

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

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

DATED 20/11/2014

In the matter of: Non-compliance of the directives by the Assistant Engineer, Electrical Section, KSEB Ltd., Kaloorkad and the Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Muvattupuzha in complying with the direction of CGRF (Central), Ernakulam in O.P. No.CGRF-CR/Comp.137/2013-14 dated 17/02/2014.

Petitioner Sri. Joy Joseph,
Kunnel House,
Vettampeedika,
Kaloorkkad.

Respondents: 1. The Assistant Engineer
Electrical Section, Kerala State Electricity Board Ltd.,
Kaloorkkad.
2. The Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd., Muvattupuzha.
3. The Executive Engineer,
Electrical Divisionl KSEB Ltd., Muvattupuzha.
4. The Secretary (Administration),
Kerala State Electricity Board Ltd., Vydyuthi Bhavanam,
Pattom, Thiruvananthapuram.

ORDER

I. Background of the case:

1. Sri. Joy Joseph, Kunnel House, Vettam Peedika, Kaloorkkad, Consumer No.14158, an industrial consumer of Electrical Section, Kaloorkkad has filed a petition before the Commission on 27/3/2014, under section 142 of the Electricity Act, 2003, alleging that the Assistant Engineer, Electrical Section, Kaloorkkad.,

the Assistant Executive Engineer, Electrical Sub Division, Muvattupuzha and the Secretary, KSEB Ltd., Vidyuthi Bhavanam, Pattom, Thiruvananthapuram have not complied with the order dated 17.2.2014 in petition No. CGRF-CR/Comp.137/2013-14 of the Consumer Grievance Redressal Forum (Central), Ernakulam.

2. In the above petition, the CGRF (Central) has ordered that *“the tariff of the complainant shall be changed to LT-V(B) within 15 days of submission of the relevant documents in compliance of Electricity Supply Code, 2005 and relevant standards in CEA (Measures relating to Safety and Electric Supply) Regulations, 2010”*. KSEB Ltd. has not complied with the order till date.
3. On receipt of the petition, the Commission had directed the Assistant Executive Engineer, Electrical Sub Division, Muvattupuzha to submit his remarks on the above petition. The Asst. Executive Engineer has reported that the petitioner has not produced any documents as per clause 14 and 19 of the KSEB Terms & Conditions of Supply, 2005. Since provisions of clauses 14 and 19 of the KSEB Terms and Conditions of Supply, 2005 are not for tariff change of an existing consumer, the reply submitted by the Assistant Executive Engineer was not found satisfactory.
4. Show cause notices under section 142 of the Electricity Act, 2003 were issued to the Assistant Engineer, Electrical Section, Kaloorkkad, the Assistant Executive Engineer, Muavattupuzha, the Executive Engineer, Electrical Division, Muvattupuzha and the Secretary (Admn), KSEB Ltd, Pattom, Thiruvananthapuram for not complying with the order dated 17/2/2014 of CGRF (Central) in petition No.CGRF-CR/Comp-137/2013-14. As per Regulation 27 (6) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2005, it is specified that the non-compliance of order of CGRF shall be considered as non-compliance as per the provision of Electricity Act, 2003 and the regulations made thereunder.

5. Reply submitted by the officials of KSEB Ltd. through Adv. B. Sakthidharan Nair have been received on 25/7/2014.

6. In the counter statement, the following points have been raised:

- (i) The show cause notice issued is unsustainable because it is issued without complying the mandatory requirements under section 143 of the Electricity Act read with Rule 3 of the Kerala Electricity (Manner of Inquiry by Adjudicating Officer) Rules, 2005. The officials of KSEB Ltd. have no notice of any adjudicating officer being appointed, nor of any enquiry being conducted after giving a reasonable opportunity of being heard.
- (ii) Regulation 27(6) of the KSERC (CGRF and Electricity Ombudsman) Regulations 2005 is in conflict with section 142 of the Electricity Act 2003 since the alleged non-compliance of the order of CGRF will not come within the purview of section 142 of the Electricity Act 2003.
- (iii) The statement that the respondents have not complied with the order of the Consumer Grievance Redressal Forum (Central) in Petition No. CGRF-CR/Comp 137/ 2013-14 is not correct. As per the order dated 17.02.2014 in CGRF-CR/Comp. 137/2013-14 the Honorable CGRF (Central) Ernakulam has taken the decision as follows: "***The tariff of the complainant shall be changed to LT V(B) within 15 days of submission of the relevant documents in compliance of supply code 2005 and relevant standards in CEA (Measures relating to safety and Electric Supply) Regulation 2010.***" Thus the decision of the Hon. CGRF is a conditional one. That the tariff of the complainant shall be changed to LT V (B) within 15 days of submission of the relevant documents in compliance of Kerala Electricity Supply Code, 2005 and relevant standards in CEA.
- (iv) There shall be a load change in the installation and accordingly the consumer need to submit documents such as installation report and test

report in compliance of clause 29 (1) of CEA (Measures relating to safety and Electric Supply) Regulation 2010. So the order of the CGRF is very clear that the petitioner has to submit two documents (1) Installation report and (2) test report in compliance of clause 29(1) of CEA. Installation report shall contain details such as connected load, the document evidencing installation E.L.C.B, details of earthing.

