

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

PRESENT: Sri.T.M. Manoharan, Chairman  
Sri. K.Vikraman Nair, Member  
Sri. S. Venugopal, Member

**OP No.16/2015**

**In the matter of the petition filed under regulation 165 of the Kerala Electricity Supply Code, 2014, to invoke the *suo motu* power of the Commission to amend the regulation 95 of the said Code.**

Kerala State Electricity Board Limited : Petitioner  
Represented by its Secretary (Administration)  
Vydythi Bhavanam, Pattom,  
Thiruvananthapuram.

**Order dated. 04.08.2015**

**Per T.M. Manoharan, Chairman**

1. Kerala State Electricity Board Limited (KSEB Ltd), represented by its Secretary, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram, has filed a petition dated 11.02.2015 before the Commission with the following prayers,-
  - A. To pass an order to invoke *suo-motu* power of this Commission to delete or omit Regulation 95 from the Supply Code, 2014, or in the alternative modify Regulation 95 of the Supply Code, 2014, consistent with Regulation 63 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations 2010 enabling the Licensees to collect the entire cost of shifting overhead lines including the cost of additional materials.
  - B. All proceedings initiated by this Commission for non-compliance of Regulation 95 of the Supply Code, 2014 may be kept in abeyance, till the disposal of this petition.
  - C. Such other relief which are just and equitable may also be granted in favour of the petitioner.
2. The petitioner has cited the following grounds, in support of its prayers,-

- (i) There is no provision in Section 50 of the Electricity Act, 2003, empowering the State Commission to specify regulation 95 of the Kerala Electricity Supply Code, 2014, for shifting overhead lines in private properties.
  - (ii) Regulation 63 of the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010 issued by CEA in exercise of the powers conferred under Section 177 and Section 53 of the Electricity Act, 2003, is the regulation applicable to shifting of overhead lines in private properties.
  - (iii) Section 67 of the Electricity Act, 2003, does not empower the State Commission to issue regulation relating to shifting of electric lines in private properties.
  - (iv) Regulation 95 of Kerala Electricity Supply Code, 2014, is *ultra vires* of the Electricity Act, 2003.
3. After scrutiny of the petition, the Commission as per its letter dated 13.03.2015 requested the petitioner to cure the defects noticed. The Commission, again requested as per its letter dated 12.5.2015, to comply with regulation 24 (5) of Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003, on or before 20.05.2015. Accordingly, the petitioner submitted the required affidavit on 19.05.2015. In another petition No.278/Com. Ex/15 dated 16.03.2015, the petitioner requested the Commission to stay the proceedings initiated against the officers of KSEB Ltd, under Section 142 of the Act, for non-compliance of regulation 95 of the Kerala Electricity Supply Code, 2014. As per notice No. 267/Com. Ex/2015/KSERC/711 dated 03.06.2015 the Commission intimated the petitioner that a public hearing would be conducted at 10.30 AM on 18.06.2015, at the Institute of Engineers Hall, Vellayambalam, Thiruvananthapuram. The Commission also issued press release about the public hearing.
  4. In the public hearing, the petitioner was represented by Adv. B. Sakthidharan Nair. No officer or employee of KSEB Ltd., participated in the public hearing, though about 2000 employees including officers were working in the office of KSEB Ltd in Thiruvananthapuram Corporation area. Eighty persons participated in the public hearing, representing the consumers and the public. They belonged to several districts, including far off districts such as Kasaragod, Malappuram and Palakkad. None of the consumers or members of public supported the claim of KSEB Ltd. Many participants in the public hearing explained their anxieties, fears and painful experiences they had, when they approached the officers for implementation of regulation 95 of the Kerala Electricity Supply Code, 2014. Sri. Dijo C Kappan, representing the Centre for Consumer Education, submitted that regulation 95 of the Kerala Electricity Supply Code, 2014 is a major relief to the consumers of Kerala, who have given right of way to KSEB Ltd during the past,

without any compensation, in order to get electricity to their area. Hence he requested the Commission to decline the request of KSEB Ltd to revoke regulation 95 of the Supply Code, 2014. Sri. Shaji Sebastian, representing Kerala State Small Scale Industries Association submitted that the petition of KSEB Ltd might be dismissed in toto. Hundreds of complaints were submitted before the Commission by the consumers from various districts explaining their grievances, problems and necessity of shifting the electric line from their properties.

5. The Commission has examined the prayers of the petitioner, along with the grounds and legal provisions cited by the petitioner. The Commission has also examined the scheme of law in the Electricity Act, 2003, the social problems faced by the consumers and owners of land, techno-economic problems faced by the licensee and such other matters related to the issue.
6. The main contention of the petitioner in this case is to the effect that, Kerala State Electricity Regulatory Commission (KSERC), has no jurisdiction to issue regulation 95 of the Kerala Electricity Supply Code, 2014, and therefore, the petitioner has prayed for a declaration to that effect. But it is found that Regulation 95 of the Kerala Electricity Supply Code, 2014, has been issued in exercise of the powers vested in the Commission under Section 181 of the Electricity Act, 2003, read with Section 14, Section 16, Section 50, Section 57, Section 67 and such other statutory provisions with a view to safeguard consumer interest and public interest. As per the scheme of law in the Electricity Act, 2003, the Commission is the only authority which has the jurisdiction and competence to issue regulations on the subject matter dealt with in the impugned Regulation 95 of the Kerala Electricity Supply Code, 2014, as can be seen from the facts, the circumstances and the legal provisions explained in the following paragraphs. Regulation 95 of the Kerala Electricity Supply Code, 2014, is quoted hereunder,-

***“95. Procedure for shifting electric line or electrical plant of the licensee.- (1) The owner of the land or his successor in interest who has given right of way for the construction of an existing electric line or electrical plant over, under, along, across, in or upon the said land, may apply for shifting the electric line or electrical plant to any other portion of his land for genuine purposes.***

***(2) The application for shifting the electric line or electrical plant shall be submitted in the local office of the licensee.***

***(3) On receipt of the application the licensee shall inspect the site and assess the technical feasibility of the proposed shifting.***

*(4) The application for shifting an electric line or electrical plant shall be granted only if:-*

*(a) the proposed shifting is technically feasible; and*

*(b) the owner of the land or his successor in interest gives consent in writing to shift the electric line or electrical plant to any other portion of his land or to any other land owned by him; or any alternate right of way along any public path way available for shifting the electric line and the electrical plant; and*

*(c) the applicant remits the labour charges required for shifting the electric line or electrical plant.*

*(5) The licensee shall shift the electric line or electrical plant if the conditions specified in sub-regulation (4) are complied with by the applicant.”*

As per the said regulation, the Commission has specified the procedure for shifting to another portion of the land of the owner, an electric line or electrical plant of a distribution licensee; on the request of the owner of the land who has given the right of way for the construction of such electric line or electrical plant in or on or along or across or under or over the land. Such request has to be granted by the licensee under regulation 95 of the Kerala Electricity Supply Code, 2014, only if the following conditions are satisfied,-

- (i) the request should be for genuine purposes;
- (ii) the owner of land shall submit an application to the local office of the licensee;
- (iii) the request should be to shift the existing electric line or electrical plant to any other portion of his own land;
- (iv) the owner of the land should give consent for shifting the electric line or electrical plant to another portion of his land;
- (v) the owner shall remit the labour cost for the same.

