

BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

No.1151/Com.Ex/KSERC/2014

In the matter of: Submission of complaint, under Section 142 of the Electricity act, 2003, praying for actions under Section 142 and 146 of the Electricity Act, 2003.

Sri. K. Anandakuttan Nair,
Secretary,
Electricity Consumers' welfare Association,
Thusharam, Kanakakunnu Lane,
Thiruvananthapuram.

- **Complainant**

Versus

1. The Asst. Engineer, Electrical Section,
KSEBL, Beach, Thiruvananthapuram.
2. The Asst. Executive engineer, Electrical sub
Division, KSEBL, Beach, Thiruvananthapuram
3. The Executive Engineer, Electrical division,
KSEBL, Kazhakuttom, Thiruvananthapuram.

- **Respondents**

Order dated:10.03.2015

Background of the Case:

1. M/s Madhuram Foods is an industrial consumer bearing Con.No.15814 with initial registered connected load of 5845 watts, under Electrical Section, Beach, Thiruvananthapuram. The company applied for additional power at various stages. The complainant submitted this complaint before

the Commission for the non-compliance of provisions of the Electricity Act, 2003 and the regulations made there under, while processing and sanctioning of power requested by the company at various stages.

Petition:

2. Madhuram Foods is an industrial consumer bearing consumer No.15814, with an initial registered connected load of 5845 watts, under Electrical Section, Beach, Thiruvananthapuram. They applied for an additional load of 22 kW (total 28 KW) on 24/10/2009. The KSEB Section officials collected an application fee (AF) of Rs.25/- and a processing fee of Rs.100/-. This processing fee is not authorized by the Commission and not included in the schedule of miscellaneous fees approved by the Commission.
3. The Executive Engineer, Electrical Division, Kazhakkootam issued an administrative sanction (A.S.) with an estimate amount of Rs.10, 84,478/- on 9/12/2009. There existed a three phase overhead service line from which electric connection for 6 KW was given, using weather proof wire. Hence, the works to be executed for the electric supply was to provide, required weather proof wire and terminal arrangement suitable for catering the enhanced load requirement.
4. Intimation for remitting estimate amount was issued on 17/12/2009, which is about two months from the date of application whereas, as per clause 8(1) (b) of the Kerala Electricity Supply Code, 2005, the cost estimate shall be intimated to the applicant within 7 days.
5. The items to be included under the cost estimate for LT electricity supply where load is below 50 kVA, is detailed under clause 8(1) (c) of the Kerala Electricity supply Code, 2005, which are service line and terminal arrangement at the premises and these are not at all included in the estimate. But it is included with the items of cost estimate for enhancing the capacity of LT distribution system of the KSEB Ltd. over the area by 100 kVA.

6. The estimate is issued to the applicant violating the section 42(1), 43(2) and 46 of the Electricity Act, 2003 and rules and regulations made thereunder, Order No.KSERC/IV/Supply Code/2009/746 dt 28/8/2009 of the Commission (cost data approval) and order of the APTEL dt 14/5/2007 in Appeal No. 22 of 2007 and mandated conditions under the KSERC (Licensing) Regulations, 2006.
7. Installment facility was allowed for the estimate amount and the consumer remitted the first installment on 23/1/2010. But the Assistant Executive Engineer, Electrical Sub Division, Beach issued technical sanction only on 25/6/2010. Hence the commencement of work was delayed and in effect the work could not completed within the time frame as specified in clause 8 of the Kerala Electricity Supply Code, 2005.
8. Completion report for a load of 30245 watts was submitted to the Asst. Engineer, Beach on 26/8/2010 and remitted application fee Rs.50/-. Without any notice, the Assistant Engineer demanded Rs.15, 000/- also and the consumer remitted the same on 4/9/2010. (This Rs.15, 000/- might have been realized towards the minimum demand charges as per clause 10 of Supply Code 2005). Electric supply as per this was also never provided.
9. The consumer requested for additional power i.e. for a total load of 66 KW. The consumer was asked to submit an application for power requirement in a format, supplied free of cost. The consumer accordingly, submitted the power requirement application. Application fee, Rs.10/- and an amount under a head "additional estimate" were collected on 31/8/2010. This power requirement was approved by the Asst. Executive Engineer on 26/10/2010.
10. A completion report and draft agreement for a total load of 52.073 KW was submitted along with an application for transfer of ownership on 30/9/2010. Additional Cash Deposit (ACD) and other expenses remitted on 17/12/2012.
11. Thus, the persons who were in the office of the Asst. Engineer, Electrical Section, Beach, Asst. Executive Engineer, Electrical Sub Division, Beach and