- (v) On submission of the above two documents, the Assistant Executive Engineer shall satisfy himself the bonafides of the request, record the reason which permits change of tariff and a supplemental schedule to the original service connection agreement showing change in classification / tariff, has also to be got executed by the Consumer as per Regulation 32 of the KSEB Terms and Conditions of Supply 2005 approved by the Kerala State Electricity Regulatory Commission consequent to Regulation 30 of the Kerala Electricity Supply Code 2005.
- (vi) The petitioner with oblique motive has not submitted the above installation report and test report in a complete form. The petitioner has not produced the true copy of the work diary of the licensed Contractor. As per the Board Order BO (FM) (Genl) No. 1301/2011 dated 21.05.2011, each contractor shall maintain work register and the Assistant Engineer shall note down the Book number and work number so that the work register number and work number can be made available to the Electrical Inspector. The sketch showing the changes in connected load duly signed by the licensed contractor was also not produced. Thus the application was incomplete. Hence the application was not processed. The applicant has not cured the defect in spite of repeated reminders.
- (vii) The respondents received the order dated 17.02.2014 of the Honorable CGRF on 04.03.2014. But the petitioner did not submit records as specified in the order. And also not remitted fee for tariff change and load change approved by KSERC. Hence the Assistant Engineer, Electrical Section, Kaloorkkad issued a letter dated 14.03.2014 to the petitioner to

cure the defects in the application form. The petitioner failed to comply with the direction of the Honorable CGRF to submit the records. Thus there is no willful disobedience or non compliance of the order of CGRF

7. The reply submitted by the officials of KSEB Ltd. through their learned counsel was not satisfactory. The case was posted for hearing on 3/9/2014 at the Court room, Commission's office, Vellayambalam.

II. Hearing on the matter:

8. Hearing was conducted at 11 A.M. on 3/9/2014. Adv. B. Sakthidharan Nair appeared representing the following officers.

- (i) Sri. Jax Sebastian, Assistant Engineer, Electrical Section, KSEB Ltd, Kaloorkkad.
- (ii) Sri. K.R. Rajeev, Asst. Executive Engineer, Electrical Sun Division, KSEB Ltd., Muvattupuzha.
- (iii) Sri. A.G. Chandran, Executive Engineer, Electrical Division, KSEB Ltd., Muvattupuzha.
- (iv) Sri. M. Shahul Hameed, Secretary (Administration), KSEB Ltd., Vydyuthi Bhavanam, Pattom, Thiruvananthapuram.

9. Adv. B. Sakthidharan Nair presented the case of the respondents. The main points submitted were as follows:

- (i) The CGRF (Central), Ernakulam had directed to change the tariff of the petitioner to LT V(B) within 15 days of the submission of relevant documents in compliance of the Kerala Electricity Supply Code 2005 and submit relevant standards in CEA (Measures relating to Safety and Electric Supply) Regulations 2010. Therefore the order of the CGRF can be complied with only after the submission of relevant documents by the

petitioner as ordered by CGRF. Till date, the same was not submitted by the petitioner.

- (ii) KSEB Ltd. vide letter dated 30/8/2014 has directed the officials of KSEB Ltd. at Muvattupuzha and Kaloorkkad to comply with the order of CGRF in petition No.CGRF-CR/Comp.137/2013-14.
- (iii) The Assistant Engineer, Electrical Section, Kaloorkkad did also produce a copy of the letter written to the petitioner to submit the relevant documents required as per the Kerala Electricity Supply Code, 2005 and CEA (Measures relating to Safety and Electric Supply) Regulations, 2010. However, the particulars of such documents to be produced by the petitioner are not seen communicated to the petitioner.
- (iv) Replying to the queries raised by the Commission, the Assistant Executive Engineer, Electrical Sub Division, Muvattupuzha stated that the request of the petitioner had two distinct aspects namely
 - i. Regularization of re-arrangement of connected load
 - ii. Change of tariff

10. Even though as stated in the order of CGRF, no further records are necessary for effecting change of tariff, for the regularization of re-arrangement of connected load, the officials of KSEB Ltd. have to ensure that the wiring conforms to the safety standards as stipulated by Central Electricity Authority.

