Section, Muthalamaada, who has paid the excess penal demand charge for the excess usage of the Max Demand and in the process of the submission of the completion report

with KSEB. During the time of inspection, locating the additional load being connected for the inspection by Electrical Inspectorate, APTS prepared a long site Mahazer imposing heavy penalty. Since there was no other alternative, the consumer approached CGRF Calicut elaborating the details and filed a complaint before CGRF which was admitted on records by CGRF on 29/6/2013. The matter was informed with the Assessing Officer along with the copy of the complaint filed before CGRF and a request for keeping the matter pending for the direction of CGRF. The Assessing Officer, instead of considering the complaint and contacting CGRF for opinion, have rejected the request of the consumer deciding himself that the complaint before CGRF will not be maintainable before CGRF. CGRF in turn kept the complaint pending, even though the consumer requested for an immediate rejection of the same for approaching higher Authorities. If more time is required the CGRF could have given a direction to the Assessing Officer for a stay of further proceedings till a decision by CGRF . A general complaint pointing the above anomaly was given to the Hon. Commission by the same complainant Shri.Shaji Sebastian.

This particular case is a clear violation of the portion of the clause 2(l), 'In case of HT and EHT connections, the contract demand shall be treated as the connected load' and the portion of the paragraph 3.1.3 of the Order DP 84, 'When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence, no case is made out against the principle of linkage of 'Contract Demand' to 'Connected Load' of LT Industrial Consumers opting for Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers'.

Since the penalisation imposed is illegal and against the direction of the Hon. Commission, attracting non compliance of the directive as per Sec. 142, and also the huge penal amount, Rs. 1,96,96,545/- (Rupees One Crore Ninety Six Lakhs Ninety Six Thousand Five Hundred and Forty Five only), with which the company will be closed down, the Hon. Commission may direct KSEB to hold all the proceedings against the consumer till hearing and disposal of this petitions before CGRF and Hon. Commission.

2. **Pyarelal Foams Pvt. Ltd.(Con No.26/4422)** is burdened with the liability of misuse of energy for an alleged extension of power in the same premises to the new unit having approval and sanction from Electrical Inspectorate and also having the completion report submitted

with KSEB which was confirmed by the Hon. Commission in the Order OP 35. The petition in these regard is pending before the Hon. Commission . Hon. Commission may direct KSEB to hold all the proceedings against the consumer till hearing and disposal of this petition and petition and petition filed by **Pyarelal Foams Pvt. Ltd**

**RELIEF PRAYED FOR UNDER SEC. 181 & SEC. 50 OF THE
ELECTRICITY ACT, 2003 AND THE ELECTRICITY (REMOVAL OF
DIFFICULTIES) ORDER 2005**

1. Hon. Commission may suitably amend clauses relating to unauthorised load and misuse of energy in Supply Code and Terms and Conditions, taking into consideration the CEA Regulation, 2010 and extended compulsory implementation of TOD Tariff to LT IV consumers.
2. Hon. Commission may direct KSEB to have required changes in the LT and HT agreements facilitating the above requirements.
3. Hon. Commission may impose the burden of ‘strict proof principle’ from the side of KSEB for enforcing an action under Sec. 126 with broader guidelines in Supply Code.
4. Hon. Commission may direct KSEB to have a proper recording of the statements given by the consumer before Assessing Officers including witness examination and cross examination in details complying with Sec. 126 of the Electricity Act 2003 and to subject the meter or other gadgets to the test of correctness by the concerned Electrical Inspectorate.
5. Hon. Commission may direct KSEB to strictly comply with the portion of the Supply Code 2(1), *‘In case of HT and EHT connections, the contract demand shall be treated as the connected load’* and consider deletion of the condition 51(5) of the Terms and Conditions of the Supply 2005 as it is in violation of the provisions of Supply Code which being subordinate legislation.
6. Hon. Commission may direct KSEB to strictly comply with the portion of the paragraph 3.1.3 of the Order DP 84, *‘When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence, no case is made out against the principle of linkage of ‘Contract Demand’ to ‘Connected Load’ of LT Industrial Consumers opting for*

Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers’.

7. Hon. Commission may direct KSEB to consider all loads and extensions not included in the submitted Completion Report only as additional loads, and to direct the consumer for submission of the required Completion Report and to start with disconnection procedure after giving notice, specifying the time limit.
8. Hon. Commission, ‘taking into consideration the time extension given to KSEB for the implementation of LT, TOD, as an extended courtesy’, may direct KSEB not to have any harassment of LT consumers in the matter related to the Connected Load or Additional Load till the implementation of TOD metering as directed by the Hon. Commission.
9. Hon. Commission may consider the possibility of the installation of the Harmonic Analyser having recording facilities fitted in the metering equipment of the licensees, mandatory for all electrical connections above a particular Contract Demand, say, 500 KVA.
10. Hon. Commission may direct KSEB to hold up the proceedings against all consumers impleading in this petition as affected party/ witness.
11. Hon. Commission may direct KSEB not to disconnect the supply while a petition is pending before Hon. Commission because the petition before Commission can be considered only as a bona fide dispute and a person approaching the Commission will never have ‘conscious, deliberate disregard for legal obligation’, ie., he is not a wilful defaulter.

Interim Prayer:

12. **Hon. Commission may direct KSEB to keep in abeyance all proceedings against ‘M/s Kunnath Paper Mill and Pyarelal Foams’ till hearing and disposal of this petition and also the petition DP 15 filed by KSEB.**