7. The Commission has issued the impugned regulation 95 considering the following facts and circumstances.

8. In the early years of electrification in our State, especially during nineteen sixties, nineteen seventies and nineteen eighties, the Kerala State Electricity Board, which was the predecessor in interest of the present licensee namely the Kerala State Electricity Board Limited, had undertaken large number of extension works to expand its distribution system. This was really a commendable work, by which supply of electricity could be extended to all the villages in the State by the end of nineteen eighties. The rural people and Grama Panchayats had also co-operated whole heartedly to this endeavour by allowing to construct, the electric line or electrical plant in or on or along or across or under or over their land.

There were also many cases in which formal consent from the owners of the land could not be obtained for such construction of electric line or electrical plant. But such owners of lands did not object to such construction of electric line or electrical plant, either due to their eagerness to get their locality electrified or due to the social pressure on them. Ultimate result was that KSEB could achieve the success of electrification of all villages, much ahead of many other States in the country. But, a fact remains that a large number of electric lines and electrical plants happened to be constructed in or on or along or across private lands, with or without the written consent of the owners of such lands.

9. During the last three or four decades, a large number of private lands in or on or along or across which electric line or electrical plant were constructed, got fragmented either due to partition among the legal heirs or due to sale of portions of such land. When the legal heirs or the successor in interest of such lands or the present owners of such lands propose to construct residential buildings or such other structures, the electric line or electrical plants existing in their land cause inconvenience or impediments to them. Many consumers or owners of lands can utilize their land conveniently, if the electric line or electrical plant in or on or along or across their land, are shifted to another portion of their own land. There were instances of several electrical accidents to the occupants of residential buildings from the electric line or electrical plant in the proximity of their houses. Many owners of the lands, who were compelled to construct their houses in their small land holdings, in spite of the proximity to the electric line or electrical plant, live under fear and anxiety about electrical accidents and consequential burns, injury or even death. Therefore, several persons complained that, they do not even allow their children or other members of the family to use profitably the terraces or premises of their residential buildings.
10. Several complaints were presented in the public hearing by the owners of the land to the effect that,-
  - (i) the electric line or electrical plant were constructed in or on or along or across their lands without obtaining their consent and without giving any compensation, and that,
  - (ii) when the owners of the such lands approach the local authorities of KSEB Ltd. with request for shifting electric line or electrical plant even their genuine requests are turned down by the local authorities of KSEB Ltd. or they demand prohibitively costly amounts as expenditure towards the shifting of the electric line or electrical plant which cause inconvenience to them. Therefore, the Commission found that it is a pressing social problem faced by a large number of consumers and owners of the lands and a techno-economic problem faced by the licensee relating to its distribution system which should be appropriately resolved

by the Commission protecting the interest of both the parties involved in the issue, namely, the owners of the lands and the distribution licensees.

11. It was under the above facts and circumstances, the Commission decided to address this vital social issue faced by thousands of consumers and owners of land, who had willingly or otherwise given consent to KSEB for the construction of electric line or electrical plant in or on or along or across or under or over their lands, which enabled KSEB to perform one of its most important functions namely distribution of electricity to consumers, especially in rural areas. In the normal course, as a public utility, KSEB Ltd. should have been positive and compassionate towards such genuine demands from the members of the society. **But experiences of the consumers and the owners of the lands indicate that such expectations of the public about KSEB Ltd., are seriously misplaced.** This fact also reinforced the decision of the Commission relating to the resolution of the problem.
12. The experience of the Commission in the public hearing was really an eye opener to the approach of KSEB Ltd. towards the vital problem faced by the consumers and owners or occupiers of the land. It is strange to note that not even a single officer of KSEB Ltd. participated in the recent public hearing conducted on 18.06.2015 at Thiruvananthapuram, especially and specifically on the issue of legal validity of regulation 95 of the Kerala Electricity Supply Code, 2014, as raised by KSEB Ltd itself. Large number of members of public even from far off districts like Kasaragod, Palakkad, Malappuram etc participated and expressed their views and grievances. Many persons submitted their views and grievances through letters also. **As per the information furnished by KSEB Ltd., there are about 32000 employees in KSEB Ltd.** The headquarters of KSEB Ltd., where large number of senior officers including the Chairman and Managing Director, the Directors and the Chief Engineers are working, along with their large contingent of supporting staff numbering to more than 1000, is hardly 3 km away from the venue of public hearing. **In Thiruvananthapuram city corporation area itself, there would be about 2000 employees of KSEB Ltd.** Yet no officer or other employee of KSEB Ltd. participated in the public hearing which was conducted to examine the request of KSEB Ltd. itself on the impugned regulation 95 of the Kerala Electricity Supply Code, 2014. The conspicuous absence of any of the officers and other employees of KSEB Ltd. in the public hearing is an eye opener to anybody who evaluates the attitude of KSEB Ltd. towards protection of consumer interests. **The irresponsive and recalcitrant attitude of KSEB Ltd. in this regard is unbecoming of a public utility and does not add any credit to it or its management.**
13. The Electricity Regulatory Commissions have to play a very vital role in safeguarding the interest of the consumers as has been held by the Hon'ble

Supreme Court in the case of MSEDCL Vs Reliance Energy Ltd., 2007 (8) SCC 381, the operative portion of which is quoted hereunder.

