

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

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

Dated: 4th December 2014

In the matter of: The requirement of punishment as per Section 142 & 149 of the Electricity Act, 2003 for the non compliance of the order of CGRF (South) dated 16.04.2013 in OP No. 897/2013 and for not reporting the matter of non-compliance to the Hon. Commission by the higher authorities of KSEB Ltd, namely the Asst. Engineer, Electrical Section, KSEB Ltd, Kundara, the Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd, Kundara the Executive Engineer, Electrical Division, KSEB Ltd, Kundara and the Dy. Chief Engineer, Electrical Circle, KSEB Ltd, Kottarakkara.

Petitioner(s) : Sri. George Philip, Kottoorazhikath Kripa, Mukkada, Kundara

Respondents : 1. The Asst. Engineer, Electrical Section, Kerala State Electricity Board Ltd, Kundara
2. The Asst. Executive Engineer, Electrical Sub Division Kerala State Electricity Board Ltd, Kundara
3. The Executive Engineer, Electrical Division, Kerala State Electricity Board Ltd, Kundara
4. The Deputy Chief Engineer, Electrical Circle, Kerala State Electricity Board Ltd, Kottarakkara

ORDER

Background of the case:-

1. Sri. George Philip, Kottoorazhikath Kripa, Mukkada, Kundara submitted a petition to the Commission on 21.3.2014 complaining that an order of CGRF (South) dated 16.4.2013 in OP No. 897/2013 was not complied with by Kerala State Electricity Board Ltd. It is also requested to take appropriate

action under Section 142 & 149 of the Electricity Act 2003, for the non-compliance of the CGRF (South) order dated 16.4.2013 in OP No. 897/2013.

2. The CGRF (South), Kottarakkara in OP No. 897/2013 had ordered on 16.4.2013 as quoted below.

(i) *“The amount of Rs. 60,000/- collected from the petitioner towards compounding charges shall be refunded to the petitioner within one month. If the amount is not paid within the above stipulated time, it shall carry interest at the bank rate from the date of remittance, till its refund.*

(ii) *The case is reminded to the Asst. Engineer, Electrical Section, Kundara for initiating proceedings under Section 126 of the Act, for using unauthorised additional load as alleged in the Mahazar. The petitioner would be at liberty to challenge the said proceedings in accordance with Law if he is still aggrieved by the proceedings.”*

3. The opposite party in the petition before the CGRF (South), Kottarakkara is the Kerala State Electricity Board Ltd represented by the Asst. Executive Engineer, Electrical Sub Division, Kundara.

4. The Kerala State Electricity Board Ltd has partly complied with the order of CGRF (South) by complying the first part of the order, by refunding Rs. 60,000/- which was collected towards the sum for compounding vide cheque dated 27.11.2013.

5. However, the Asst. Engineer, Electrical Section, Kundara has never acted as instructed in the second part of the order which states as follows:

“The case is remanded to the Asst. Engineer, Electrical Section, Kundara for initiating proceedings under Section 126 of the Act, for using unauthorised additional load as alleged in the Mahassar. The petitioner would be at liberty to challenge the said proceedings in accordance with Law, if he is still aggrieved by the proceedings.”

6. The Commission called for the report of the Assistant Executive Engineer, Electrical Sub Division, Kundara on 09.04.2014 and sought for the reasons for the non-compliance of the order of CGRF (South), Kottarakkara dated 16.4.2013 in OP No. 897/2013. The Asst. Executive Engineer submitted a

detailed report on 22.4.2014 attaching a copy of the letter from the office of the LA & DEO, Kerala State Electricity Board Ltd, Thiruvananthapuram dated 16.11.2013 showing his endorsement on 25.11.2013 to the Asst. Engineer, Electrical Section, Kundara for strict compliance of the second part of the order of CGRF (South) dated 16.4.2013 in OP No. 897/2013.

7. The Asst. Executive Engineer, Electrical Sub Division, Kundara reported that:
 - (i) Law officer, Kerala State Electricity Board Ltd has communicated the decision of the Board to comply with the order of CGRF (South) dated 16.4.2013 in OP No. 897/2013 and this communication vide letter No. LA VI/5870/2013 dated 16.11.2013 addressed to the Executive Engineer, Electrical Division, Kundara with a copy to him has been endorsed to the Asst. Engineer, Electrical Section, Kundara vide endorsement No.DB25/KDA/2013-14/71 dated 25.11.2013 for strict compliance of the 2nd part the order of the CGRF (South) in OP No. 897/2013, with a copy of the said order.
 - (ii) The Asst. Engineer, Electrical Section, Kundara has issued the proceedings towards the compliance of the 2nd part of the order of the CGRF on 27.3.2014.
8. A copy of the above proceedings of the Asst. Engineer, Electrical Section, Kundara has been enclosed along with the written explanation of the Asst. Executive Engineer, Electrical Sub Division, Kundara.
9. On verification of the said proceedings, the following statements are seen explained.
 - (i) The Asst. Engineer, Electrical Section, Kundara conducted the hearing on 13.12.2012 and confirmed the provisional bill amount of Rs. 82,155/- which includes Rs. 60,000/- as compounding fee and the petitioner remitted the entire amount.
 - (ii) As per the order of CGRF, dated 16.4.2013 in OP No. 897/2013 the amount of Rs. 60,000/- collected from the petitioner towards compounding charge is allowed to be refunded.
 - (iii) Since usage of unauthorised additional load is never in doubt, no case of revision of penal amount charged as per the assessment of energy misused, by the act of the petitioner.

