

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

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

**Dated: 23<sup>rd</sup> January 2015**

**In the matter of:** Penalise KSEBLtd for non-compliance of Electricity Act, 2003, Sec. 142, Supply Code 2014 (Reg.97(2), Reg.115(7), Reg.149(2), and Reg. 157(2) KSERC Order DP 75/2009 and Kerala State Electricity Regulatory Commission approved KSEB O.2518/2013 (Part II (1), Part – IC (6))

Sri. Premkumar, Site Manager,  
M/s. Ray Constructions Ltd,  
Kutta, Kaninadu P.O, Vaduvacode : Petitioner

Vs

1. The Secretary, Kerala State Electricity Board Ltd,  
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram  
2. The Asst. Engineer, Kerala State Electricity Board Ltd  
Electrical Sec., Puthencruz : Respondents

**ORDER**

**Background of the case:-**

1. The petitioner M/s. Ray Constructions Ltd, an LT industrial consumer in Electrical Section, Puthencruz with Con No. 11009 has filed this petition praying to proceed against the officials of Kerala State Electricity Board Ltd for the non-compliance of directives of Kerala State Electricity Regulatory Commission in the Kerala Electricity Supply Code, 2014.

**Averments of the Petitioner:-**

The Petitioner submitted the following for the consideration of the Commission.

2. The petitioner submitted that the allegation of unauthorised extension is wrong and false as the crusher unit is a subsidiary of M/s. Ray Constructions Ltd. It is also contented by the petitioner, that the extension taken to the construction unit, is under the same ownership and in the same premises and was not for temporary purposes.
3. The petitioner further submitted that,
  - (i) As per Regulation 149(2)(i), the entry, inspection and further proceedings under Section 126 of the Act shall be done only by the Assessing Officer as designated by Government. In this case, the Sub Engineer had conducted inspection and prepared the site mahazer. The Asst. Engineer, who is the assessing officer, without verifying the site, had served the impugned bill and hence the provisional bill cannot be considered as valid.
  - (ii) The allegation of additional load of 71kW in excess of the existing load was totally wrong and false because if the alleged load was connected the total kVA would have been 139 kVA the 100kVA transformer would not cater this much load. Hence it is clearly violating the Reg. 152(1) of the Kerala Electricity Supply Code, 2014.
  - (iii) As per Reg. 154(4) of the Kerala Electricity Supply Code, 2014, the additional load in the same premises for the same purpose cannot be treated as unauthorised usage.
  - (iv) As per KSE Board order No. 2518/2013 *'Unequivocal application of tariff for temporary connection and extension (LT-III) in all cases of unauthorised extension is not warranted. Tariff for temporary extension may be applied for assessment only in cases where the purpose for extending the supply is of a temporary nature and thus the assessment in such cases are bound to be for short duration covering the temporary period of usage'*. Hence in this case, extension cannot be penalised under temporary connection.
  - (v) The Hon. High Court of Kerala in WP(c)No. 15966 of 2012 (U) Judgment dated 6.11.2012 order that *'Even in case the tenant is an establishment, who is utilizing the rented premises for providing accommodation to their employees, such occupancy cannot be treated as a hostel, lodge, guest house or rest house'*. Since we have also

*used the service connection for providing accommodation as rest rooms for our employees/labours; it could never be treated as misuse of tariff. If tariff has to be changed, it could only be changed to LT-I domestic as per Hon. High Court Judgment in WP(c) No. 15966 of 2012(U).*

- (vi) Even for change of tariff the licensee has to comply with Supply Code 2014 Reg 97(2) ' the consumer shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections, if any.; But no such procedures have been done by KSEBL, which is not fair and just. Warranting the action against the Assessing officer as per Sec. 142 of the act for Non-compliance of the Directives.*
- (vii) The order put forward by the Asst. Engineer was against the objections filed. The AE did not comply with the Supply Code Reg. 157(2) directing to have a speaking order.*

**4. The petitioner has made the following prayers in the petition**

- (i) Punish AE by imposing penalty complying with Sec. 142 for not complying with Supply Code Regulations 97(2), 149 (2)*
- (ii) Direct KSEBL to dispense with all proceedings against the consumer and for tariff change direct them to issue suitable notices complying with Supply Code 2014 Reg. 97(2)*
- (iii) Direct KSEBL to consider the place where labours stay in the same premises of the consumer, as part of corresponding company / industry and not to penalize under unauthorized additional extension.*
- (iv) Direct AE to have a speaking order Complying with Supply Code answering all the objections put forward by us.*
- (v) Direct the AE to release a speaking order complying with Supply Code 2014 Reg. 157(2). And ask him to keep in abeyance all the proceedings like disconnection of Supply till a speaking order is released.*