the Executive Engineer, Electrical Division, Kazhakkoottam during the period of occurrence of above illegalities and non-compliances, independently and jointly acted in disobedience of the legal provisions in Electricity Act, 2003, Rules and Regulations issued thereunder and orders of the Commission and Appellate Tribunal for Electricity.

12. Hence, the petitioner submits before Commission that, the non-compliance and breaches require actions under section 142 and 146 of the Electricity Act, 2003.

Response of KSEB Ltd.

13. The LT Consumer bearing No.15814 was registered in Electrical Section, Beach by Sri. Anil Ganesh, M/s Madhuras Food Products, IDA, Kochuveli, Thiruvananthapuram with connected load of 5.846 kilo watts for industrial purpose on 18/01/2006.

14. On 24/10/2009 Sri. Anil Ganesh submitted application before the Assistant Engineer, Electrical Section, Beach for the feasibility of power to an extent of 28 kW including the existing connected load of 5.846 kW. Then the feasibility of extending the power from the nearest transformer to the applicant's premises was explored and based on the then site condition estimate was prepared for providing power. It was noticed that the existing transformer is not having the required capacity to cater to the additional load. The consumer informed at the time of processing the application for feasibility of power that his demand for power would be increased to more than 60kW in near future and was ready to pay the expenses for new transformer to be installed in front of his premises instead of enhancing the existing transformer. Hence it was proposed to install a new 100kVA transformer considering also the anticipated demand of the consumer in near future.

15. The Executive Engineer, Electrical Division, Kazhakkoottam had sanctioned vide AS No. 180/09-10 dated 7/12/2009 an estimate amounting to

Rs.10,84,478/- for installing a 100kVA transformer to supply additional power to the premises. The work involved tapping of 11kV supply from the proposed CTC RMU to be installed in front of the consumer's premises after laying 40m of 3X300 sq.mm. XLPE 11kV UG cable to energize a 100kVA transformer.

16. Twenty eight installments for the estimate amount were granted. The payments were made irregularly right from the payment of first installment itself. This late payment resulted in the cancellation of installment facility by the computer system. Nine installments were also paid by the consumer against the balance amount of expenditure. An amount of Rs.13, 53,707/- was paid altogether by the consumer including interest on belated installment.
17. All works except the installation of extensible RMU were completed during July 2010. Due to the non-availability of RMUs as mentioned in the estimate itself, RMU could not be installed at that time. In order to avoid hardship to the consumer the work has been provisionally energized with Double Pole (DP) structure, as an interim measure on 11/7/2010 and later the RMU was installed.
18. The consumer then requested to enhance their connected load and submitted the application cum completion report as per Terms and Conditions of Supply for a load of 30.626 KW on 26/8/2010 instead of the 28 kW sought in the application for additional power allocation.
19. On 31/8/2010 the consumer requested for a feasibility of power to an extent of 66kW to enhance their connected load from 30.626kW, as informed by the consumer at the time of applying feasibility of power of 28kW.
20. Since the cost of installation of the 100kVA transformer and allied works had already been collected from the consumer and the transformer was already energized, feasibility of power to the extent of

66kW was sanctioned. On 30/9/2010, the consumer submitted the application cum completion report for 52.07 kW as per Terms and Conditions of Supply. The consumer was very well aware at the time of requesting additional load of 22kW that the demand of power of his industry would come above 50kW, for which an exclusive transformer is required as per terms and conditions of Supply approved by the Commission.