10. The reply submitted by the Asst. Executive Engineer, Electrical Sub Division, Kundara was not satisfactory. Since it was established that the Kerala State Electricity Board Ltd officials had not complied with the order of the CGRF (South), Kottakkara even after 19 months from the date of issue of the order, the Commission issued show cause notice dated 9-6-2014 to explain why action under Section 142 and Section 149 of the Electricity Act, 2003, should not be initiated against the following officials of Kerala State Electricity Board Ltd.

1. Sri. K. Jacob, Asst. Engineer, Electrical Section, Kerala State Electricity Board Ltd, Kundara
2. Sri. Abdul Kalam, Asst. Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd, Kundara
3. Sri. S.R. Santhosh, Executive Engineer, Electrical Division, Kerala State Electricity Board Ltd, Kundara
4. Sri. B. Udaya Varma, Dy. Chief Engineer, Electrical Circle, Kerala State Electricity Board Ltd, Kottarakkara

11. The Commission directed the concerned officers to show cause why action under Section 142 of the Electricity Act, 2003 should not be initiated against them individually and informed them that if reply was not received within 15 days from the date of receipt of notice, further action would be proceeded against them as if they had no explanation to offer in the matter.

12. Reply submitted by the officials of Kerala State Electricity Board Ltd through their learned counsel, Adv. B. Sakthidharan Nair, was received on 30.07.2014.

13. In the written explanation, the following points have been raised by the learned Counsel on behalf of the officials of Kerala State Electricity Board Ltd.

- (i) The show cause notice issued under Section 142 of the Electricity Act, 2003 is unsustainable because it is issued without complying the mandatory requirements under Section 143 of the Act read with Rule 3 of the Kerala Electricity (Manner of inquiry by Adjudicating Officer) Rules, 2005. The officials of Kerala State Electricity Board Ltd have no notice of any

adjudicating officer being approved or any inquiry being conducted after giving a reasonable opportunity of being heard.

- (ii) Section 149 of the Electricity Act, 2003 is not attracted since the alleged non-compliance of the order which is civil in nature, is not an offense within the meaning of Section 149 of the Electricity Act 2003. Hence the notice issued under Section 149 of the Electricity Act 2003, is also not maintainable.
- (iii) There was no deliberate disobedience of the order of CGRF (South) Kottarakkara. Because the subject matter of the complaint in OP No. 897/2013 was an assessment under Section 126 of the Electricity Act, 2003, it is beyond the jurisdiction of CGRF or Electricity Ombudsman. However, the Board took a lenient view and directed on 16.11.2013 to comply with the order of CGRF. The respondent officers Dy. Chief Engineer, Executive Engineer and the Asst. Executive Engineer, without any delay whatsoever issued immediate direction to the Asst. Engineer to comply the order.
- (iv) The impugned order of the CGRF has two parts and only in case of the first part of the order time for refund is stipulated as well as consequence of non-compliance. As far as the second part of the order no time limit is stipulated. Thus there is no wilful non-compliance of the order of the CGRF.

14. The case was posted for hearing on 02.09.14 at the Court room, Commission's Office at Vellayambalam, since the reply submitted by the officials of Kerala State Electricity Board Ltd through their learned counsel is not satisfactory.

Hearing on the matter:-

15. Hearing was conducted by the Commission at 11 AM on 2.9.14. Advocate B. Sakthidharan Nair appeared before the Commission representing the following officers,

- (i) Sri. K. Jacob, Asst. Engineer, Electrical Section, Kerala State Electricity Board Ltd, Kundara

- (ii) Sri. Abdul Kalam, Asst. Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd, Kundara
- (iii) Sri. S.R. Santhosh, Executive Engineer, Electrical Division, Kerala State Electricity Board Ltd, Kundara
- (iv) Sri. B. Udaya Varma, Dy. Chief Engineer, Electrical Circle, Kerala State Electricity Board Ltd, Kottarakkara.

16. The learned counsel presented the case of the respondents. The points raised by him are summarised as follows:

- (i) The Commission has no authority under Section 142 of the Electricity Act, 2003 to proceed against the quasi judicial authority acting under 126 of the Electricity Act, 2003. The Section 142 of the Act empowers the Commission to proceed against any person if it is satisfied that the person has contravened any of the provisions of the Act or the Rules or Regulations made there under. The word 'person' has been defined in Clause (49) of Section 2 of the Act. The quasi judicial authority acting under Section 126 of the Act will not come within the meaning of the word "person" as defined in the Act.
- (ii) In the impugned case, the Asst. Engineer, Electrical Section was taking action in the capacity of the Assessing officer under Section 126 of the Electricity Act, 2003 and therefore the Commission cannot proceed against him under Section 142 of the Act.
- (iii) The Assessing Officer is a quasi judicial authority who has to take action independently and he has unfettered rights. Therefore, the Asst. Executive Engineer, Executive Engineer and Dy. Chief Engineer cannot be held responsible for the decision of the Asst. Engineer.
- (iv) The petitioner had deliberately suppressed the fact that respondent had filed a review petition No. RP – 6 in OP No. 897/2013 to review the order issued by CGRF (South), Kottarakkara.
- (v) As per the proceedings dated 27.3.2014, the Asst. Engineer, Electrical Section, Kundara has ordered to refund the amount of

Rs. 60,000/- collected from the petitioner towards compounding charges and therefore the order of CGRF has been complied with. CGRF had not fixed any time limit for compliance of the 2nd part of the order.

