

BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

C.P.No.05/2016

In the matter of : Petition under Section 142 of the Electricity Act, 2003 for the non-compliance of provisions of Supply Code, 2014.

Petitioner : Suja. K (Proprietor, Shoranur Agri Tools, SIDCO Industrial Estate, Shoranur 2), Velanmarthodi, Koonathara, Shoranur, Palakkad- 679 523.

Respondents : 1. Assistant Engineer, KSEB Ltd., Shoranur, Palakkad District Pin-679122.
2. Kerala State Electricity Appellate Authority, Vytilla, Kochi- 682019
3. Assistant Engineer (APTS), KSEB Ltd., Palakkad

Order Dated 16.02.2017

Back ground of the case:-

1. The petition has been filed by the petitioner under Section 142 of Electricity Act, 2003, for penalizing the respondents as they have, according to the petitioner, intentionally contravened the statutory provisions as well as the regulations and directions issued by the Commission.
2. The petitioner is running an SSI unit at SIDCO Industrial Estate, Shoranur- 2, with Consumer No. 22769 under Electrical Section, KSEB Ltd, Shoranur. The tariff is LT IV (A)-Industry with a connected load of 13236 Watts. Anti Power Theft Squad, Kerala State Electricity Board Limited along with section officials inspected the premises of the consumer on 27.01.2016 and found that the connected load of the petitioner was 49 kW, which was in excess of the sanctioned load to the extent of 36 kW. Consequently the Assessing Officer under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the Act), issued a provisional penal bill for Rs. 80,372/- alleging unauthorized use of electricity.

3. The A.E, Electrical Section, Shoranur, after hearing the petitioner, issued a final assessment order on 02.03.2016, confirming the provisional penal assessment of Rs. 80,372/- as final. It is alleged that the Assessing Officer ignored sub-regulation (15) of Regulation 153 of the Kerala Electricity Supply Code, 2014, wherein it is stipulated that the unauthorized load in the same premises under the same tariff category shall not be reckoned as unauthorized use of electricity.
4. Aggrieved by the final assessment order, the petitioner preferred an appeal petition No. 65/2016, before the Appellate Authority under Section 127 of the Act. The Appellate Authority disallowed the argument of the petitioner / appellant that, as per regulation 153 (15) of the Supply Code, additional load under the same premises and same tariff will not constitute unauthorized use of electricity under Section 126 of the Act. The Appellate Authority vide his order dated 18.07.2016 directed KSEB Ltd to revise the assessment at twice the rate under LT IV A tariff for the proportionate energy charges along with applicable fixed charges. The Commission had delivered an order on 31.05.2016 in OP No.06/2016 wherein, the legal position relating to additional load and unauthorized use of electricity has been clarified in view of the regulation 153 (15) of the Supply Code. The petitioner has alleged that the respondents contravened the regulation 153 (15) of the Supply Code and the directions issued by the Commission in its order dated 31.05.2016 in OP No. 06/2016.

Prayer:-

5. The prayer of the petitioner is to penalize the respondents as they intentionally contravened the regulations and the directions issued by the Commission and to issue any other order as the Commission may deem fit.

Statement of defence submitted by KSEB Ltd:-

6. The Commission has, as per letter No. 1304/Com.Ex/2016/KSERC dated 07.09.2016, issued notice to the respondents. In reply to the notice, the Assistant Engineer, KSEB Ltd, Shornur has, as per his statement dated 23.09.2016, submitted as follows,-
 - (1) Upon inspection of the premises of the petitioner (consumer No. 22769 of Electrical Section, Shornur) by the Sub Engineer along with officials of Anti Power Theft Squad (APTS) unit Palakkad, it was found that the petitioner consumer had a connected load of 48538 Watts as against the sanctioned load of 13236 Watts. The additional load was connected without prior permission of the licensee which will attract proceedings under Section 126 of the Electricity Act, 2003.
 - (2) As per regulation 31 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulation, 2010, no electrical

installation shall be connected to the supply unless the test results of the installations as provided by a licensed electrical contractor are produced. As per regulation 103 (2) of the Kerala Electricity Supply Code, 2014 the consumer shall execute a supplementary agreement for enhancement of sanctioned load. The above regulations have been violated by the petitioner.

