

No. 1742/Com.Ex/KSERC/2016

**THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Present: Shri. T.M. Manoharan, Chairman
Shri. K. VikramanNair, Member
Shri. S. Venugopal, Member

C.P.No.10/2016

In the matter of: The requirement of punitive action, as per Section 142 of the Electricity Act, for non-compliance of the directive, without serving detailed bill as envisaged in Regulation 123 of Supply Code, 2014 and for harassment of the consumer by initiating action under Section 126 of the Electricity Act without giving advance notice and without conducting inspection in person as per Regulation 150 of Supply Code, 2014.

Petitioner : Suresh Babu, Managing Director, M/s. Hot Spices & Builders Private Limited, Thiruvaniyoor- 682 308

Respondents: 1. Kerala State Electricity Board Limited,
VydyuthiBhavanam, Pattom,
Thiruvananthapuram- 695 004, represented by Secretary.
2. Giri Kumar, Assistant Engineer,
Kerala State Electricity Board Limited,
Thiruvaniyoor- 682 308.

Order dated 16.11.2016

Background of the case:-

1. Consumer No.7462, M/s. Hot Spices & Builders Private Limited, is an LT-Industrial consumer having a contract demand of 80 kVA under Electrical Section, Thiruvaniyoor. The Anti Power Theft Squad (APTS) team of KSEB Limited (KSEBL) along with section officials inspected the premises on 09.05.2016 and prepared a site mahazar. The second respondent on satisfaction of unauthorized use of electricity issued a provisional penal bill for Rs.10,79,124/- under Section 126 of the Electricity Act, 2003. The petitioner filed objection before the second respondent on 21.07.2016 and the second respondent in the capacity of the Assessing Officer after hearing of the petitioner on 09.08.2016 issued the final assessment on 09.09.2016 along with a final penal bill amounting Rs.7,93,524/- Aggrieved by the final assessment order and final bill, the petitioner filed appeal before the appellate authority under Section 127 of the Electricity Act, 2003 on 07.10.2016 after remitting 50% of the final bill amount.

Petition:-

2. The petitioner submitted that,-

- (1) The KSEBL officials had never issued a detailed bill as envisaged in regulation 123 of the Supply Code, 2014. Also they have never issued a notice whenever the consumption exceeded 80kVA which is the agreed contract demand. The alleged unauthorized usage above 100kVA is only 2.4kVA for the month of December, 2015 and 0.8kVA for the month of March, 2016. In all the other months prior to the date of inspection the recorded contract demand has not exceeded 100 kVA.
- (2) Detailed bill was issued by the second respondent for the month of December, 2015 on request of the petitioner. On verification of the detailed bill it is seen that the recorded power factor is only 0.67 and the KSEBL officials have collected Rs.18,825/- towards PF penalty. If the KSEBL officials were giving detailed bill as per Regulation 123 of the Supply Code, 2014, the petitioner could have kept their power factor above 0.9kVA.
- (3) The inspection of the premises was conducted by the Sub Engineer and not by the Assessing Officer as per regulation 150 of the Kerala Electricity Supply Code, 2014. The total time taken for entire proceedings as per Section 126 of the Electricity Act, 2003 is only 30 days. The final bill was given after 32 days after hearing. Hence both the site mahazar and the final bill are liable to be cancelled. Even though the inspection was conducted on 09.05.2016 the provisional bill was issued only on 15.07.2016 ie., two months and six days after the inspection.

3. Relief sought by the petitioner,-

The respondents may be punished under Section 142 of the Electricity Act, 2003 for the non compliance of Regulation 123 of the Supply Code, 2014 and regulation 150 of the Supply Code, 2014.

Hearing of the case:-

4. Hearing was conducted at 11am on 10.11.2016. Shri.P.Narayanan, Director of the Petitioner Company and Adv.B.Sakthidaran Nair appeared for the petitioner and respondents respectively. The representative of the petitioner submitted that,-

- (1) The APTS team of KSEBL inspected the premises on 09.05.2016 and a penal bill was issued for Rs.10,79,124/- alleging that the contract demand has been exceeded above 100kVA for the month of December, 2015 and March, 2016. No detailed bill was served to the consumer till the date of APTS inspection and therefore the consumer was unaware of the fact that the contract demand was exceeded.
- (2) The petitioner consumer was remitting current charges as demanded by KSEBL, wherein penalization for excess demand has been included as per the tariff order in force.
- (3) As provided in Regulation 153 of the Supply Code, 2014 no notice has been served by KSEBL for exceeding the contract demand.