17. The Commission sought clarification on the following points:

- (i) The order, if any, issued by the Government of Kerala appointing the Asst. Engineer, Electrical Section, Kundara under Section 152 of the Electricity Act, 2003, as the officer authorised to compound the offence may be submitted by the officials of Kerala State Electricity Board Ltd.
- (ii) Whether or not the Asst. Engineer of any Electrical Section has been authorised to proceed against any person under Section 126 of the Electricity Act, 2003, also in the cases of offence of theft of electricity to be dealt with under Section 135 of the Act.
- (iii) The Assistant Engineer, Electrical Section, Kundara can claim for immunity of a quasi-judicial authority under Section 126 of the Act only when he is legitimately acting in good faith under the said section following the procedures laid therein, namely;
 - (a) Issuance of provisional assessment order under sub-section (1);
 - (b) Serving of the provisional assessment order on the accused person under sub-section (2);
 - (c) Accepting objections filed by the accused person;
 - (d) Affording reasonable opportunity for personal hearing;
 - (e) Passing the final order after complying with the above procedures within the time limit prescribed in sub-section (3);Necessary and sufficient documentary evidence if any may be produced to prove that the Asst. Engineer, Electrical Section, Kundara was proceeding against the petitioner as per the provisions and procedures as stipulated under Section 126 of the Electricity Act, 2003, in this

case; especially while ordering to remit Rs.60,000/- as compounding fee.

- (iv) Whether or not CGRF, Kottarakkara while considering the Review Petition had issued any order staying the impugned order issued by it against which review petition was filed.
- (v) Whether or not there is any provision in the Act or in the Rules or in the Regulations made there under, for statutory automatic stay of the impugned order once a review petition is filed.

18. It was also ordered by the Commission on 2.9.2014 that:

- (i) The relevant files in the office of the Asst. Engineer, Asst. Executive Engineer, Kundara and the clarification sought in the above paragraph shall be produced on or before 19.9.2014.
- (ii) The counsel of the respondents and the petitioner may also submit their argument notes, if any, to the Commission on or before 19.9.2014.

Response of Kerala State Electricity Board Ltd:-

19. The officials of Kerala State Electricity Board Ltd submitted their argument note through their learned counsel on 19.9.2014. The following arguments are submitted by him before the Commission.

- (i) The Asst. Engineer who is appointed as the Assessing Officer by the State Government, is a quasi judicial authority acting under Section 126 of the Electricity Act, 2003, will not come within the meaning of the word "person" as defined in Section 2(49) of the Electricity Act, 2003 Hence the Commission lack jurisdiction to impose penalty under Section 142 of the Act against the assessing officer under Section 126 of the Electricity Act, 2003. A statutory Appeal shall lie against the final decision of the Assessing Authority before the Appellate Authority appointed by the State Government under Section 127 of the Electricity Act, 2003.
- (ii) The Assessing officer is a quasi judicial Authority who has to take action independently and impartially without any extraneous of evidence by the executive or administrative wing

of the State. Therefore it is legally not permissible for the administrative head, to issue direction or guidance to the assessing officer who is exercising function under Section 126 of the Electricity Act, 2003. Hence the Asst. Executive Engineer, Executive Engineer and Dy. Chief Engineer cannot be held responsible for the decision of the Assessing Officer. Hence show cause notice issued under Section 142 and 149 of the Electricity Act, 2003 is unsustainable.

- (iii) As per Section 128 of the Electricity Act, 2003 if the licensee has failed to comply with any of the provisions or Rule etc, the appropriate Commission shall direct the investigating authority to investigate and report. In the instant case, no investigating agency was appointed, no report called for, no direction issued to take such action in respect of the subject matter by the Commission. In the Commission, the allegation in the notice cannot be considered as 'disobedience' or ' non-compliance' or 'offence' within the ambit of the Section 142 and 149 of the Electricity Act, 2003 read with Regulation 27(6) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2009. Hence the show cause notice issued under Section 142 and 149 of the said Act is not sustainable.
- (iv) On perusing the relevant file of the Electrical Section, Kundara, it can be seen that the inspection conducted by APTS on 16.11.2012 at the premises of consumer No. 115 and detected unauthorised use of electricity availed for domestic purpose for construction purpose and also connected an unauthorised additional load of 5675 units, which comes under unauthorised use of electricity under section 126 of the Electricity Act, 2003 and also theft of electricity under section 135 (e) of Electricity Act,2003.The Mahazar was prepared. A provisional assessment bill for Rs. 82,155/- was issued on 17.11.2012 including a compound fee of Rs. 60,000/-. The consumer filed objection on 22.11.2012. He was heard on 13.12.2012 after issuing notice on

11.12.2012. Statement of the petitioner recorded on 13.12.2012. As per order dated 5.1.2013 the assessment officer had made the provisional assessment absolute. Instead of filing appeal before the Appellate authority under section 127 of the Electricity Act 2003 the petitioner approached CGRF vide OP No. 897/13. Even though there is a bar of jurisdiction in entertaining a complaint in respect of unauthorised use of electricity, the CGRF (South) under Regulation 2(1) (f) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005, entertained the matter and gave order on the decision of the Assessing authority. CGRF (South) passed an order in OP 897/13 directing to refund Rs. 60,000/- and to proceed under section 126 of the Electricity Act, 2003. The said order passed by CGRF (South) is per-se illegal and without jurisdiction. Hence the respondents filed review petition. CGRF (South) on 7.9.2013, passed an order reiterating the earlier order. In spite of the above fact and legal position, the respondent, in good faith, complied with the order.

