

**BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

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

Dated: 26/02/2014

In the matter of: Noncompliance of the provisions under Section 126,135 and 152 of the Electricity act,2003.

Petitioner(s) : Complaint Petitions dated 30-11-2012 from Sri.Vijayakumar, Senior Project Manager, KAP (India) Projects and construction Pvt Ltd, Kundara and Sri. K.George Philip,Kottoorazhikathu Kripa,Kundara.

Respondents : 1. The Assistant Engineer,Electrical Section, Kundara.
 2. The Assistant Executive Engineer, APTS Unit, Kollam
 3. The Executive Engineer, Electrical Division Kundara.

ORDER

Background of the case:-

1. The APTS wing of KSEB conducted inspection under Electrical Section Kundara on 15-11-2012 and detected unauthorised extension to the temporary sheds within the premises of Con.No.6913 and unauthorised temporary extension to a building under construction within the premises of consumer no: 115 respectively. The Assistant Engineer penalised both the consumers under Section 135 of the Electricity Act, 2003.The Assistant Engineer issued provisional penal bill to both the consumers along with compounding charges. Even though the occupant of the premises of Con.No. 6913 filed objection against the provisional bill, the Assistant Engineer, without affording opportunity of being heard, issued final bill to the petitioner. The occupant of the premises of Con.No.6913 remitted the final bill amount in full along with the compounding fee. The consumer residing in the premises of Con.no.115 was allowed to remit 50% of the provisional bill amount along with the compounding fee.

2. Both the consumers filed complaints before the Commission alleging violation of the provisions of the Electricity Act 2003 and to take appropriate action, against the Assistant Engineer, Electrical Section, Kundara, the Assistant Executive Engineer, APTS Unit, Kollam and the Executive Engineer, Electrical Division, Kundara under Section 142 of the Electricity Act, 2003.
3. Based on the above complaints, the compliance Examiner was directed to conduct enquiry on the matter. The compliance Examiner conducted the enquiry and submitted the following report before the Commission.
 - (i) Both the offences are charged under Section 135 of Act, even in the absence of any corroborative evidence to prove that the consumers had indulged in theft of electricity. Both the offences are unauthorised extension of electricity coming under Section 126 of the Act.
 - (ii) The Assistant Executive Engineer, APTS Unit, Kollam has given written instruction to the assessing officer, thereby travelled into the exclusive domain of the Assessing officer.
 - (iii) The Assistant Engineer had assessed the consumers for the offence under Section 135 of the Act, and collected compounding fee, even though as per Government notification, the concerned Executive Engineer is the authorised officer for the purpose of compounding under Section 152 of the Act.
 - (iv) The Assistant Engineer had not afforded any opportunity of hearing on the objection filed by the first petitioner against the provisional assessment, as per Section 126(3) of the E.Act, 2003.
 - (v) The Executive Engineer, Electrical Division, Kundara has ratified the action of the Assistant Engineer , compounding of the offence under Section 135 of the Act, thereby delegated his statutory powers to a subordinate officer.
 - (vi) The meter reading of Con.No.115 for the previous one year shows that the energy consumption on every month is almost equal to the average consumption.

4. Based on the report of the Compliance Examiner, the Commission prima facie found that the Assistant Engineer, Electrical Section, Kundara, the Assistant Executive Engineer, APTS Unit, Kollam and the Executive Engineer ,Electrical Division, Kundara have violated the provisions of the Act and hence issued show cause notice under Section 142 of the Electricity Act,2003. Since their replies were not satisfactory, notice was served to the above officers to appear for a hearing, in the matter of punishment as per Section 142 of the Act for noncompliance of Section 126,135 and 152 of the Electricity Act, 2003.
5. The charges levelled against the above officers were as follows:-

Sri.K.Jacob, Assistant Engineer, Electrical Section, Kundara

- 1) has wrongly construed the extension of electricity from the premises of a domestic consumer, bearing Consumer No. 6913, to the residential camp sheds of labourers through a good condition meter, as an offence under Section 135 of the Electricity Act, without any corroborative evidence for proving dishonest intention.
- 2) has wrongly compounded without powers, the case of Con. No.6913 and Con. No.115 as per Section 152 of the Act 2003, thereby wrongly exercising the statutory powers of the Executive Engineer, who is the authorized officer as per SRO No. 735/2005 of the Government of Kerala.
- 3) did not admit the objections filed by the occupant of Con. No. 6913 on the assessment and did not hear and issue final order after personal hearing as per Section 126 (3) of the Electricity Act, 2003.
- 4) has assessed the electricity charges of Con. No. 115 without complying with the order of the Commission in DP 75/2009.