## Hearing of the petition:-

5. Hearing on the matter was held on 08.01.2015 at Commission's Office at Thiruvananthapuram. Sri. Premkumar, Site Manager, M/s. Ray Construction Ltd, Kutta, Kaninadu (P.O), Vaduvacode appeared on behalf of the petitioner and Adv. B. Sakthidharan Nair appeared on behalf of the respondents, before the Commission. Sri. Premkumar presented the case of M/s. Ray Constructions Ltd as explained in the petition. Adv.B.Sakthidharan Nair informed that the respondents have received the copy of the petition only two days back and therefore they wanted time to file written statement of defence. During the course of hearing the Commission pointed out that the consumer in this case is one Smt. Rebecca Abraham. The Asst. Engineer, Puthencruz in his submission has informed that the connection is registered in the name of Smt. Rebecca Abraham, under LT IV (A) tariff category for working a stone crusher unit at Kutta near Puthencruz.

Both the parties were given time till 16.01.2015 to submit their written statement and other records if any.

6. Accordingly the petitioner had submitted their additional statement and the KSEBLtd submitted their counter statement through Adv. B.Sakthidharan Nair, learned counsel of the respondents.

7. The petitioner submitted the following:

(i) *At present the petitioner is only a occupier as far as the KSEBL is concerned, because after purchasing the property the name and address were not changed in the KSEBL records. As per Electricity Act 2003 and Supply Code, 2014, the owner or occupier of a premise is equally liable and equal beneficiary for the matters in relation to the electric power connection.*

(ii) *The property of Mrs. Rebecca Abraham was purchased by M/s. Ray Constructions during the year 2001. The crusher in the property was being run by M/s. Ray Constructions Ltd. The name of the consumer Smt. Rebecca Abraham was not changed. Even though an application was submitted with KSEBL for changing the ownership, we were unable to follow up and get it changed. Considering and admitting the*

*authenticity of the present owner and occupier we humbly request the Hon. Commission not to reject the petition on technical grounds.*

- (iii) Three recent orders of the Hon. High Court preventing the daily penalisation for the detected unauthorised load. The High Court Orders on petition No. WP(C) No. 10841 of 2012(E), WP(C) No. 23547 of 2013(P) and OP No. 3054 of 2001.*
- (iv) Considering all the above facts and for rectifying the anomalies we humbly request the Hon: commission to give a direction to the Asst. Engineer, Puthencruz section to re-examine the entire order and procedure complying with the High Court Orders, Supply Code, date of Panchayath License and any other relevant factors as applicable.*

**8. The averments submitted by KSEBL are as quoted below:**

- (i) The complainant has no locus standi to file the complaint. Consumer number 11009 is an industrial connection in LT IV A tariff for working a stone crusher unit under Electrical Section, Puthencruz. The registered owner of the said connection as per our records in Smt. Rebecca Abraham. The ownership has not yet been changed in our records. Hence the complainant has no locus standi to file this complaint.*
- (ii) Being alerted by the Anti Power Theft Squad of Kerala State Electricity Board Ltd, that the consumer is indulged in unauthorised use of electricity, which fact was found out by them in an inspection conducted in the premises concerned along with the officials of Electrical Section, Puthencruz on 07.10.2014, this respondent being the duly notified 'assessing officer', inspected the premises on 08.10.2014 and made a provisional assessment of the said unauthorised use of electricity as per Section 126(1) of the Act. The consumer made objections to the same as per Section 126(3) of the Act and after affording an opportunity of hearing, a final order was issued on 06.11.2014 as per Section 126(3) of the Act. Though the consumer was made aware of the appellate remedy available to him, for reasons better known to him, he has not exercised the same and approached this Hon'ble Commission.*
- (iii) It is respectfully submitted that as this Hon'ble Commission is aware, Electricity Act, 2003 is a comprehensive and exhaustive one and it has*

*provided appellate remedies and the authority to be sit in judgment in case of dispute in respect of action taken pursuant to Section 126 of the Act. Because of this position, even though the legislature in its innate wisdom has included Section 173, the law beholds Sections 126, 127 & 135 as 'sui generis' and hence upholds the supremacy of the same. This position has time and again been upheld by the Hon'ble Apex Court of the land. In the circumstance, the authority stipulated under Section 127 of the Act alone is competent to sit in judgment over an action taken pursuant to Section 126 of the Act by an 'assessing officer' duly notified by a State Government. This being so, Section 145 of the Act is attracted to the circumstances of the case and the petition is liable to be dismissed by this Hon'ble Commission on the ground of maintainability. Otherwise, the same will be usurping of jurisdiction of the authority specified under Section 127 and the said authority will become 'functus officio'.*