- (v) In spite of the above clear legal position the respondents 2 to 4 were constrained to issue directions to comply the order passed by the CGRF and the first respondent, the Asst. Engineer, Electrical Section, Kundara was compelled to reopen the final assessment order and again passed an order on 27.3.2014 since the order of CGRF complied with, the petition had become infructuous.

Response of the Petitioner:-

20. The petitioner has submitted comments on the arguments put forth by the learned counsel of the respondents. The main points are reproduced below:

- (i) *A plain reading of section 126 of the Electricity Act reveals that the quasi judicial authority of an assessing officer is limited. This exercise of the quasi judicial authority is only to be exercised while in hearing an objection against an order of provisional*

assessment and in while issuing a final order of assessment. While in the matter of 'Assessment', whether any person is engaging/ engaged in unauthorised use of electricity and if convinced of such unauthorised use by the Assessing officer personally then assessment of electricity charges payable and then issuing provisional assessment order are done only under administrative authority but not under quasi judicial authority. The Asst. Engineer, Electrical Section, Kundara has never exercised his administrative authority under Section 126 of the Electricity Act, properly and diligently, also never he exercised his quasi judicial authority in issuing a final order of assessment after a fair hearing of the petitioner. Moreover he never complied with the order of CGRF (South), requiring him to act as Assessing officer properly since he had arbitrarily causing injury and hence grievance to the petitioner.

- (ii) The argument of the counsel of the respondent that "person" defined under section 2(49) of the Electricity Act 2003 does not include the quasi judicial authority of Assessing officer also and hence the Assessing officer never included among any person referred under Section 142 of the Act, is not accepted. Person defined under Section 2(49) of the Electricity Act 2003 include "artificial judicial person", also therefore there is no need further to include quasi judicial person also in the definition and it is a well understood fact under Law.*
- (iii) The argument of the learned counsel of the respondents that, CGRF being a quasi-judicial authority have no jurisdiction upon yet another quasi-judicial authority which is assessing officer. The statutes are very clear on the matter. Under Clause 2(f) (iv)(1) of "Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005", CGRF and Electricity Ombudsman are excluded of jurisdiction on the matter of*

“unauthorised use of electricity as provided under Section 126 of the Act”.

Even a plain reading of this regulation amply make it clear that, actions taken, ‘as provided under section 126 of the Act’ is only excluded from the jurisdiction of CGRF and Electricity Ombudsman whereas, it also makes it very clear that, if actions are taken ‘not as provided under section 126 of the Act’ the CGRF and Electricity Ombudsman have jurisdiction to redress and to settle such grievances caused out of that. If actions are taken not as provided under the Act, it is breach of statutes and such actions are marred with procedure impropriety, arbitrariness, irrationality and it is illegal, hence null and void. As such, due to such an action genuine grievance is caused to consumers and consumer interest is also breached. In such situations, the CGRF and Electricity Ombudsman like institutions should step in to redress and settle such grievances caused due to breach of statutes, which is just and proper.

Therefore it is just and proper for the CGRF and Electricity Ombudsman to redress and settle such grievances caused to consumers violating statutes by an assessing officer or anybody for the sake of protecting consumer interest and for upholding rule of law. In this case, the action of the assessing officer who is the respondent (1) in this case has violated law.

(iv) There is nothing improper on the part of the Consumer

Grievance Redressal Forum (South) to issue such an order in complaint OP No. 897/2013, while the first respondent has acted in more improper and irrational way flouting statutes blatantly, where, all these regulations are created for protecting consumer interest also, and for upholding natural justice and hence assuring rule of law. Extra ordinary situation had been created by the first respondent by his deeds which were not at all, as provided under Section 126 of the Act. Therefore, extraordinary steps have to be taken by appropriate authorities for the sake of natural justice, which is natural law and for the prevalence of

rule of law, which is a guaranteed under the constitution of this great nation.

- (v) *The argument note reveals that, the KSEBL had communicated the decision to comply with the order of the CGRF (South) in OP No. 897/2013. KSEBL is only an entity created under law and its powers, duties and functions are executed through its functionaries. Thereby the respondents (2)(3) & (4) are the functionaries of KSEBL or even KSEBL in executing things and it is their duty to see to that the order of the CGRF (South) in OP No. 897/2013 is complied with and they should have prevailed upon the Asst. Engineer for that. On the event of non compliance, it should have been informed the KSEBL as well as the Hon: Commission which is a mandated duty of respondents (2) (3) and (4).*

Unfettered authority or freedom never means a means to cause grievance or injury to others. Therefore, unfettered authority of assessing officer is also restricted under the supreme principle of natural justice and rule of law. The arguments of the learned counsel that, the respondents (2) (3) & (4) are not having any authority to prevail upon the assessing officer is nothing but straight jacket interpretation of law, which is antithesis to rule of law.

