

**BEFORE THE HON'BLE KERALA STATE ELECTRICITY  
REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

**PETITION No.      OF 2015**

[PETITION FILED UNDER REGULATION 165 OF THE KERALA ELECTRICITY SUPPLY CODE, 2014 TO INVOKE THE SUO-MOTU POWER OF THE HON'BLE KERALA STATE ELECTRICITY REGULATORY COMMISSION TO AMEND THE DEFECT/ERROR IN REGULATION 95 OF THE SAID CODE].

**PETITIONER**

The Kerala State Electricity Board Limited  
Represented by its Secretary (Administration),  
Vydyuthi Bhavanam, Pattom,  
Thiruvananthapuram.

**RESPONDENT**

NIL

The above named Petitioner most respectfully submits as follows:-

1. The Kerala State Electricity Regulatory Commission in exercise of the powers conferred by Section 50 read with Section 181 of the Electricity Act, 2003 made the Kerala electricity Supply Code, 2014. Section 181 (1) confers power on the State Commission to make Regulations consistent with the Act and Rules generally to carry out the provisions of the Act. Section 181 (2) (X) of the Electricity Act, 2003 empowers the State Commission to make Electricity Supply Code under Section 50 the Electricity Act, 2003. Section 50 of the Electricity Act, 2003 empowers that the State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing electricity charges,

disconnection of supply for non-payment, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person for replacing, altering or maintaining electric lines or plants or meter and such other matters.

2. There is no provision in Section 50 of the Electricity Act empowering the State Commission to prescribe Regulations for shifting overhead lines in private properties.

3. As per Section 70 of the Electricity Act, 2003, the Central Government has constituted the Central Electricity Authority to exercise such functions and perform such duties as are assigned to it under the Act. Section 177 of the Act empowers the Central Electricity Authority to make regulations consistent with the Act and the Rules generally to carry out the provisions of this Act. Section 177 (2) (b) (e) empowers the Central Electricity Authority to make Regulation to specify suitable measures relating to safety and electric supply under Section 53 of the Act and the technical standards of construction of lines. Section 53 (b) and 53 (g) empowers the Central Electricity Authority to specify suitable measures inter alia damage to property of any person or interference with the use of property. In exercise of the above powers, the Central Electricity Authority made the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulation 2010. Regulation 63 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulation 2010 prescribes the Regulation regarding shifting overhead line, which says that on receiving intimation for shifting an overhead line (overhead line means any electric supply line which is placed above ground and in the open air but excluding the rails of a traction system) the supplier or owner shall examine whether

(1) the line was laid under the Regulations and any other law

(2) technical feasibility

(3) it meets the requirement of right of way

- (4) whether such person was liable to pay cost, if so, estimate of the cost of expenditure likely to be incurred to alter the overhead line and require him to deposit it within 30 days.

If such person disputes the cost of alteration of the overhead line estimated by the supplier or owner or even the responsibility to pay such cost, the dispute may be referred to the Electrical Inspector whose decision be final. The Electrical Inspector estimates the cost on the following basis

- (1) the **cost of material**
- (2) the wages of labour
- (3) supervision charges
- (4) charges incurred by the supplier under Section 67 of the Act.

4. Section 67 of the Electricity Act, 2003 deals with the provisions as to opening up streets, railways, tramway, sewer, drain tunnel under any street, railway or tramway etc. As per Section 67 (2) the appropriate government may make rules in this behalf. As per Section 67 (4) where any difference or dispute including compensation the matter shall be determined by the appropriate Commission. As per Section 67 (5), the appropriate commission while determining any difference or dispute under this Section may impose penalty in addition to compensation.

5. From the above provisions, it is very clear that the power to make regulation in respect of the shifting of the overhead lines, to prescribe the method of assessment of cost expenditure and the settlement of disputes arising out of it are within the Regulatory powers of the Central Electricity Authority in pursuance of the powers under Section 53 and 177 of the Act. The power to make rules in respect of opening up streets, railways etc. are within Rule making power of the appropriate Government. Section 67 does not empower

the State Commission to make Regulation prescribing the procedures for shifting line. That means the power to make Regulation in respect of the shifting of overhead lines is not within the Regulatory Powers of the State Commission under Section 181 (2) (X) read with 50 of the Electricity Act, 2003. It is within the domain of Central Electricity Authority/appropriate Government. But the Kerala State Electricity Regulatory Commission incorporated Regulation 95, which prescribes the procedure for shifting electric line or electric plant of the licensee, which is not consistent with the Regulation 63 of Central Electricity Authority (measures Relating to Safety And Electric Supply) Regulations, 2010.

6. As per Regulation 63 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulation 2010, Licensee is eligible to collect the entire cost expenditure including additional materials for alteration of overhead line, whereas, as per Regulation 95 the Licensee is not eligible to collect cost of additional materials for shifting the electric line or electric plant. Thus Regulation 95 of the Kerala State Electricity Supply Code, 2014 is not consistent with Regulation 63 of the Central Electricity Authority (Measures Relating to the Safety) Regulation 2010, but also not within the domain of the Regulatory Powers of the State Regulatory Commission. As per Section 181 (1) of the Electricity Act, 2003, the State Regulatory Commission should make Regulations consistent with the Act and Rules. Hence Regulation 95 of the Supply Code, 2014 is ultra-vires. The above anomaly is also an 'error' or 'defect' within the meaning of Regulation 165 of the Supply Code, which is causing huge loss and inconvenience to the Licensee.

7. Hence in the interest of justice, this Hon'ble Kerala State Electricity Regulatory Commission may be pleased to pass an order to invoke the Suo-motu power under Regulation 165 of the Supply Code, 2014 and to delete/omit Regulation 95 from the Supply Code, 2014 OR in the alternative modify Regulation 95 of the Supply Code, 2014 consistent with Regulation 63 of the Central Electricity Authority (Measures Relating to the Safety)

Regulation 2010, so as to enable the Licensee to collect the entire cost of overhead line shifting including the cost of additional materials.

8. If an order as prayed above is not granted the Licensee will be put to irreparable losses, hardships and sufferings.

It is therefore, the petitioner prays for the following:-

**RELIEF**

- A. TO PASS AN ORDER to invoke suo-motu power of this Hon'ble Commission to delete /omit Regulation 95 from the Supply Code, 2014 OR in the alternative modify Regulation 95 of the Supply Code, 2014 consistent with Regulation 63 of the Central Electricity Authority (Measures Relating to Safety) Regulation 2010 enabling the Licensees to collect the entire cost of shifting overhead lines including the cost of additional materials.
- B. All Proceedings initiated by this Hon'ble Commission for non-compliance of Regulation 95 of the Supply Code, 2014 may be kept in abeyance, till the disposal of this petition.
- C. Such other relief which are just and equitable may also be granted in favour of the petitioner.

Dated this the 11<sup>th</sup> day of February, 2015.

All the facts stated above are true and correct to the best of my knowledge, belief and information.

**PETITIONER**