*“There can be no manner of doubt that the Commission has full powers to pull up any of its licensee to see that the rules and regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Section 45 (5), 52, 55 (2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed.”*

When the utilities fail in their duties with regard to protection of the interests of the consumers, Electricity Regulatory Commissions have to take necessary remedial measures. The rationale behind issuance of regulation 95 is as submitted above and it is fully justified in view of the cold response and irresponsible attitude shown by KSEB Ltd. towards this vital social problem as explained in the earlier paragraphs.

14. The Commission has carefully examined the scheme of law in the Electricity Act, 2003, relating to development of distribution system including construction of electric line or electrical plant and the recovery of expenditure from consumers. A brief outline of the scheme of law in this regard in the Electricity Act, 2003, is explained in the following paragraphs.
15. As per the scheme of law in the Electricity Act, 2003, the Commission, being the statutory State Electricity Regulatory Commission appointed under Section 82 of the Act, is the only authority to issue regulations on the subject matter dealt with in regulation 95 of the Kerala Electricity Supply Code, 2014. As per the provisions of Electricity Act, 2003, the Central Electricity Authority (CEA) is the national authority relating to technical matters and safety matters in power sector. There is no provision in the Electricity Act, 2003, which directly authorises the distribution licensee to realise any amount from the consumer or any other person. The distribution licensee cannot realise any amount by way of electricity charges or expenditure or security deposit or such other charges from the consumer or from any other person, unless the distribution licensee is authorised by the regulations or orders issued by the State Electricity Regulatory Commission under Section 16 (Conditions of Licensee) or under Section 45 (Power to recover charges as determined under Section 62) or under Section 46 (Power to recover expenditure) or under Section 47 (Power to require security) or under Section 50 (Electricity Supply Code) or under Section 55 (Security for the price of meter) or under Section 57 (Standards of Performance of Licensee) or under Section 61 (Tariff Regulations) or under Section 62 (Determination of tariff) or under Section 67 (Provisions as to opening up of streets, railways, etc), or such other provisions in Electricity Act, 2003. There is no explicit provision in the Electricity Act, 2003, which empowers the CEA to authorize any licensee by

regulations, to recover expenditure relating to construction of electric lines or electrical plants. In fact, it is the CEA which lacks jurisdiction on the subject matter relating to recovery of expenditure from the consumers or the owners of the lands as can be seen from the real scheme of law in the Electricity Act, 2003.

16. Section 46 of Electricity Act, 2003, is the only Section in the Electricity Act, 2003, which contains provisions relating to recovery of expenditure incurred by the licensee in providing electric line or electrical plant for the purpose of giving supply to the consumer. The said Section is quoted hereunder, -

***“46. Power to recover expenditure.- The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”***

From the above Section it can easily be seen that the statute does not authorize the distribution licensee directly to recover expenditure. It empowers only the State Commission to issue at its discretion, the regulations authorizing the distribution licensee to recover reasonable expenditure relating to the construction of electric line or electrical plant used for giving supply to the consumer. It is pertinent to note that the expression used by the Legislature is that the State Commission “may authorize a distribution licensee”.

17. The impugned regulation 95 of the Kerala Electricity Supply Code, 2014, has to be read, understood and implemented in view of clause (19) of Section 2, sub-section (1) of section 42, Section 46 and Section 67 of the Electricity Act, 2003. As per clause (19) of Section 2 of the Act, the net-work of electric lines or electrical equipment up to and including meter are parts of distribution system. Clause (19) of Section 2 of the Act states as follows, -

***“(19) “distribution system” means the system of wires and associated facilities between the delivery points on the transmission lines or the generation station connection and the point of connection to the installation of the consumers”***

As per Section 42(1) of the Act, it is the duty of the distribution licensee to develop and maintain an efficient and economical distribution system. Section 42 (1) of the Act, is quoted here under, -

***“42. Duties of distribution licensee and open access.- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.”***



As per Section 46 of the Act, the State Electricity Regulatory Commission is given the discretionary powers to authorise any distribution licensee, by regulation to recover from the consumer, the reasonable expenses incurred by the licensee for providing electric lines or electrical equipment used for giving a particular supply. Shifting of electric lines or electrical equipment necessarily involves construction of an electric lines or electrical equipment along a realigned route or at a relocated spot respectively. The expenditure reasonably incurred for providing electric line or electrical equipment will also include the expenditure for construction of electric lines or electrical equipment along realigned route or at relocated spot, when such electric line or electrical plant is shifted.

18. Section 67 of the Electricity Act, 2003, deals with a totally different situation in which the alteration of electric lines or shifting of electrical plants by the distribution licensee or transmission licensee may involve breaking up of soil, breaking up of any streets, railway or tramway, alteration of position of pipes for supply of water or alteration of sewer pipes or such other contingencies. The said section is quoted hereunder.

***“67. Provision as to opening up of streets, railways etc. - (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -***

*(a) to open and break up the soil and pavement of any street, railway or tramway;*

*(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*

*(c) to alter the position of any line or works or pipes, other than a main sewer pipe; works;*

*(d) to lay down and place electric lines, electrical plant and other*

*(e) to repair, alter or remove the same;*

*(f) to do all other acts necessary for transmission or supply of electricity.*

*(2) The Appropriate Government may, by rules made by it in this behalf, specify,-*

*(a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;*

- (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;*
- (c) the nature and period of notice to be given by the licensee before carrying out works;*
- (d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);*
- (e) the determination and payment of compensation or rent to the persons affected by works under this section;*
- (f) the repairs and works to be carried out when emergency exists;*
- (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefore;*
- (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;*
- (i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;*
- (j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;*
- (k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;*
- (l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;*
- (m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;*
- (n) the manner of restoration of property affected by such works and maintenance thereof;*
- (o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and*
- (p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.*
- (3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.*

*(4) Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.*

*(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.”*

As per sub-section (1) of Section 67, a licensee may, from time to time, subject always to the terms and conditions of his licence, carryout works as indicated in clauses (a) to (f) thereof. This means that the licensee can undertake the works as stipulated in clauses (a) to (f) of sub-section (1) of Section 67 only if the licensee is permitted to undertake such works as per the conditions of licence issued by the Commission. As per sub-section (2) the State Government has to make rules relating to matters indicated in clauses (a) to (p). Sub-section (3) stipulates that the licensee shall, while exercising any of the powers conferred on it, by the conditions of licence issued by the Commission cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him. The sub-section (4) states that where any difference or dispute including the amount of compensation under sub-section (3) arises under this Section the matter shall be determined by appropriate Commission. As per sub-section (5) the Commission may also impose penalty on the licensee not exceeding the amount of compensation payable under sub-section (3).