21. The main submission of KSEBL vide paragraph 8 and 9 are quoted as follows.

- 1) *“Regarding the allegation on delay in providing additional power allocation of 22 kW, it is humbly submitted that the application made on 24/10/2009 does not qualify as an application for supply of power as per Section 43 of the Act since the charges as per section 46 has not been remitted at that point of time nor the installation of the consumer was ready for availing the additional supply. The installation of the consumer was ready only on production of application cum completion certificate on 26/8/2010 and the load was different from the load sought in the application for power allocation dated 24/10/2009. The connected load was again sought to be enhanced immediately after submitting the application cum completion report on 30/9/2010. The load of 30.626 kW and 52.07 KW were sanctioned on 29/9/2010 (Additional Security Deposit for load of 30.626 kW was remitted only on 29/9/2010) and 18/10/2010 respectively based on the completion of works and energization of exclusive transformer on 11/7/2010 which was installed as per power allocation application dated 24/10/2009. Thus there was no delay on the part of KSEB in releasing the supply after the consumer has completed all the formalities as stipulated in Kerala Electricity Supply Code, 2005.*
- 2) *The cost of works required for providing the additional power was estimated as per Section 46 of the Act and provisions of Kerala*

Electricity Supply Coode, 2005 and the methodology approved by the Hon. Commission for estimating cost of distribution works. The work was proposed for giving additional power to the consumer. The estimate for the identified work required exclusively for providing additional power to the consumer was approved as per the methodology approved by the Commission.

Hearing on the matter:

22. Hearing was conducted at 11 A. M. on 30-12-2014. The petitioner and the respondents were present. Adv. B. Sakthidharan Nair appeared representing the following officers.

- i. Sri. Shibu.S.S., Assistant Engineer, Electrical Section, Beach, TVM.
- ii. Sri. K. Ajithkumar, Assistant Executive Engineer, Electrical Section, Beach, TVM.
- iii. Sri. E. Mohammed Sheriff, Executive Engineer, Electrical Division, Kazhakuttom, TVM.
- iv. Sri. Radhakrishnakumar, Dy. Chief Engineer, Electrical Circle, TVM(U)

23. The learned counsel of the respondents challenged the locus-standii of the petitioner and requested time for filing additional counterstatement and arguments on the petition. Both parties were given time up to 09-01-2015 by the Commission as per its order dated 30-12-2014, for filing further notes and arguments if any. Both the parties submitted their additional written statements.

24. The main submission and argument submitted by the respondents, vide their additional counter statement are quoted as below:

- 1) *"The complainant in Petition No.1151/2014 has no locus standi to file the complaint. There is no privity of contract between him and the licensee. He is neither a "Consumer" within the meaning of section 2(15) of the Electricity Act 2003 nor an "Affected Party" within the meaning of Regulation 22(d) of the Kerala State Electricity Regulatory Commission (Conduct of business)*

Regulation 2003. Hence the petition filed by him may be dismissed in-limini.

- 2) The Complainant in petition No. 115/14 does not come within the parameters of Regulation 30(a)(b)(c) of the Kerala State Electricity Regulatory Commission (Conduct of business) Regulation 2003 as he is neither a “person” nor an “authorized employee” nor a Chartered Accountant / Advocate. Hence it is not permissible for him to represent a consumer before the Hon. Commission.*
- 3) It is respectfully submitted that the complainant in petition 1151/2014 Sri. Ananthakuttan Nair who represented the consumer in OP No. 981/2013 and OP No. 1086/2013 before the Hon. CGRF has abused the process of the Hon. Commission and initiated these proceedings for the gains of an individual consumer. Hence no public interest is involved in the complaint.*
- 4) The complainant in Petition No. 1151/2014 cannot initiate proceedings in the capacity as an ‘Informer’ because the proceedings followed by the Regulatory Commission is that of civil proceedings and section 142 of the Electricity Act 2003 is akin to “civil contempt” within the meaning of Section 2(b) read with section 12 of the Contempt of Court Act 1971. In a civil contempt a stranger to the preceding cannot initiate the proceedings. The complainant in Petition No. 1151/2014 cannot initiate proceedings under section 142 of the Electricity Act 2003 in the light of the proceedings contemplated under Regulation 30(a)(b)(c) of the Kerala State Electricity Regulatory Commission (Conduct of business) Regulation 2003.*
- 5) Without prejudice to the above contentions it is respectfully submitted that the issues raised by these petitioners have already been heard and decided by the Hon. GRF in OP No. 1086/2013. Hence the complainants are precluded from agitating the same*