- (4) The petitioner company has already remitted Rs. 4,51,800/- as power factor penalty.
 - (5) The petitioner prayed to Commission to initiate proceedings against KSEBL under Section 142 of the Electricity Act, 2003, for harassing the consumer under Section 126 of the Electricity Act, 2003, without complying with the provisions of Supply Code, 2014.
 - (6) The petitioner company had already submitted the necessary documents and applications before the second respondent for converting the LT to HT supply.
5. Counsel for the respondents submitted that,-
- (1) The petitioner consumer bearing Consumer No. 7462 is running a spices factory with a sanctioned connected load of 82KW and contract demand of 80kVA. Presently, the consumer is using an additional unauthorized connected load of 62KW in addition to the sanctioned connected load of 82KW has also overdrawn the power beyond 100kVA.
 - (2) Since the recorded contract demand has exceeded above 100 kVA the applicable LT tariff and category would change even if the purpose was unaltered. Hence the excess contract demand consumption can be construed as an offence under Section 126 of the Electricity Act, 2003.
 - (3) The Assessing Officer has issued a final bill for Rs. 7,93,524/- after hearing the objections filed by the petitioner. If the petitioner consumer is aggrieved with the order of the Assessing Officer the legal remedy is to file appeal before the Appellate Authority under Section 127 of the Electricity Act, 2003.
 - (4) No proceedings under Section 142 of the Electricity Act, 2003 shall lie against the Assessing Officer in view of the provisions of Section 168 of the Electricity Act, 2003.
 - (5) There is no cause of action before the Commission to proceed under Section 142 of the Electricity Act, 2003, since the petitioner has already preferred an appeal before the Electricity Appellate Authority under Section 127 of the Electricity Act, 2003, and is still pending for disposal. It may be noted that the petitioner cannot agitate the same issue in two different fora.
6. The second respondent, Assistant Engineer, Electrical Section, Thiruvaniyoor submitted that the petitioner has been served with detailed electricity bills under TOD tariff except for the month of January to August, 2016 and no notice has been served to the consumer for reducing the contract demand by dismantling the connected load, as provided in Supply Code, 2014.
7. The Chairman, KSERC directed the second respondent to effect the HT supply to the consumer at the earliest, without prejudice to the case pending before the Appellate Authority.

Decision of the Commission:-

8. The legal remedy for the petitioner against the orders issued by the Assessing Officer under Section 126 of the Act is to prefer appeal before the Appellate

Authority under Section 127 of the Act. The petitioner has already resorted to such course of action by preferring appeal before the Appellate Authority under Section 127 of the Act. It has been held by the Hon'ble Supreme Court in Seetharam Mill Case that Section 126 and Section 127 of the Act are Codes in themselves and no authority shall interfere with the proceedings of the Assessing Officer under Section 126 and of the Appellate Authority under Section 127 of the Act. The Assistant Engineer, Thiruvaniyoor Section (Second Respondent) informed that the petitioner has subsequently been served with detailed electricity bills under ToD Tariff System. There was some delay in giving detailed bills in respect of the months from January 2016 to August 2016 in view of the problems relating to rolling out of computer software required for the purpose. For the proceedings initiated and orders issued in the capacity of Assessing Officer under Section 126 of the Act, the Second Respondent is eligible for protection under Section 168 of the Act. No action under Section 142 can be initiated against the Assessing Officer based on the orders issued by him under Section 126 of the Act, unless willful disobedience or malafide is conclusively proved. Under the facts and circumstances stated above the Commission gives the following orders,-

- (i) In view of the explanation submitted by the Second Respondent and in view of the pendency of appeal before the Appellate Authority under Section 127 of the Act, the Commission is of the considered view that there is no ground at present to proceed against the Respondents under Section 142 of the Act and therefore the request of the petitioner to proceed against the respondents under Section 142 of the Act is declined.
- (ii) The First Respondent is directed to give necessary directions to the officers in the field to give detailed bills to the consumers as specified in Regulation 123 of the Kerala Electricity Supply Code, 2014 and report compliance within one month from the date of this order.

The petition is disposed of as above and it is ordered accordingly.

Sd/-

S.Venugopal
Member

Sd/-

K.Vikraman Nair
Member

Sd/-

T.M.Manoharan
Chairman

Approved for issue,

Santhosh Kumar.K.B
Secretary.