- (vi) *Actions contemplated under Section 142, 146 and 149 of the Act are not at all adjudications, but a proceedings for punishments under law. This Hon: Commission being a quasi judicial authority, it has all the right and powers to decide the procedures to be adopted for an action under Section 142, 146 & 149, provided that, principle of fair hearing is not vitiated. Adjudication under Section 143 is only required in the event of a non compliance of Section 29 or Section 33 or Section 43 of the Act.*
- (vii) *The Kerala State Electricity Board Ltd, which is the distribution licensee, had no objection in implementing the order of the CGRF whereas, the respondents in this case who are the*

officials to implement the order of the CGRF and then the order of the KSEBL to implement the order of the CGRF is finding out alibis for not implementing it and is trying to find shelter under law through narrow interpretations of statutes, also to evade from punishment, which does not satisfy natural justice and rule of law.

(viii) This petitioner once again respectfully submits before this Hon: Commission that, appropriate punishments may be awarded to the respondents to meet the end of justice.

Analysis and decision of the Commission:-

21. At the outset itself, before evaluating the merits of the facts and circumstances presented by the accused officers and their counsel, the Commission would prefer to examine the legal issues raised by them during the course of hearing and in the written notes of arguments submitted by them. The respondents have raised the following legal issues;

- (i) The Commission has no authority under section 142 of the Electricity Act, 2003, to proceed against the Assistant Engineer, Electrical Section, Kundara who is quasi-judicial authority acting under section 126 of Act.
- (ii) The Assessing Officer under section 126 of the Act has unfettered power to deal with unauthorized use of electricity.
- (iii) The quasi-judicial authority acting under section 126 of the Act will not come within the meaning of the word person, as defined in clause (49) of section 2 of the Act.
- (iv) The show cause notice issued under section 142 of the Act is unsustainable because it is issued without complying with the mandatory requirement under section 143 of the Act read with rule (3) of the Kerala Electricity (Manner of Inquiry by an Adjudicating Officer) Rules, 2005.
- (v) Section 149 of the Electricity Act, 2003, is not attracted since the alleged non-compliance of the order, which is civil in nature, is not an offence within the meaning of section 149 of the Electricity Act, 2003.

22. It is true that the Assistant Engineer in charge of the Electrical Section has been designated by Government of Kerala as the Assessing Officer under section 126 of the Act. Accordingly the Assistant Engineer, Electrical Section, Kundara is the Assessing Officer in respect of that section. The Assistant Engineer in charge of an electrical section has several duties such as development of distribution system, repairs and maintenance of distribution system, billing and revenue collection, voltage improvement, reduction of technical and commercial losses, collection of arrears of revenue, giving new electrical connections, disconnection, reconnection, dismantling of connections, prevention of power theft, prevention of theft of electric line, electrical installations and other materials, maintenance of stores, maintenance of registers and accounts and such other works which are incidental to the distribution and supply of electricity to consumers. The assessment under section 126 of the Act is one of the duties of the Assistant Engineer of an electrical section. Vast majority of the consumers in an electrical section are law abiding consumers who do not indulge in any illegal activities such as unauthorized use of electricity or theft of electricity. Only very few consumers indulge in such irregular or illegal activities. Therefore the proceedings under section 126 of the Act are not a regular activity of the Assistant Engineer of any electrical section. Only when the Assistant Engineer of electrical section is taking action in accordance with the provisions of section 126 of the Act, the Assistant Engineer is functioning as a quasi-judicial authority. The Hon'ble Supreme Court in Civil Appeal No. 8859 of 2011, between the Executive Engineer and M/s. Sri Seetharam Rice Mill has held that section 126 and section 127 of the Act are codes in themselves, and that the Assessing Officer under section 126 and the appellate authority under section 127 have full freedom to exercise the powers conferred on them under the respective sections. As per sub-section (1) of section 126 the Assessing Officer can, to the best of his judgment, make provisional assessment of the electricity charges payable by a person benefited by unauthorized use of electricity, if the Assessing Officer after inspection of the premises, installations and records, comes to the conclusion that the consumer was indulging in unauthorized use of electricity. As per subsection (2) of section 126 of the Act, the provisional assessment order has to be

served on the consumer in such manner as prescribed in the rules. As per sub-section (3) of section 126 of the Act, the consumer is entitled to file objections against the provisional assessment and the Assessing Officer shall afford a reasonable opportunity of being heard to such consumer before passing final order of assessment. It is also stipulated that the final order shall be passed within thirty days from the date of service of the provisional assessment order. From the scheme of law in section 126 of the Act, it is evident that inspection of the premises, electrical installations, registers and records by the Assessing Officer, coming to a conclusion that the consumer was indulging in unauthorized use of electricity, provisional assessment to the best of judgment of the Assessing Officer, service of provisional assessment as prescribed by rules, receiving objections, affording reasonable opportunity for being heard in person by issuance of a notice, conducting personal hearing and issuing final orders within thirty days from the date of issuance of provisional assessment order, are inevitable components of the proceedings under section 126 of the Act. It is true that the proceedings under section 126 of the Act by an Assessing Officer, in accordance with the above procedures, are quasi-judicial proceedings. An Assistant Engineer is an Assessing Officer only when he is proceeding under section 126 of the Act. If an Assistant Engineer is acting contrary to the provisions of section 126 of the Act or when he is not adhering to the procedures prescribed by law, he cannot claim immunity of the Assessing Officer under section 126 of the Act. Further, while performing other functions of an Assistant Engineer, he cannot claim the privileges or immunity of an Assessing Officer. Here in this case the Assistant Engineer, Electrical Section, Kundara had acted on the report of anti-power theft squad. He had not inspected the premises or installations or registers or records in person. He had also not, by himself, come to the conclusion that the consumer was indulging in unauthorized use of electricity. There is nothing on record to prove that he had made provisional assessment to the best of his own judgment based on his personal inspection, scrutiny of record and analysis of facts and circumstances of the case. He had also not followed the principle of natural justice by serving the provisional assessment order and giving the consumer proper opportunity to file objections and for personal hearing. A Proceeding will not come under section 126 of the Act,

just because it is written so, in the records. Any proceedings can be considered to be under section 126 of the Act only if;