issue again before the Hon. KSER Commission especially the same being a grievance of an individual consumer in respect of a

“complaint” within the meaning of Regulation 2(1)(f) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2005. The Hon. Supreme Court in Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd. (2008) 7, SCC 381 held that Regulatory Commissions cannot adjudicate individual grievances. In such cases Consumers must redress their grievances through the mechanism provided under section 42(5) and 42(6) of the Electricity Act 2003”.

29. The main arguments of the complainant are as quoted below:

1. *“The opposite parties in the complaint were represented by Mr. B. Sakthidharan Nair, Advocate. His arguments were only regarding the admissibility and maintainability of the complaint. He never disputed the material facts in the complaint have been accepted by the opposite parties.*
2. *A complaint under Section 142 or 146 of Electricity Act, 2003 has no similarity with Contempt of Court 1971. Contempt and what make contempt are defined under Contempt of Courts Act, 1971. Upon even a plain reading of the Sections 142 or 146 under the Electricity Act, it makes very clear that the said Sections and the provisions under Contempt of Courts Act, 1971 have no similarities at all and the Contempt of Courts Act, 1971 has been enacted for different purposes and on a different ground of law. Therefore, the argument of the advocate counsel of the opposite parties is not sustained, hence not acceptable*
3. *Here in this instant case, the complainant, who is the Secretary*

to the Electricity Consumers' Welfare Association is a complainant and at the same time an informer. In the complaint, he has agitated against blatant contravention of the provisions of the Act, rules and regulations made there under by the opposite parties and their failure to comply with the orders and direction issued by this Hon;. Commission while providing electricity supply to a consumer. In this matter, the affected party is a consumer and he is immaterial in this case, since no relief is intended to a consumer under Section 142 or 146 of the Act to the consumer. What matters is only, whether the opposite parties have breached the statutes under Electricity Act, 2003, while providing electricity supply to a consumer or not. This Hon. Commission is empowered under the above sections of the Act to proceed against the opposite parties or against any such person who has violated statutes, upon a complaint by any person including this complainant.

4. Under section 142, 146 of the Act, the Hon. Commission could take actions upon any persons' contravention of any provisions of the Act, rules and regulations made there under and failure to comply with the orders and direction issued by the Commission through a complaint filed by any person or if the Commission is satisfied that any person had committed the above illegalities. Two separate provisions are provided for cognizance of breach of statutes, which are either through a complaint by any person or suo moto by the Hon. Commission. Thereby, this Association belongs to the category of any person and hence it has every right to make a complaint on the matter before this Hon. Commission and also it has every right to hear the complainant allowing this complainant to elucidate the material facts and evidence in the case.

5. By the illegality in action, the opposite parties have caused

un due gain to another person, which is KSEB (KSEBL) and unnecessary pecuniary and other losses to a consumer. By not refunding such amounts collected illegally within the time

frame after an evaluation of works as ordered by the Commission, the opposite parties caused KSEB (KSEBL) to make unjust enrichment also. These sorts of action of the opposite parties could be translated as criminal misconduct by public servants, which fall under Section 13(1) of Prevention of Corruption Act 1988. The Hon. Supreme Court of India examined in the case Vineet Narain & Others vs Union of India & Another on 18 December, 1997, whether public is entitled to make complaint against the corrupt, seeking prosecution and then Hon. the Court adjudged the matter in positive. In Civil Appeal No. 1193 of 2012, Dr. Subramanian Swamy vs Dr. Manmohan Singh and another the Hon. Supreme Court had again examined whether a complaint can be filed by a citizen for prosecuting a public servant for an offence under the Prevention of Corruption Act, 1988.