**19. It is informed that Government of Kerala have not issued any separate rules under sub-section (2) of Section 67 of the Act. As per Section 185 of the Electricity Act, 2003, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948, and the Electricity Regulatory Commissions Act, 1998 have been repealed. As per clause (b) in sub-section (2) of Section 185, the provisions contained in Sections 12 to 18 of the Indian Electricity Act, 1910 and Rules made thereunder shall have effect until the Rules under Section 67 to Section 69 of this Act are made. As per clause (c) in sub-section (2) of Section 185, the Indian Electricity Rules, 1956 made under Section 37 of the Indian Electricity Act, 1910, as it stood before such repeal shall continue to be in force till the regulations under Section 53 of the Act are made. Central Government has already made the Electricity Rules, 2005 and the Works of Licensees Rules, 2006 under sub-section (2) of Section 67 of the Act. The Rule 82 of Indian Electricity Rules, 1956 deals with erection of or alteration to buildings, structures, flood banks and elevation of roads. Rules 77, 79 and 80 of the Indian Electricity Rules, 1956 deal with the statutory clearances required for the electric lines. The scheme of law which existed**

**prior to the repeal as per Section 185 of the Act does also not contain any provision contrary to the regulation 95 of Kerala Electricity Supply Code, 2014.**

20. Sub-section (1) of Section 67 makes it clear that the licensee can undertake works as mentioned in Section 67 only *'subject always to the terms and conditions of his licence'*. As per Section 16 of the Act the appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence. It has been stipulated in the proviso to Section 16 that the Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to Section 14. As per the first proviso KSEB was a deemed licensee and as per the fifth proviso KSEB Ltd. is a deemed licensee. Therefore both KSEB and KSEB Ltd. are bound by the conditions of licence issued by the Commission. The Commission has already issued the KSERC (Conditions of Licence for Existing Distribution Licensee's) Regulations 2006. As per condition (2) in part II "General Condition", the distribution licensee shall comply with the provisions of the Act, rules and regulations, orders and directions issued by the Commission from time to time and the provisions of all other applicable laws for the time being in force. The said regulations do also contain among other matters, the provisions relating to the obligation of the licensee as specified in condition (4), the information to be submitted to the Commission as specified in condition (12), the dispute resolution as specified in condition (15), the standards and procedure as specified in condition (16), the compliance with the grid code as specified in condition (22), the compliance with the Electricity Supply Code as specified in condition (23), the distribution system planning, security standards, distribution system operating standards and performance standards as specified in condition (24), the procedure for handling complaints as specified in condition (25), the consumers right to information as specified in condition (27) and such other matters.

21. The distribution licensee should also comply with the rules issued by the Government under sub-section (2) of Section 67 of the Act, while taking up works mentioned in sub-section (1) of the said Section. The Central Government have issued the Works of Licensee Rules 2006, under sub-section (2) of section 67 of the Act. Rule 3 of the said Rules, is quoted hereunder.

*"3. Licensee to carry out works. - (1) A licensee may-*

*(a) Carryout works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has*

*not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;*

*(b) Fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of any overhead line on any building or land or having been so fixed, may alter such support;*

*Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in this behalf, for carrying out the works;*

*Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorized may by order in writing direct for any such works, support, stay or strut to be removed or altered.*

*(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorized, as the case may be shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.*

*(3) Every order made by a District Magistrate or a Commissioner of Police or an authorized officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.*

*(4) Nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act.*

22. Sub-rule (1) of Rule 3, empowers the licensee to undertake the works as prescribed in clauses (a) and (b). As per clause (a) in sub rule (1) the licensee can take up construction of electrical line or electrical plant in or on or along or across a private property, only with the prior consent of the owner. As per the first proviso under sub rule (1), if the owner or occupier of the land raises objections, the licensee shall obtain permission from the District Magistrate or Commissioner of Police or any other officer authorized by the State Government in this behalf, for carrying out the works. As per the second proviso under sub rule (1), if at any time, the owner or occupier of any building or land, shows sufficient cause, the District Magistrate or the Commissioner of Police or the authorized officer may, by order in writing, direct to remove or to alter such works. Sub Rule (2) empowers the District Magistrate / Commissioner of Police /

Authorized Officer to fix compensation or annual rent or both which should be paid by the licensee to the owner or occupier of the land. As per sub rule (3), the State Electricity Regulatory Commission has the power to review any order issued by the District Magistrate / Commissioner of Police / Authorized Officer under sub rule (1).

23. Rule 7 of the Works of Licensees Rules, 2006, deals with alteration of position of pipes, electric line etc. Rule 7 is quoted hereunder,-

***“7. Alteration of the position of pipes, electric line, etc.- (1) Any licensee may alter the position of any pipe (not forming part of a local authority’s main sewer), or of any wire under or over any place which he is authorized to open or break up, if such pipe or wire is likely to interfere with the exercise of his powers under the Act; and any person may alter the position of any electric supply lines or works of a licensee under or over any such place as aforesaid, if such electric supply-lines or works are likely to interfere with the lawful exercise of any powers vested in him.***

*(2)The licensee or other person desiring to make the alterations, unless otherwise agreed, shall, not less than one month before commencing any alteration, serve upon the person for the time being entitled to the pipe, wire, electric supply-lines or works, as the case may be (hereinafter in this rule referred to as “the owner”), a notice in writing, describing the proposed alteration, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed work, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally, and intimating the time when it so to be commenced, and shall subsequently give such further information in relation thereto as the owner may desire.*

*(3) The owner may, within fourteen days after the service of the notice, section and plan, serve upon the operator a requisition to the effect that any question arising upon the notice, section or plan, shall, unless settled by agreement, be determined by Appropriate Commission, and thereupon the matter shall be determined by the Appropriate Commission.*

*(4) The Appropriate Commission to whom a reference is made under sub-rule(3), shall have regard to any duties or obligations which the owner is under, and may require the operator to execute any temporary or other works so as to avoid, as far as possible, interference therewith.*

*(5) Where no requisition is served upon the operator under sub-rule (3) within the time limit, or where such a requisition has been served and the matter has been settled by agreement or determined by the Appropriate Commission, the alteration may, upon payment or securing of any*

*compensation accepted or determined by the Appropriate Commission, be executed in accordance with the notice, section and plan and subject to such modification agreed upon between the parties or as may have been determined by the Appropriate Commission.*