- (i) such proceedings are initiated consequent to unauthorized use of electricity by a consumer as detected in the inspection by the Assessing Officer,
- (ii) provisional assessment is made by the Assessing Officer to the best of his judgment,
- (iii) provisional assessment is served on the consumer as per relevant rules,
- (iv) the consumer is given opportunity to file objection,
- (v) the consumer is given opportunity to be heard in person, and
- (vi) the final order is passed within thirty days after considering the objections filed and the evidences adduced during personal hearing by the consumer.

23. It is also true that the Assessing Officer under section 126 of the Act and Appellate Authority under section 127 of the Act shall have freedom to exercise the powers conferred on them under the respective sections without fear or favour or any extraneous influences. The freedom or powers available to an Assessing Officer under section 126 of the Act cannot be misinterpreted as freedom or powers to do anything under the garb of or in the name and style of proceedings under section 126 of the Act, without conforming to the legal provisions stipulated therein. An Assistant Engineer or any other officer acting in violation of the statutory provisions or not conforming to the statutory provisions cannot claim the protection of law for doing such illegal or irregular activities. A person who violates any legal provision or acts in contravention of any legal provision cannot claim any protection under that legal provision. When an Assistant Engineer of Electrical Section is acting in violation of law or not in conformity with legal provisions, he cannot claim any immunity of an Assessing Officer under section 126 of the Act and at that time he can be considered only as an erring officer of the distribution licensee who will come within the meaning of "person" as defined in clause (49) of section 2 of the Electricity Act, 2003. When any officer of the licensee namely, KSEB Limited, is acting in contravention of any of the provisions of the Act, or the Rules or the Regulations made thereunder, or any directions issued by the Commission, the appropriate Commission can initiate proceedings under section 142 of the Act in accordance with the procedures stipulated therein.

Here in this case the Assistant Engineer, Kundara has, without authority or competence, compounded the case under section 152 of the Act and collected Rs.60,000/- as compounding fee. The officer authorized by the Government to exercise the power of compounding an offence is the Executive Engineer in charge of the Electrical Division concerned. The post of Executive Engineer is the promotion post of Assistant Executive Engineer which in turn is the promotion post of Assistant Engineer. The Assistant Engineer, Electrical Section, Kundara is seen to have illegally usurped the powers of Executive Engineer and illegally and injudiciously issued orders to compound the offence. Compounding can be done only by the officer authorized by Government in this behalf and only in respect of the offences coming under Part XIV, Offences and Penalties of the Act. The offences under this part are theft of electricity under section 135 of the Act, theft of electric line and materials under section 136 of the Act, receiving stolen property under section 137 of the Act, interference with meters or works of the licensee under section 138 of the Act, negligently breaking or damaging the works under section 139 of the Act, intentionally injuring the works under section 140 of the Act and maliciously extinguishing public lamps under section 141 of the Act. An Assistant Engineer who has illegally usurped the power of the Executive Engineer and has illegally indulged in compounding of offence cannot claim immunity of a quasi-judicial authority under section 126 of the Act. Section 142 of the Act has clearly empowered the Commission to punish such officers who contravene the provisions of the Act or Rules or Regulations made thereunder and contravenes any directions issued by the Commission. Section 142 of the Act is quoted hereunder;

“142. Punishment for non-compliance of directions by Appropriate Commission.- In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that by person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any directions 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.”

- 24.** Clause (6) of regulation 27 of the Kerala State Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Electricity Ombudsman) Regulations, 2005 as amended by the Kerala State Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Electricity Ombudsman) Third Amendment Regulations, 2010 is quoted hereunder

“Non-compliance of awards, orders, directions of the Consumer Grievances 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.”

Therefore any violation of the provisions of Electricity Act, 2003 or rules or regulations made thereunder, any contravention of the directions issued by the Commission and non-compliance of awards, orders and directions of the Consumer Grievances Redressal Forum or Electricity Ombudsman will invite proceedings under section 142 of the Act.

- 25.** Section 143 of the Act confers the power of adjudication on the Commission. This has to be read with clause (f) of sub-section (1) of section 86 of the Act which deals with the functions of the State Commission. The said clause empowers the Commission to adjudicate upon the disputes between the licensees and the generating companies and to refer any dispute for arbitration. Therefore the proceedings under section 142 of the Act and adjudication under section 143 of the Act are different. Only for adjudication under section 143 of the Act the Commission need appoint any of its Members to be an adjudicating officer. For the proceedings under section 142 of the Act there is no need of appointing an adjudicating officer.

- 26.** Section 149 of the Electricity Act, 2003, deals with offences by companies. The said section is quoted hereunder;

“149. Offences by companies.- Where an offence under this Act has been committed by a company, every person who at the time of

offence was committed was in charge of and was responsible to the company for conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.”

It can be seen that Section 149 of the Act deals with the liability of the company and its employees with regard to the offences committed under the provisions of the Act. KSEB Ltd is a company and the Assistant Engineer, Kundara and other accused officers are the employees of the company. Therefore the applicability of section 149 of the Act to this case cannot be questioned.