6. *It was pointed out by the Constitution Bench of the Hon. Supreme Court of India in the judgment in Sheonandan Paswan vs. State of Bihar and Others, (1987) 1 SCC 288 that:- "It is now settled law that a criminal proceeding is not a proceeding or vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability an orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book.*

Having said that separate provisions are provided under Section 142 or 146 of the Act, which falls under the head "Offences and Penalties", for such acts of breach of

statutes and hence arbitrariness in action by any one, and authority is also conferred upon this Hon. Commission to punish any person upon a complaint by any person after affording an opportunity for hearing to the accused and if the accused is / are guilty. These sections 142 and 146 have close similarities with Prevention of Corruption Act 1988. Therefore, taking the same ratio of the pronounced judgments of the Hon. Supreme Court of India above, this complainant has every right to file this complaint and the instant complaint is maintainable.

7. This complaint filed by this complainant is under Section 142 and 146 of the Act, which are punitive provisions to punish any person who has breached statutes under Electricity Act, 2003 upon a complaint by any person. Whereas, a petition of a consumer before the CGRF is under consumer grievance redressal procedure and the consumer is only entitled to file a complaint before the CGRF and thereon appeal before the Electricity Ombudsman. Therefore, the argument of the advocate counsel to the opposite parties that, this instant complaint is an appeal is not sustained and hence not acceptable.

Analysis and decision of the Commission.

1. The petition is filed by Sri. K.Anandakuttan Nair, Secretary, Electricity Consumer's Welfare Association, Thiruvananthapuram, under section 142 of the Electricity Act, 2003. The petition is in respect of certain alleged contravention of certain provision of the Act, rules and regulations made there under committed by Kerala State Electricity Board Ltd officials, against M/s. Madhuram Foods, Kochuveli, Thiruvananthapuram bearing Con. No. 15814 of Electrical Section, Kerala State Electricity Board Ltd, Beach, Thiruvananthapuram.

2. As per Regulations 22(d) of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003, proceedings by the Commission, can be initiated upon a petition filed by an affected party. In the instant case, the petitioner is claimed to be the Secretary, of Electricity Consumer's Welfare Association, Thiruvananthapuram and hence he is not representing the consumer and as such he is neither a "consumer" within the meaning of sub section (15) of Section 2 of the Electricity Act, 2003, nor an "Affecting party" within the meaning of Regulation 22(d) of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003.

3. As per Regulation 30 of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003, the following persons can represent the proceedings of the Commission.
 - (i) The complainant / petitioner in person.
 - (ii) The complainant / petitioner through an authorised employee
 - (iii) The complainant / petitioner through an authorized professional who may be an Advocate or a Chartered Accountant, or a Cost of Works Accountant or a Company Secretary or graduate / Chartered Engineer holding a certificate of practice.

In the instant case, the complainant is not an employee of the consumer or a Chartered Accountant / Engineer / Advocate. Hence it is not permissible for the complainant to represent before the Commission.

4. The complainant can be treated as an informer of the Commission for initiating suo motu proceedings as per 22(a) of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003. The role of complainant ends at the point of giving information to the Commission regarding breach of statues by a "person" as defined as Sub Section (49) of Section 2 of the Electricity Act, 2003 and he can not proceed with the petition thereafter.

5. In the circumstances stated above, the complainant Sri. K. Anandakuttan Nair, is neither an affected party as defined in 22(d) of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003 nor an authorized representative of the consumer as defined in Regulation 30 of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulation, 2003, and therefore his complaint cannot be accepted for initiating proceedings under Section 142 of the Electricity Act, 2003.

Order of the Commission

The petition is dismissed as the complainant in the petition has no locus standii to file the complaint before the Commission as per the provisions specified in Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003.

Sd/-

K. Vikraman Nair
Member (Engg)

Sd/-

T.M. Manoharan
Chairman

Approved for issue

Secretary