*(6) Where the operator desiring to make the alteration makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by the Appropriate Commission.*

*(7) Where the owner or occupier desires to carry out certain works himself,-*

*(i) he may, at least ten days before the operator desiring to make the alteration of pipes or wire is entitled to commence the alteration, serve upon the operator a statement in writing to the effect that he desires to execute the alteration himself and requires the operator to give such security for the repayment of any expenses as may be agreed upon or, in default of agreement, determined by the Appropriate Commission.*

*(ii) where a statement is served upon the operator under clause (i); he shall, not less than forty-eight hours before the execution of the alteration is required to be commenced, furnish such security and serve upon the owner a notice in writing intimating the time when the alteration is required to be commenced, and the manner in which it is required to be made; and thereupon the owner may proceed to execute the alteration as required by the operator;*

*(iii) where the owner declines to comply, or does not, within the time and in the manner prescribed by a notice served upon him under clause (ii), comply with the notice, the operator may himself execute the alteration;*

*(iv) all expense incurred by the owner in compliance with a notice served upon him by the operator under clause (ii) may be recovered by him from the operator.”*

As per sub-rule (1) of Rule 7, any licensee or operator or any person may alter the position of electric line or electrical plant, according to the terms and conditions stipulated therein. Any person may also alter the position of any electric supply line or works of licensee, if they “are likely to interfere with the lawful exercise of any powers vested in the owner or occupier of the land. Sub-rule (2) deals serving of notice about such alteration, on the licensee or the owner of the land. As per sub-rule (3) any dispute between the licensee and the owner or occupier of land, shall be determined by State Electricity Regulatory

Commission, if not settled by agreement between them. Sub-rule (4) empowers the SERC to issue orders to execute any temporary or other works to avoid interference with the lawful exercise of any of the powers vested in the owner or occupier of the land. Sub-rule (5) empowers execution of works relating to alteration of electric line or relocation of electrical plant in accordance with the agreement arrived at between the licensee and the owner or occupier of the land. It is also specified in the said sub-rule that, if no such agreement could be arrived at, the works can be executed in accordance with the decision of the State Electricity Regulatory Commission relating to compensation payable by the licensee to the owner or occupier of the land and in accordance with the sketch and plan approved by the Commission. Sub-rule (6) provides for payment of compensation by the licensee to the owner or occupier of the land as determined by the Commission. Sub-rule (7) provides the procedure for carrying out certain works by the owner or occupier of the private land. Thus the rules envisage only at payment of rent and compensation to the owner or occupier of the land in or on or along or across or under or over which electric line or electrical plant has been constructed. The rules do not envisage at realization of any amount from the owner or occupier of the land for shifting from his land, the electric line or electrical plant of the licensee. The said rules also confer authority on the Commission to settle the disputes and to determine the compensation or rent payable by the licensee to the owner or occupier of the land.

24. Despite the above facts, the Commission has fully protected the interest of KSEB Ltd. while issuing regulation 95 of the Kerala Electricity Supply Code, 2014 as can be seen from the facts explained hereunder.

25. As per definition of the distribution system in clause (19) of Section 2 of the Electricity Act, 2003, the distribution system consists of the net-work of conductors and other installations like transformers, up to the point of inter connection with electrical installation of the consumer. The point of interconnection with consumers installation is just after the meter. Therefore, the network system for distribution up to and including the meter is part of the distribution system. As per sub-section (1) of Section 42, it is the duty of the distribution licensee to develop and maintain an efficient and economic distribution system. Thus, execution of all the works relating to the development and maintenance of the distribution system up to and including the meter, is the duty of the distribution licensee. As per sub-section (3) of Section 67 of the Electricity Act, 2003, the licensee has to construct electric line or electrical plant in a such a way that, it would cause only little damage or detriment or inconvenience to the owner of the land and the licensee shall make full compensation to the owner of the lands for the damage, detriment or inconvenience caused by the licensee or its employees. The provisions in Rule 3 and Rule 7 of the Works of Licensee Rules, 2006, as explained above do also



corroborate and reinforce the above legal position. But if such a rigid stand is taken by the Commission while framing regulations, there may be a flood gate of such applications, since every owner of the land is likely to follow “Not in my back yard” policy. That is why condition such as technical feasibility, genuine purpose, and giving right of way along another portion of the land owned by the applicant are insisted for such shifting. Further such applicants have to remit the labour charges required for the works relating to the shifting of electric lines or electrical plants.

26. Every licensee is allowed to recover its expenditure on capital investment as per the provisions of KSERC (Terms and Conditions for Determination of Tariff), Regulations, 2014 (hereinafter referred to as Tariff Regulations, 2014), in the following manner. As per the provisions in the Tariff Regulations, 2014, the capital expenditure is divided into debt and equity in the ratio of 70:30. The repayment of principal and the payment of interest are the two expenses to be met by the licensee in respect of its capital expenditure. These expenses are allowed to be recovered through tariff. For this purpose depreciation is allowed to fund the repayment of principal of the capital liability and interest on capital liabilities is allowed for the payment of interest thereon. Return on the 30% equity employed by the licensee is also allowed to be recovered. Thus, the loan, interest on loan and return on equity in respect of any capital investment made by the licensee are allowed in the aggregate revenue requirements of the licensee and they are allowed to be recovered through tariff. Therefore the value of materials used by the licensee in shifting the electric lines or relocating the electrical plant can be fully recovered by accounting such costs in the capital expenditure of the licensee. In this regard it is pertinent to point out that, if any asset under the possession or control of the licensee is made out of the contribution of consumer, no depreciation or interest on capital liabilities or return on equity is admissible to the licensee on that account.

**27. The KSEB Ltd has put forth an argument to the effect that, the expenditure on the cost of materials required for shifting the electric line or electrical plant under regulation 95 of Kerala Electricity Supply Code, 2014, will have to be borne by all the consumers through tariff, though the beneficiary of such expenditure is only one consumer or a small group of consumers in a locality. This argument of KSEB Ltd is not at all reasonable or acceptable due to the following reasons,-**

- (i) It is the statutory duty of KSEB Ltd as a distribution licensee, under Section 42 of the Act, to develop and maintain an efficient and economical distribution system up to and including the meter in the premises of the consumer. It is also the statutory duty of KSEB Ltd to construct electric lines or electrical plants in or on or along or**

across any private land only with the consent of the owner or occupier of the land and with least inconvenience or damage or detriment to the property or life of such owner or occupier of the land.