11. The Commission observed that though the KSEB Ltd. had issued direction on 30/8/2014 to comply with the order of the CGRF, so far it has not been actually complied with.

12. The Commission directed the Asst. Engineer and Asst. Executive Engineer to produce their files on the subject on or before 19/9/2014. Accordingly they submitted the file on 18/9/2014.

On perusal of the file, the following facts have been revealed.

- (i) Even though the Asst. Engineer had informed the petitioner to submit the relevant documents as per the order of CGRF for effecting change of tariff, the Assistant Engineer has not intimated the details of such documents to be produced by the petitioner for change of tariff.
- (ii) An application in the prescribed form is seen submitted by the petitioner on 23/7/2013 for load change and tariff change and there are many communications with the petitioner for curing the defects in the prescribed application form which is intended for load change.
- (iii) The Assistant Engineer inspected the site on 10/9/2014 and prepared a site inspection report and a letter is seen communicated to the petitioner on 13/9/2014 for curing the defects in the installation of the premises and to produce wiring diagram and the copy of work register of the licensed electrical contractor who had done the installation work. The petitioner informed the Assistant Engineer that he has already submitted the wiring diagram along with his application and he is not liable to produce the copy of the work register of the contractor.

III. Analysis and decision of the Commission

13. The first and foremost issue raised by the Respondents is about the jurisdiction of the Commission to hear and decide this case. Section 142 of the Electricity Act, 2003 deals with punishment for non-compliance of directions issued by the Commission. Section 142 is quoted hereunder:

“In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he

may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

From the section quoted above, it can be seen that the Commission can initiate action if any complaint is filed before it by any person alleging contravention of the provisions of Electricity Act, 2003 or rules or regulations made thereunder. The Commission had issued Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2005, in exercise of the powers conferred on it by subsections (5) and (7) of section 42 of Electricity Act, 2003. As per clause 27(6) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2005 (as amended by the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Third Amendment Regulations, 2010, non-compliance of award or orders or directions of CGRF shall be considered as non-compliance of the provisions of Electricity Act, 2003, and the regulations made thereunder and Kerala State Electricity Regulatory Commission shall proceed accordingly. The said clause 27(6) is quoted hereunder:

“Non-compliance of awards/orders/directions of the Consumer Grievance Redressal Forum and Ombudsman by Distribution Licensee shall be considered as non-compliance of the provisions of Electricity Act, 2003 and the regulations made thereunder and Kerala State Electricity Regulatory Commission shall proceed accordingly”

In view of the above facts and legal provisions, it is found that the arguments of the Respondents with regard to the jurisdiction and competence of Kerala State Electricity Regulatory Commission to decide this case is baseless.

14. The procedure followed by the Commission under section 142 of the Electricity Act is in accordance with the law. Section 143 of the Electricity Act, 2003 or the Kerala Electricity (Manner of Inquiry by Adjudicating Officer) Rule, 2005, has no applicability in the matter of action taken under section 142 of the Electricity Act. Sub section (1) of section 143 of the Electricity Act relates to adjudication as provided in clause (7) in sub section (1) of section 86 of the Act. Sub section (2) of section 143 of the Electricity Act relates to imposition of penalty for failure to comply with sections 29, 33 or 43 of the said Electricity Act.
15. The Appellate Tribunal for Electricity in the order dated 19.4.2011 in appeal No.183/2010 has discussed in detail, the procedure to be followed in the case of action under section 142 of the Electricity Act, 2003. Nowhere in the above direction and order, the APTEL mentions that the procedure in section 143 of the Electricity Act is applicable to proceedings under section 142 of the Electricity Act. Hence the objection of the learned counsel of the officials of KSEB Ltd. cannot be accepted in this regard.
16. The CGRF (Central), Ernakulam had directed the officials of KSEB Ltd. to change the tariff of the petitioner to LT V (B) within 15 days of the submission of relevant documents in compliance of the Kerala Electricity Supply Code, 2005 and relevant standards in CEA (Measures relating to Safety and Electric Supply) Regulations, 2010. Even though there were so many communications with the petitioner, the officials of KSEB Ltd. had never informed the details of documents any to be produced by the petitioner for complying with the order of the CGRF.
17. The documents to be produced by the petitioner for change of tariff, has been specified in clause 32 of the KSEB Terms and Conditions of Supply, 2005, formulated as per clause 30 of the Kerala Electricity Supply Code, 2005. Clause 32 of the KSEB Terms and Conditions of Supply, 2005 stipulates that
“The change of tariff under LT from higher to lower tariff at the request of the consumer shall be permitted in bonafide cases by the officer not below the rank of Assistant Executive Engineer. The Assistant Executive Engineer shall satisfy

himself the bonafides of the request and record the reasons while permitting change of tariff. A supplementary schedule to the original service connection agreement showing the change in classification/tariff and the date of change over to the new classification/tariff, has also to be got executed by the consumer”.