Sri. Sunil Kumar V.V. Assistant Executive Engineer, APTS Unit, Kollam

- 1) has wrongly construed the extension of electricity from the premises of a domestic consumer, bearing Consumer No. 6913, to the residential camp sheds of labourers through a good condition meter, as an offence under Section 135 of the Electricity Act, without any corroborative evidence for proving dishonest intention.

- 2) has given written instruction, without any authority , to the Assessing Officer for charging the offence committed by the Consumers, bearing Consumer No. 115 and 6913, under Section 135 of the Electricity Act, 2003.

Smt. Remony. R, Executive Engineer, Electrical Division, Kundara

- 1) The compounding of the offence as per Section 152 done by an officer of the rank of Assistant Engineer without any authority was ratified , thereby delegating the statutory powers conferred by SRO. No.735/2005 of the Government of Kerala.

Hearing of the Matter:-

6. On 11-12-2013 on the date of hearing all the three officials appeared in person.

- 1) The Assistant Engineer, Electrical Section, Kundara deposed that he had acted as per the directions issued by the Assistant Executive Engineer, APTS Unit, Kollam and his action against the petitioners were as per the provisions of the Act and KSEB (Terms & Conditions of Supply) Regulations. Compounding of the Offence was done in good faith under the presumption that ratification can be obtained from the Executive Engineer.
- 2) The Assistant Executive Engineer, APTS Unit, Kollam and the Executive Engineer, Electrical Division, Kundara had filed their written statements before the Commission.
- 3) The Assistant Executive Engineer, APTS Unit, Kollam Stated that-
 - (i) *The electric supply of Con.No.6913 was extended unauthorisedly to temporary sheds where construction workers of the petitioners were accommodated, which is a lodging activity. The consumer was enjoying unlawful gain since the fixed charge of LTVII A tariff is higher than those of LTI (a) tariff. The action of the inspection team was as per the provisions of Section 135(1) (e) of the Electricity Act,*

2003, Regulation 27A (II) (1) (e) of the Kerala Electricity Supply code, 2005 and Regulation 52(1) (e) of the KSEB terms and conditions of supply, 2005.

- (ii) *The Section 135 of the Electricity Act, 2003 clearly defines dishonest intention as “... provided also that any artificial means not authorised by the Board or licensee or supplier, as the case may be, exists for abstraction, consumption or use of electricity, it shall be presumed , until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by the consumer ...”. The above provision in the Act mandates that the inspecting official ‘shall presume’ that the consumer has acted dishonestly, if there exists any unauthorised means for abstraction, consumption or use of electricity. The above provision in the Act, read with the Section 4 of the Indian Evidence Act 1872 leaves the inspecting officer with no option other than to presume that the consumer has acted dishonestly, in the absence of evidence to the contrary. It is absolutely clear that the consumer has extended the power supply from the domestic connection, for lodging purposes, with an intention of monetary gain. Section 24 of the Indian Penal Code 1860 states that ‘whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly’. Under such conditions, the inspecting team was left with no legal option than to consider that the consumer has acted dishonestly.*
- (iii) *Not given any written instruction to the assessing officer regarding the inspections conducted as well as regarding the assessment. A joint inspection report as per KSEB circular no.77/IGP camp/2010/135 dated 31-03-2010 was prepared and given to the assessing officer for further action.*
- (iv) *If there is any flaw in the above position, offer an apology on the specific matter.*

4) The Executive Engineer, Electrical Division, Kundara stated that-

(i) Was unaware of the fact that the statutory power should not be delegated. Ratified the action of the Assistant Engineer in compounding the case of Con.No.6913, since all the formalities under Section 135 were seen observed. In the absence of formalities under Section 135 of the Act, ratification for compounding was not given in the case of Con.No.115. The compounding fee collected from the above consumer was returned to him based on the Order No. CGRF/KTR/RP6 in O.p.No.897/2013/196/30-09-2013 of the C.G.R.F (South).