(ii) KSEB Ltd as distribution licensee, undertakes many works for the development and maintenance of its distribution system such as line extension works, voltage improvement works and system improvement works. Beneficiaries of such works are only a small group of consumers in a locality. But the expenditure for such works is not being collected exclusively from the beneficiaries. The cost of such works is recovered through tariff from all consumers, even though beneficiaries are only a small group of consumers. The petitioner cannot adopt a discriminatory policy against the applicants under regulation 95 of Kerala Electricity Supply Code, 2014.

(iii) The materials of the existing electric lines or electrical plants can be utilized for shifting such lines or plants. If any of the materials of the existing line or plant are found to be too old or damaged for reuse, such materials will have to be replaced by usable materials. Even otherwise, as distribution licensee the KSEB Ltd is bound to replace such old or damaged materials during the maintenance operations of its distribution system. Therefore there is no need to recover cost of materials from the applicants under regulation 95 of Kerala Electricity Supply Code, 2014.

28. Thus the genuine interest of the owner of the land, who suffers inconvenience or damage or detriment due to the electric line or electrical plant constructed in or on or along or across his land and the genuine interest of the licensee with regard to the recovery of cost of materials have been duly and fully protected by regulation 95 of the Kerala Electricity Supply Code, 2014, by recovery of labour charges from the owner of the land and by allowing the licensee to recover the cost of materials by including such cost in its capital expenditure.

29. On the other hand, the Central Electricity Authority (CEA) is the national authority on technical matters and the matters relating to safety. It is constituted under Section 70 of the Act, with duties and functions as stipulated in Section 73 of the Act and powers to issue regulations on matters stated in Section 177 of the Act. Section 73 of the Act which states about the duties and functions of the Central Electricity Authority, is quoted hereunder.

*“73. Functions and duties of Authority.- The Authority shall perform such functions and duties as the Central Government may prescribe or direct, and in particular to -*

- (a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co-ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;*
- (b) specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid;*
- (c) specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines;*
- (d) specify the Grid Standards for operation and maintenance of transmission lines;*
- (e) specify the conditions for installation of meters for transmission and supply of electricity;*
- (f) promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system;*
- (g) promote measures for advancing the skill of persons engaged in the electricity industry;*
- (h) advise the Central Government on any matter on which its advice is sought or make recommendation to that Government on any matter if, in the opinion of the Authority, the recommendation would help in improving the generation, transmission, trading, distribution and utilisation of electricity;*
- (i) collect and record the data concerning the generation, transmission, trading, distribution and utilisation of electricity and carry out studies relating to cost, efficiency, competitiveness and such like matters;*
- (j) make public from time to time information secured under this Act, and provide for the publication of reports and investigations;*
- (k) promote research in matters affecting the generation, transmission, distribution and trading of electricity;*
- (l) carry out, or cause to be carried out, any investigation for the purposes of generating or transmitting or distributing electricity;*
- (m) advise any State Government, licensees or the generating companies on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other Government, licensee or the generating company owning or having the control of another electricity system;*

- (n) advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity; and*
- (o) discharge such other functions as may be provided under this Act.*

As per the said Section the CEA shall perform such functions and duties as the Central Government may prescribe or direct and in particular relating to matters mentioned in clauses (a) to (o) as stated above. As per clause (b) the CEA can specify the technical standards for construction of electrical plants, electric line and connectivity to grid. As per clause (c) the CEA can specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines. As per clause (d) the CEA can specify the grid standards for operation and maintenance of transmission lines and as per clause (e) the CEA can specify the conditions for installation of meters and supply of electricity.

30. Section 177 of the Act confers power on the Central Electricity Authority, to make regulations on the matters stipulated therein. The said section is quoted hereunder,-

- “177. Powers of Authority to make regulations.-*** (1) *The Authority may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.*
- (2) *In particular and without prejudice to the generality of the power conferred in sub-section (1), such regulations may provide for all or any of the following matters, namely:--*
- (a) the Grid Standards under section 34;*
  - (b) suitable measures relating to safety and electric supply under section 53;*
  - (c) the installation and operation of meters under section 55;*
  - (d) the rules of procedure for transaction of business under sub-section (9) of section 70;*
  - (e) the technical standards for construction of electrical plants and electric lines and connectivity to the grid under clause (b) of section 73;*
  - (f) the form and manner in which and the time at which the State Government and licensees shall furnish statistics, returns or other information under section 74.*
  - (g) any other matter which is to be, or may be, specified;*
- (3) *All regulations made by the Authority under this Act shall be subject to the conditions of previous publication.*

31. The Central Electricity Authority issued the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010, in exercise of its powers conferred under clause (b) of sub section (2) of Section 177, read with Section 53 of the Act. Section 53 of the Act is quoted hereunder,-

**“53. Provisions relating to safety and electricity supply.-** The Authority may in consultation with the State Government, specify suitable measures for –

- (a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;
- (b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property ;
- (c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;
- (d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;
- (e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;
- (f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;
- (g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing a risk of personal injury or damage to property or interference with its use;”

Clause (a) of Section 53 empowers CEA to issue regulations for protecting the public,-

- (i) from the danger arising from activities related to generation, transmission, distribution or trading of electricity or
- (ii) from use of electricity or
- (iii) from installation, maintenance or use of any electric line or electrical plant.

Clause (b) of Section 53 empowers CEA to issue regulations for,-

- (i) eliminating or reducing personal injury to any person
- (ii) eliminating or minimising damage to property of any person or
- (iii) eliminating or minimising interference with use of such property

Clause (c) of Section 53 empowers CEA to issue regulations for prohibiting transmission or supply of electricity except by means of a system which conforms to the standards specified by the CEA. Clause (d) of Section 53 empowers CEA to issue regulations relating to notice to the State Electricity Regulatory Commission and Electrical Inspector, on electrical accidents. Clause (e) of Section 53 empowers CEA to issue regulations for maintenance of necessary records such as maps and plans by Generating company or Licensee. Clause (f) of Section 53 empowers CEA to issue regulations relating to inspection by Electrical Inspector or by any other person authorised by CEA. Clause (g) of Section 53 empowers CEA to issue regulations in respect of electric line or electrical equipment or any electrical appliances under the control of a consumer, for the purpose of eliminating or reducing risk of personal injury or damage to property or interference with its use. This clause is precisely for specifying standards of specifications and safety relating to installations like generating units which are connected to the electrical systems in the premises of the consumer. It can easily be seen that all the provisions in Section 53 are intended to specify standards of specification of electrical installations and standards of safety for eliminating or minimising accidents or risk or injury to the members of public, to the persons working in the premises where such electrical systems are installed, to the property of the persons and to the electrical systems themselves.