27. Explanation (b) under sub-section (6) of section 126 of the Act explains the unauthorized use of electricity. As per sub-clause (iv) of clause (b) usage of electricity for purpose other than for which the usage of electricity was authorized and usage of electricity for the premises or area other than for which such supply of electricity was authorized, will come under the meaning of unauthorized use of electricity. As per clause (e) of sub-section (1) of section 135, the dishonest use of electricity for the purposes other than for which the usage of electricity was authorized will come under the ambit of theft of power. The person found to have indulged in theft of power has to be prosecuted in a court of law and the cognizance of offence has to be taken by

the court on the compliant in writing made by a police officer or the authorities mentioned in section 151 of the Act. As per section 151 A the power to investigate an offence under the Act is vested with the police officers. Once action is taken for theft under section 135 and other provisions under Part XIV – Offences and Penalties, the Assessing Officer cannot proceed concurrently under section 126 of the Act. Section 152 of the Act provides for compounding of offence. As per sub-section (2) of section 152 of the Act, on payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court. From the records relating to the proceedings initiated by the accused officers it can easily be found that they have misinterpreted the law deliberately or otherwise and initiated action based on the report of the anti-power theft squad both under section 126 and under section 135 of the Act simultaneously.

28. In view of the statutory provisions quoted above it is found that;

- (i) The Commission has jurisdiction and competence to proceed against the accused officers of KSEB Limited under section 142 of the Act.
- (ii) The Assistant Engineer, Electrical Section, Kundara has large number of duties and responsibilities and the duty of Assessing Officer under section 126 of the Act is only one among his duties. The Assistant Engineer, of the Electrical Section can claim the immunity of a quasi-judicial authority under section 126 of the Act only when he is acting in accordance with the provisions of the Act and he cannot claim any such immunity when he is acting in contravention of the Act.
- (iii) A proceedings under section 126 of the Act shall be strictly in accordance with the procedures prescribed therein and the Assistant Engineer will come under the meaning of the word person, as defined in clause (49) of section 2 of the Act, when he is not acting in accordance with the provisions of section 126 of the Act and when he is performing other duties assigned to him as the head of electrical section.
- (iv) The provisions of section 143 of the Act are not applicable in this case.

(v) Section 149 of the Electricity Act, 2003 is attracted in this case as the licensee is a company and the Assistant Engineer, Kundara and other accused officers are its employees.

29.In view of the above findings on the legal issues raised by the accused officers and their counsel, further issues in the case are analyzed and decided as follows.

30.Here in this case, the Assistant Engineer, Kundara could not produce records or adduce evidences during personal hearing conducted by the Commission to prove that he had strictly followed the procedures prescribed by law under section 126 of the Act, when he was directed by the CGRF to take appropriate action under the said section. It is also seen that personal hearing was conducted only on 01.07.2014, that too after initiation of the proceedings under section 142 of the Act by the Commission. So far no order issued by him under section 126 of the Act in compliance of the directions of CGRF (South) has been produced.

31.The procedure followed by the Commission under Section 142 of the Electricity Act is strictly in accordance with the law. Section 143 of the Electricity Act, 2003 or the Kerala Electricity (Manner of Inquiry by Adjudicating officer) Rule, 2009 has no application in the matter of action under Section 142 of the Electricity Act, 2003. Sub section (1) of Section 143 of the Electricity Act, 2003 relates to adjudication as provided in clause (f) in sub sections (1) of section 86 of the Act. Sub-section (2) of the section 143 of the Act relates to imposition of penalty for failure to comply with Section 29, 33 or 43 of the Electricity Act, 2003.

32.On perusal of the relevant file it is seen that an inspection was conducted by the Anti-Power Theft Squad of Kerala State Electricity Board Ltd at the premises of consumer No. 115 of Electrical Section, Kundara. The electrical energy availed for domestic purpose was unauthorizedly used for the construction purpose by adding additional load of 5675 watts. A provisional assessment bill for Rs. 82,155/- dated 17.11.12 was served on the petitioner under Section 126 of the Electricity Act, 2003. This amount of Rs.82,155/- included compounding fee of Rs.60,000/- for the theft of electricity under Section 135 (1) (e) of the Electricity Act, 2003. The consumer filed objection

on 22.11.2012. He was heard on 13.12.2012 and a final assessment order was issued by the Asst. Engineer Electrical Section, Kundara on 05.01.2013.

33. Aggrieved by this order, the petitioner approached the CGRF (South) Kottakkara vide OP No. 897/13 against the order of the Asst. Engineer, Electrical Section, Kundara. The order of CGRF (South) dated 16.4.2013 in OP No. 897/13 is quoted here under.

(i) *An amount of Rs. 60,000/- collected from the petitioner towards compounding charges shall be refunded to the petitioner within one month. If the amount is not paid within the above stipulated time, it shall carry interest at the bank rate from the date of remittance, till its refund.*

(ii) *The case is remanded to the Asst. Engineer, Electrical Section, Kundara for initiating proceedings under Section 126 of the Act, for using unauthorised additional load as alleged in the mahazar. The petitioner would be at liberty to challenge the said proceedings in accordance with law if he is still aggrieved by the proceedings.*

34. The Kerala State Electricity Board Ltd filed review petition vide RP No. 6 in OP No. 897/2013 and the CGRF passed order on 7.9.2013 reiterating the earlier order in OP No.897/2013. The Kerala State Electricity Board Ltd decided to comply with the order and communicated the same to the Executive Engineer, Electrical Division, Kundara vide letter No. LA VI/5870/2013 dated 16.11.2013 with a copy to the Asst. Engineer, Electrical Section, Kundara.