18. The load change in a premises is to be carried out, by the consumers, owners, occupiers, electrical contractors, electrical workmen and suppliers, as specified in Regulation 29 and 31 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010. First paragraph of Regulation 29 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 specifies that

“No electrical installation work, including additions, alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, domestic appliances of voltage not exceeding 250V and fittings as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any consumer, supplier, owner or occupier for the purpose of supply to such consumer, supplier, owner or occupier except by an electrical contractor licensed in this behalf by the State Government and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognized by the State Government”.

19. In the instant case, the petitioner has requested vide his application on 24/7/2013 for,

- (i) regularization of re-arranged connected load
- (ii) change in tariff

The KSEB Ltd. officials ought to have taken these two aspects separately. Since no further records are necessary for tariff change, the officials of KSEBL should have changed the tariff of the consumer and advised him on the requirements of regularization of the re-arranged connected load. Instead, the officials of KSEB

Ltd. are seen to have willfully harassed the consumer by entering into unwarranted correspondence with him.

20. The change of tariff and change of connected load are two different and distinct processes. In this case the Consumer Grievance Redressal Forum was dealing with only change in tariff, consequent to change in purpose for which electricity is used (change from industrial purpose to ornamental fish farming). CGRF had directed to change the tariff within 15 days from the date of submission of relevant documents as required under the provisions of the Kerala Electricity Supply Code 2005 and CEA Measures Relating to Safety & Electricity Supply Regulations 2010. The order of CGRF means only that the consumer should submit the documents required for tariff change, if any, specified in the above regulations for the purpose of tariff change. It cannot be interpreted otherwise. The Respondents have not pointed out any such document, which is to be submitted for tariff change consequent to the change in purpose of use of electricity from industrial to ornamental fish farming.
21. The officials of KSEB Ltd. can take appropriate action against the petitioner for regularization of re-arrangement of connected load, if the defects noticed and intimated to the consumer have not been cured by him. But this shall in no way affect the decision for tariff change, since the purpose has been confirmed by the respondents as ornamental fish farming.
22. The genuine claim of the consumer for changing the tariff, in accordance with the purpose, was blocked by the officials of KSEB Ltd. from 7/2013 till date by raising irrelevant queries. The officials struggled hard by various communications to avoid compliance of the order of CGRF (Central) dated 17/2/2014 in petition No CGRF-CR/Com.137/2013-14.

23. The Commission is satisfied that the order of CGRF was not complied with for more than eight months without any valid reasons or explanations. The Commission had issued show cause notice to all the concerned officials to explain why action under section 142 should not be initiated against them, for which the officials had submitted the reply through the learned counsel of KSEB Ltd, which also did not give any satisfactory reply. An opportunity was also given to them to be heard in person before finalizing the matter.

24. The objection filed by the learned counsel were carefully examined by the Commission as stated above and the Commission found no reason why the action should be dropped. Under these circumstances, the Commission decides to impose penalty on the responsible officials of KSEB Ltd. under section 142 of the Electricity Act, 2003, for the delay and non-compliance of the CGRF order.

25. The Secretary (Administration), KSEB Ltd. has given direction to the Assistant Executive Engineer, Electrical Sub Division, Muvattupuzha to comply with the order of CGRF. On perusal of the records submitted through their relevant file, nothing came out on the role of the Secretary (Administration) for the delay and non-compliance of the CGRF order. The role of the Executive Engineer is also similar and nothing has come out which establishes the role of the Executive Engineer in delaying the compliance. Hence the Commission decides to absolve these two officials namely Secretary (Administration), KSEB Ltd. and the Executive Engineer, Electrical Division, Muvattupuzha from the charges.

IV. Orders of the Commission

26. Accordingly, in exercise of the powers conferred as per Section 142 of the Electricity Act, 2003, the Commission orders that

1. Sri. K.R. Rajeev, Assistant Executive Engineer, KSEBL, Electrical Sub Division, Muvattupuzha shall pay a penalty of Rs.10,000/- (Rupees ten thousand only)
2. Sri. Jax Sebastian, Assistant Engineer, Electrical Section, KSEBL, Kaloorkkad shall pay a penalty of Rs.5,000/- (Rupees five thousand only).

The officials shall remit the penalty in the office of the Commission within 30 days from the date of this order.

Sd/-
Mathew George
Member (F)

Sd/-
T.M. Manoharan
Chairman

Approved for issue

SECRETARY