32. There is absolutely no provision in the Electricity Act, 2003, which empowers CEA to authorise distribution licensee to realise any amount by way of charges or expenditure from the consumer or any other person. In view of the statutory provisions explained in earlier paragraphs, it can easily be seen that the Commission is the only authority which has jurisdiction to issue regulations relating to shifting of electric lines or electrical equipment as specified in regulation 95 of the Kerala Electricity Supply Code, 2014.

33. Regulation 63 of the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010, deals with erection or alteration of buildings, structures, flood banks and elevation of roads. The said regulation is quoted hereunder,-

**“63. Erection or alteration of buildings, structures, flood banks and elevation of roads.-** (1) *If at any time subsequent to the erection of an overhead line, whether covered with insulating material or not or underground cable, any person proposes to erect a new building or structure or flood bank or to raise any road*

*level or to carry out any other type of work whether permanent or temporary or to make in or upon any building, or structure or flood bank or road, any permanent or temporary addition or alteration, he and the contractor whom he employs to carry out the erection, addition or alteration, shall, give intimation in writing of his intention to do so, to the supplier or owner and to the Electrical Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road or any addition or alteration and scaffolding thereof required during the construction.*

*(2) On receipt of such intimation, the supplier or owner shall examine,-*

*(i) whether the line or underground cable under reference was laid in accordance with the provisions of these regulations and any other law;*

*(ii) whether it is technically feasible;*

*(iii) whether it meets the requirement of Right of Way (ROW);*

*(iv) whether such person was liable to pay the cost of alteration of the overhead line or underground cable and if so, send a notice without undue delay, to such person together with an estimate of the cost of the expenditure likely to be incurred to so alter the overhead line or underground cable and require him to deposit, within thirty days of the receipt of the notice, with the supplier or owner, the amount of the estimated cost.*

*(3) If such person disputes the cost of alteration of the overhead line or underground cable estimated by the supplier or owner or even the responsibility to pay such cost, the dispute may be referred to the Electrical Inspector whose decision thereof shall be final.*

*(4) The Electrical Inspector shall estimate the cost of alteration of overhead line or underground cable on the following basis, namely:-*

*(i) the cost of material used on the alteration after crediting the depreciated cost of the material which shall be available from the existing line or underground cable;*

*(ii) the wages of labour employed in affecting the alteration;*

*(iii) supervision charges to the extent of fifteen per cent of the wages mentioned in sub clause (ii); and charges incurred by the supplier or owner in complying with the provisions of section 67 of the Act, in respect of such alterations.*

*(5) Any addition or alteration to the building or structure shall be allowed only after the deposit of such estimated cost to the supplier or owner.*

*(6) No work upon such building, structure, flood bank, road and addition or alteration thereto shall be commenced or continued until the Electrical Inspector has certified that the provisions of regulation 58, 60 and 61 should not be contravened either during or after the aforesaid construction:*

*Provided that the Electrical Inspector may, if he is satisfied that the overhead line or underground cable has been so guarded as to secure the protection of persons or property from injury, certify that the work may be executed prior to the alteration of the overhead line or underground cable or in the case of temporary addition or alteration, without alteration of the overhead line or underground cable.*

*(7) The supplier or owner shall, on receipt of such deposit, alter the overhead line or underground cable in such a way that it does not contravene the provisions regulation 58, 60 and 61 either during or after such construction within two months from the date of such deposit or within such longer period as the Electrical Inspector may allow.”*

Sub-regulation (1) states that if at any time, subsequent to the erection of an overhead line, whether covered with insulating material or not, any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building or structure or flood bank or road any permanent or temporary addition or alteration, shall, give intimation in writing of his intention to do so, to the supplier or owner or to the Electrical Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road or any addition or alteration and scaffolding thereof required during the construction. Sub-regulations (2), (3), (4), (5), (6) and (7) deals with procedures on receipt of such intimation as mentioned in sub-regulation (1). As per clause (iv) of sub-regulation (2), the supplier or owner shall examine whether such person was liable to pay the cost of alteration of overhead line and if so sent a notice without undue delay to such person together with an estimate of cost of expenditure likely to be incurred to so alter the overhead line and require him to deposit within thirty days of the receipt of the notice, with the supplier or owner, the amount of the estimated cost. In this regard it has to be specifically noted that the liability or otherwise of the owner or the occupier of the private land has to be determined only as per the regulations issued by the Commission. As per



sub-regulation (3) the disputes relating to cost of alteration of the overhead line may be referred to the Electrical Inspector whose decision thereof shall be final.

34. Chief Electrical Inspector and Electrical Inspector are the authorities appointed by the State Government under Section 162 of the Act. The duties and functions of the Chief Electrical Inspector and Electrical Inspector shall be as prescribed by the rules issued by the State Government. Sub-section (2) of Section 162 states as follows,

*“(2) In the absence of express provisions to the contrary or any rule made thereunder, an appeal shall lie from the decision of a Chief Electrical Inspector or an Electrical Inspector to the appropriate government or if the appropriate government, by general or special order so directs, to an appropriate Commission”*

From the provisions in Section 162 of the Act, it can be seen that the CEA has not been authorized by the provisions of Electricity Act, 2003, to delegate powers to the Chief Electrical Inspector and Electrical Inspector as has been specified in regulation 63 of the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010. Further the provision in the said regulation 63 of the CEA, to the effect that the order of the Electrical Inspector shall be final, is contrary to the statutory provisions in sub-section (2) of Section 162 of the Act and therefore the said provision in regulation 63 of the CEA cannot have any legal validity.