- (iv) The site mahazer prepared on 7.10.2014 disclosed that there was an unauthorised extension of 71kW used over and above the sanctioned load of 53kW for the crusher unit. The unauthorised extension was made by using cable from the crusher unit for the working of fabrication site office, bar bending shed, welding shed and labour shed of M/s. Ray Constructions Ltd., the contractors of Kochi Refinery and other companies.*
- (v) The connection bearing consumer number 11009 was effected to the consumer for working a stone crusher unit with a connected load of 53kW. But it was noticed that an unauthorised extension of 71kW was used for construction works of M/s. Ray Constructions Ltd. Thus a provisional assessment for the said unauthorised use of electricity amounting to Rs. 33,68,950/-was made under Section 126 of the Act on 08.10.2014.*
- (vi) On receipt of the demand notice and provisional penal bill, M/s. Ray Constructions Ltd filed a petition against the said provisional assessment. A personal hearing was conducted on 06.11.2014. Sri. Shaji Sebastian, Chairman IECC and Sri. Premkumar, Manager, Ray Constructions Ltd, attended the hearing. After considering material*

*evidences and facts, the Assessing officer as per proceedings dated 6.11.2014 revised the said provisional assessment bill of Rs. 33,68,950/- and made final order under Section 126 of the Act amounting to Rs. 29,84,992/- and directed the consumer to pay the bill on or before 24.11.2014. Considering the request from the consumer 30 days was allowed from 06.11.2014 as appeal period under Section 127 of the Act.*

*(vii) Instead of exercising appellate remedy under Section 127, the petitioner has approached the Hon'ble Commission. From the facts stated above, it is evident that the assessment is made consistent with the Act.*

*(viii) In the above circumstances, this Hon'ble Commission may be pleased to dismiss the petition with costs of the respondents.*

#### **Analysis & Decisions of the Commission:-**

9. (1) M/s. Ray Constructions Ltd is the present occupier of the premises of Consumer No. 11009, an industrial connection LT IV A tariff for working a stone crusher unit under Electrical section, Puthencruz.

(2) The 2<sup>nd</sup> respondent issued a provisional bill for Rs. 33,68,950/- under Section 126 of the Electricity Act, 2003 on 08.10.2014, after noticing an unauthorised extension of 71kW for the working of fabrication unit, site office, welding shed and labour shed of M/s. Ray Construction Ltd, during the inspection conducted in the premises of Consumer No. 11009 on 7.10.2014. A final bill for Rs. 29,84,992/- was issued on 06.11.2014 after considering all material evidences and hearing of the petitioner. Hence the Commission find no reason to proceed against the respondents for the non-compliance of Regulation 157(2) of the Supply Code, 2014.

(3) Regulation 97(2), stipulates re-classification of tariff of a consumer through a notice about the proposal for re-classification. In the instant case, the tariff of the consumer has not seen changed from LT IV A. Hence the respondents cannot be proceeded against for the non-compliance of sub-section (2) of Regulation 97 of the Kerala Electricity Supply Code, 2014.

(4) As per sub-section (2) of Regulation 149 of Supply Code, 2014 the Asst. Engineer of the respective Electrical section is the only officer designated as Assessing officer in terms of sub-section (6) of section 126 of the Electricity Act, 2003. In the instant case, the Sub Engineer of the local Electrical Section had prepared the site mahazer, who is the inspecting authority as authorised by the Government. The Assessing Officer can come to conclusion based on the mahazer prepared by the inspecting authority. Hence the 2<sup>nd</sup> respondent cannot be proceeded against for the non-compliance of the Regulation 149(2) of Kerala Electricity Supply Code, 2014.'

(5) The proceedings in this case have been initiated under Section 126 of the Electricity Act 2003 against the petitioner by the KSEBLtd. As such the appellate authority, stipulated under Sec 127 of the Act is the competent authority to hear and decide the appeal from the order issued under Section 126 of the Act, 2003.

**Order of the Commission:-**

**10.** (i) As per the facts and records presented before the Commission, there is no case to proceed under section 142 of the Electricity Act, 2003 against the respondent for the non-compliance of provisions of the Kerala Electricity Supply Code, 2014.

(ii) Since the proceedings have been initiated against the petitioner by the Assessing Officer under section 126 of the Electricity Act, 2003, the petitioner, if aggrieved by the order of the Assessing officer, may prefer appeal before the Appellate Authority as stipulated under section 127 of the Electricity Act, 2003.

(iii) Petition is disposed off accordingly.

Sd/-

**Mathew George**  
Member

Sd/-

**K.Vikraman Nair**  
Member

Sd/-

**T.M. Manoharan**  
Chairman

Approved for issue

Secretary