(ii) The irregularities noted in the action taken by the Assistant Engineer on both the cases were reported to the Deputy Chief Engineer, Electrical Circle, Kottarakkara and he had initiated disciplinary action against the Assistant Engineer.

(iii) The action under Section 142 of the Act may kindly be dropped.

Analysis and decision of the Commission.-

7. On analysing the various statements and reports collected on the issues involved, the Commission concludes as follows:

- 1) The Assistant Engineer, Electrical Section, Kundara, who had expressed his ignorance in the statutes and procedures, without hesitation, had failed in analysing the offences involved and the legal course of action to be followed. He failed in following the statutory procedures envisaged in the Act and Regulations on detection of offences. He had refused to receive and acknowledge the objections on the provisional assessment submitted by the first complainant against the provisional assessment order of the assessing officer.
- 2) There is nothing in the site mahazer to establish that the petitioners have dishonestly used the electricity provided by the licensee. The meter fitted in the premises of both the petitioners was working properly. In the case of Con.no.6913, the electric supply was extended to the nearby temporary sheds, where labourers are accommodated,

and the offence can be classified as unauthorised load and extension in the same premises for the same purposes. In the case of Con.No.115, electric supply was extended in the same premises to a building under construction which comes under a different tariff. In both the cases, the proceedings under the Section 126 of the Electricity Act, 2003 are the proper action to be taken against the petitioners, in the absence of a malafide or dishonest intention and tampering of meter. The Assistant Engineer cannot take refuge behind the instructions given by another agency like APTS, since he is expected to act based upon his personal judgement and conviction.

- 3) The Assistant Engineer, Electrical Section, Kundara has included the compounding fee, under Section 152 of the Electricity Act 2003, also along with the provisional assessment bill issued to the petitioners, which is irregular. The Executive Engineer is the compounding authority, authorised by the Government of Kerala vide notification SRO 735/2005, in the case of low tension consumers, in exercise their powers conferred by Sub-section 1 of Section 152 of the Electricity Act, 2003. The action of the Assistant Engineer in presuming that the consumer will be ready to compound the offence and include the fees under the provisional assessment demand is highly irregular.
- 4) The Executive Engineer, Electrical Division, Kundara has ratified the action of the Assistant Engineer, Electrical Section, Kundara in compounding of the offence under Section 135 of the Act, and thereby illegally delegated his/her statutory powers conferred by Sub section 1 of Section 152 of the Act.
- 5) The Assistant Executive Engineer APTS, who is expected to inspect the consumer premises for detection of theft and other irregularities, is doing only supporting function in an organisation like KSEB. He has no statutory role in the scheme of things envisaged in the Act and Regulations. The statutory functionaries like Assessing Officer, Authorised Officer, Appellate Authority etc prescribed in the Act have to take action based upon their personal judgement and conviction on

matters entrusted upon them by the Act. Hence Commission do not find it appropriate to take action upon the APTS officials in the matters related to non compliance of the provisions of the Act.

Order of the Commission:-

Accordingly, in exercise of the powers conferred as per Section 142 of the Electricity Act, 2003, the Commission orders as follows:

- i. Sri.K.Jacob, Assistant Engineer, Electrical Section, Kundara is severely warned against the non compliance of the provisions of Section 126,135 and 152 of the Electricity Act, 2003.
- ii. Smt.Remony.R, Executive Engineer, Electrical Division, Kundara is advised to be more careful in performing the duties in exercise of the powers conferred by Government of Kerala under Sub-section (1) of Section 152 of the Electricity Act, 2003, to compound the offence under Section135 of the Electricity Act, 2003.

The complaints are disposed off accordingly.

Sd/-
P.Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
T.M. Manoharan
Chairman

Approved for issue

Secretary