35. As can be seen from the above scheme of law, the subject matter of regulation 95 of Kerala Electricity Supply Code, 2014 and the subject matter of Regulation 63 of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010, pertain to and deals with totally different situations and purposes, in view of the statutory provision in clause (19) of Section 2, Section 42, Section 46, Section 50, Section 57 and Section 67 of the Electricity Act, 2003, and the rules issued by the Government under sub-section (2) of Section 67 of the Act. As per definition in clause (19) of Section 2 of the Electricity Act, 2003, the distribution system means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers. As per sub-section (1) of Section 42 of the Act it shall be the duty of the distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply. As per Section 46 of the Act the State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. The licensee can recover expenditure only as per the regulations issued by the Commission and such recovery shall only be the reasonable expenditure incurred by the licensee. Section 50 of the Act

empowers the Commission to specify Electricity Supply Code to provide for recovery of electricity charges, billing of electricity charges, disconnection of supply, restoration of supply, measures for preventing tampering, distress or damage to electrical plant or electric line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and for removing the meter, entry for replacing, altering or maintaining electric line or electrical plants or meter and such other matters. The term 'such other matters' refers to any matter relating to supply of electricity, maintenance of distribution system and safeguarding consumer interest. Section 57 of the Act empowers the Commission to specify standards of performance of the licensee and to determine compensation for non-achievement of such standards in addition to the penalty which may be imposed on initiation of prosecution. The licensee is liable to pay such compensation to the affected persons as determined by the Commission. Section 58 empowers the Commission to specify different standards for a class or classes of licensees. Section 181 of the Act deals with power of the State Commission to make regulations. Clauses (a) to (zo) stipulate specifically the matters on which Commission shall make regulations. As per clause (zp) of sub-regulation (2) the Commission has also been given power to make regulations on any other matter consistent with the Act, to carry out the provisions of the Act.

36. It is true that the Commission has included regulation 95 in the Kerala Electricity Supply Code, 2014 issued under Section 50 of the Act. It is for the purpose of the convenience of consumers, the distribution licensee and other persons concerned. The Commission has also included several provisions for the realization of security deposit, realization of meter rent, approval of cost data for recovery of expenditure and such other matters under different chapters of the Supply Code, 2014, though they are covered by Sections other than Section 50 of the Act. It can also be seen that the Supply Code, 2014 contains regulations relating to submission of application, inspection of site, issuance of demand note by the licensee for recovery of expenditure, approval of cost data for recovery of expenditure, realization of application fee, realization of inspection fee, realization of surcharge and other miscellaneous charges which are not specifically enumerated in Section 50 of the Electricity Act, 2003. Specific enumeration of all matters incidental to and essential for regulating supply of electricity to consumers by a distribution licensee is not either possible or required under Section 50 of the Act. Absence of specific mention of a particular item in Section 50 of the Act cannot be a reason to adjudge that the regulation issued by the Commission on that item is invalid or illegal or ultra vires, if the said item is incidental to or essential for regulating supply of electricity to consumers. If the stand taken by KSEB Ltd. towards regulation 95 of the Kerala Electricity Supply Code, 2014, is adopted in general, KSEB Ltd. should not have collected

application fee or inspection fee or surcharges or other miscellaneous charges which are not specifically mentioned anywhere in the Electricity Act, 2003. It may also be seen that by the amendment Act, 2007, the State Commission is authorized under Section 50, to specify an Electric Supply Code to provide for such other matters along with matters enumerated thereunder. Hence the Commission is fully competent to include regulation 95 in the Supply Code, 2014.

37. One of the most important objectives of the Electricity Act, 2003, is protection of consumer interest. Ultimately all the activities, operation and management in power sector are aimed at providing uninterrupted supply of quality power at affordable or competitive prices to the consumers. The Electricity Act, 2003, has bestowed on the Electricity Regulatory Commissions, tremendous duties and responsibilities to safeguard consumer interest. It is with this objective, the Electricity Regulatory Commissions in State and Centre are given powers of subordinate legislation on a large number of matters relating to generation, transmission, distribution and trading in power sector, quasi-legislative powers to determine tariff, quasi-judicial powers to adjudicate disputes, powers for granting licence, powers to issue regulations relating to conditions of licence, powers to issue regulations relating to distribution of electricity, namely the Supply Code, powers to issue regulations on Standards of Performance of licensees, powers to issue regulations relating to Consumer Grievances Redressal Forum and Electricity Ombudsman and such other powers.
38. Any developmental project or any law can be successfully implemented only with the co-operation of the affected people. It is a well-known fact that social acceptance is an inevitable pre-requisite for successful implementation of any developmental project or of any law. The petitioner does not appear to have appreciated the fact that the cooperation of the consumers and public at large is inevitable for its effective and successful functioning.
39. All the above facts, circumstances and legal provisions explained above must be well known to KSEB Ltd. But for the reasons best known only to the licensee and its management, a negative approach is seen adopted to this vital problem faced by the consumers and the owners or occupiers of private lands, who had, with or without written consent, allowed KSEB Ltd. to construct electric lines and electrical plants in or on or along or across or under or above their lands. The Commission cannot even dare to attribute 'ignorance of law' as a reason for such a stand taken by KSEB Ltd., in view of the fact that it has a very large contingent of legal professionals to advise its management on legal matters. Therefore, the Commission is constrained to conclude that KSEB Ltd. is misinterpreting the statutory provisions conveniently to their undue advantage.
40. In view of the above facts, circumstances and statutory provisions, the Commission is convinced that regulation 95 of the Kerala Electricity Supply Code,

2014, has been issued by the Commission with jurisdiction and competence, with a view to safeguarding the interests of the consumers and the owners or occupiers of private lands and the interests of KSEB Ltd. The contentions raised by the petitioner are devoid of any merit and deserve only to be rejected.

41. The petition dated 11.02.2015 filed by KSEB Ltd. is therefore dismissed. This order has been issued subject to the judgment of the Hon'ble High Court in the Writ Petition No. (C) 13138/2015.

Dated this 4<sup>th</sup> day of August, 2015.

Sd/-

T.M.Manoharan  
Chairman

We fully subscribe to the conclusion and decision in the subject matter along with the interpretation, technical discussion and logic regarding the scheme of things as laid down in detail in the order. However, we are not able to persuade ourselves in accepting some remarks mentioned about the licensee. We therefore would like to mention that we do not subscribe to the comments made about the licensee, the deployment of its resources etc in para 11, para 12, para 38 and para 39 of the order. At the same time we cannot turn a blind eye on the absence of licensee's officers in the public hearing. It was the licensee which had brought up this matter as a petition before the Commission. However, when the same was being heard through a public hearing, there was a conspicuous absence of the licensee's officers which was unprecedented, considering the seriousness of the subject matter. The licensee lost an opportunity to genuinely raise and let the public know its practical difficulty, if any on the subject matter. This absence could well have been avoided.

Sd/-

K. Vikraman Nair  
Member

Sd/-

S. Venugopal  
Member

Approved for issue,

K. Mathew Kurien  
SECRETARY