35. On receipt of the above communication, the Asst. Engineer, Electrical Section, Kundara issued a proceedings vide No. DB/AE/35/13-14/KDA/104 dated 27.3.2014, which is stated to be in compliance of the order of CGRF dated 16.4.2013. The main operative portion of the said proceedings is as follows:

“Having regard to the entire facts and circumstances of the case and the arguments advanced by the petitioner and order pronounced by Chairperson CGRF (South) and the direction contained in reference 1st cited, the complaint is redressed as follows:

(i) *The amount of Rs. 60,000/- collected from the petitioner towards compounding charges is allowed to refund as per the direction contained in the order.*

(ii) *Usage of unauthorised additional load is never in doubt; there is no case for revising penal amount charges against this.*

If the petitioner is not satisfied with the above decisions he/she is at liberty to prefer appeal before the Deputy Chief Engineer, Electrical Circle, Kollam.

36. The first part of the order of CGRF is seen complied with to the extent that the amount of Rs.60,000/- was refunded. As already explained in earlier paragraphs, the Assessing Officer can proceed under section 126 of the Act if the consumer is found indulging in unauthorized use of electricity. If such unauthorized use of electricity is with dishonest intention, action has to be taken under section 135 and other relevant sections of the Act. Compounding can be done under section 152 of the Act only by the Executive Engineer of the Electrical Division concerned. But the Assistant Engineer, Electrical Section, Kundara is seen to have proceeded both under section 126 and under section 135 of the Act for which he has no competence or jurisdiction. Therefore the action of the Assistant Engineer, Kundara in this regard is illegal. The compounding fee collected, even though illegally, should have been refunded only under the orders of Executive Engineer, Electrical Division, Kundara who is the compounding authority under section 152 of the Act. The very intention of the communication of Kerala State Electricity Board Ltd to the Executive Engineer, Electrical Division, Kundara with a copy to the Assistant Engineer, Electrical Section, Kundara is that the order of CGRF have two parts, one relating to refund of compounding fee and the other relating to initiating proceedings under Section 126 of the Electricity Act by the Asst. Engineer, Electrical Section, Kundara. But the Executive Engineer is not seen to have exercised his powers under the provision of Section 152 of the Electricity Act.

37. The order dated 16.4.2013 of CGRF (South) in OP No. 897/2013 to the Assistant Engineer, Electrical Section, Kundara is very specific and clear. The Assistant Engineer, Electrical Section, Kundara should have initiated

proceedings under section 126 of the Electricity Act, 2003, afresh in accordance with the order of the CGRF (South), strictly following the procedures prescribed therein, which shall include,

- (a) Personal inspection or personal verification of records.
- (b) Issuance of provisional assessment order sub-section (1) to the accused person based on the best of his judgment.
- (c) Accepting objection filed by the accused person
- (d) Affording reasonable opportunity for personal hearing
- (e) Passing the final order after complying with the above procedures with time limit prescribed in Sub Section (3)

38. On verifying the relevant file of the Asst. Engineer, Electrical Section, Kundara, it is revealed that a personal hearing is seen conducted on 1.7.2014 and the petitioner had submitted a statement before the Asst. Engineer. But no final proceeding is seen issued so far.

39. The Commission is thus convinced that the order of CGRF has not been complied with by the Assistant Engineer, Electrical Section, Kundara for more than one year. 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 is not satisfactory. An opportunity was also given to them to be heard in person before finalizing the matter. The objection and arguments filed by the learned counsel was carefully examined by the Commission as stated above and the Commission found no reason why the action should be dropped against the delinquent officials. Hence the Commission is satisfied that the above persons have contravened the provisions of the Act and regulations made thereunder.

40. Under these circumstances, the Commission decides to impose penalty on the delinquent officials of KSEB Ltd. under section 142 of the Electricity Act, 2003, for the non-compliance of the order of CGRF (South) dated 16-04-2013 in O.P. No.897/2013.

41. The Law Officer, KSEB Ltd. has given direction to the Executive Engineer, Electrical Division, Kundara with copy to the Asst. Executive Engineer, Electrical Division, Kundara 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 Dy. Chief Engineer for the delay and non-compliance of the CGRF order. The role of the Asst. Executive Engineer is also similar and nothing has come out which establishes the role of the Asst. Executive Engineer in delaying the compliance. Hence the Commission decides to absolve these two officials namely Dy. Chief Engineer, Electrical Circle, KSEB Ltd., Kottarakkara and the Asst. Executive Engineer, Electrical Division, Kundara from charges levelled against them.

Orders of the Commission:-

42. Accordingly, in exercise of the powers conferred under Section 142 of the Electricity Act, 2003, the Commission directs that,-

- (i) Sri. S.R. Santhosh, Executive Engineer, KSEBL, Electrical Division, Kundara is severely warned against the non-compliance of the provisions of sections 149 and 152 of the Electricity Act, 2003, and
- (ii) Sri. K. Jacob, Assistant Engineer, Electrical Section, KSEBL, Kundara shall pay a penalty of Rs.10,000/- (Rupees Ten Thousand only) for the contravention of the various provisions stated above.

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

Sd/-
Member

Sd/-
Chairman

Approved for issue

SECRETARY