- (3) The above illegal act of the petitioner consumer caused revenue loss to the licensee. The final assessment order under section 126 of the Electricity Act, 2003, was issued on 02.03.2016 after hearing the consumer on 22.02.2016. Thus the act of the first respondent was strictly as per the relevant regulations. Against the order of the Assessing Officer the petitioner consumer filed Appeal No. 65/2014 before the Appellate Authority under Section 127 of the Act. As per the order dated 18.07.2016 the Appellate Authority under Section 127 of the Act, the assessment made by the Assessing Officer was set aside and directed the first respondent to revise within 15 days, the assessment at twice the rate under LT IV (A) Industry tariff for proportionate energy charges along with applicable fixed charges as detailed in the order. In the meantime the consumer filed the present petition.
- (4) The statement of the petitioner that in view of sub regulation (15) of regulation 153 of the Supply Code, 2014 the impugned use of electricity by the petitioner would not amount to unauthorized use as it was used by the petitioner in the very same premises and under the very same tariff is misconceived and hence denied. The above said sub regulation has been amended vide notification dated 11.01.2016 and inspection was conducted on 27.01.2016. Hence the argument of the petitioner is not sustainable.

Hearing of the case:-

7. Hearing was conducted at 11 am on 27.09.2016. Adv.Mohanan.V.Ponad and Adv.B.Sakthidaran Nair appeared for the petitioner and respondents respectively.
8. The counsel for the petitioner presented the petition in detail and submitted that,-
 - (1) The site mahazar prepared by the respondent does not allege any tariff violation for the use of electricity in the petitioner's premises.
 - (2) The alleged unauthorized additional load was used for the same purpose and under the same tariff for which supply was sanctioned to the petitioner. Therefore as per sub-regulation (15) of Regulation 153 of the Supply Code, 2014 use of additional load for the same purpose and under the same tariff will not come under the purview of Section 126 of the Act.

- (3) In a very similar case, the Commission has delivered an order dated 31.05.2016 in OP No.6/2016 wherein it is stated that the assessment order issued by the Assessing Officer under Section 126 of the Act was wrong since the cause of action was at the time when Regulation 153 (15) of the Kerala Electricity Supply Code, 2014 was in force without any alteration or amendments.
- (4) The respondents may be penalized for the contravention of the regulations issued by the Commission.

9. The counsel of the respondents submitted that;

- (1) The authorized load of the petitioner consumer was 13236 Watts under LT-IV Industrial Tariff. On inspection of the premises it was found that the total connected load was 48538 Watts. Thus the consumer was using 35302 Watts without taking prior permission of the licensee. This unauthorized additional load is clearly an unauthorized use of electricity under Section 126 of the Act. Moreover the petitioner has violated Regulation 31 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 and Regulation 103 (2) of the Supply Code, 2014.
- (2) Aggrieved by the order of the Assessing Officer, the petitioner consumer preferred appeal before the Appellate Authority under Section 127 of the Electricity Act, 2003. The Appellate Authority has delivered an order on 18.07.2016. If the petitioner consumer is aggrieved with the order of the Appellate Authority he may prefer writ petition before the Hon'ble High Court of Kerala.
- (3) The Assessing Officer cannot be proceeded against for anything done in good faith purporting to be done under this Act since actions done in good faith is protected under Section 168 of the Electricity Act, 2003.
- (4) The petitioner has no cause of action under Section 142 of the Act, until the particular order issued by the Assessing Officer/Appellate Authority is found to be wrong by a competent authority.

10. Both the petitioner and the respondents were allowed 15 days' time to file argument notes and additional information / documents, if any. Accordingly the petitioner, as per statement dated 19.10.2016, submitted her reply to the written statement of defence KSEB Ltd. In the said statement the petitioner submitted as follows,-

- (1) The Assessing Officer cannot be put under the shield of section 168 of the Electricity Act, 2003, since the assessment under section 126 of the Electricity Act, 2003 was done with ill motive to tarnish the image of Sri.Mohan.V Ponad, the husband of the petitioner consumer.

- (2) Sri.Mohan.V.Ponad is working as the Area Secretary of “Laghu Udyog Bharathi” which is an All India level organization of small scale industrialists. As Secretary of the above organisation he has interacted often with the Assistant Engineer, Electrical Section, Shornur who is the first respondent in this case.
- (3) Even though several applications were lodged before the first respondent on 01.12.2011, 17.01.2014, 17.06.2014,17.12.2014 and 11.09.2015 for enhancing the connected load of consumer No. 22769 of Electrical Section, Shornur after remitting a total advance amount of Rs.8000/-, till date KSEBL has not sanctioned the request.
- (4) The inspection conducted by the section officials with the assistance of APTS team on 27.01.2016 was only to harass the petitioner consumer.
- (5) The regulation 153 (15) of the Kerala Electricity Supply Code, 2014 was amended by the Commission through notification dated 11.01.2016. But the same was published in the gazette only on 16.02.2016. As per the notification the amendment will come into effect only from the date of publication in the official gazette.

Analysis of the Commission

11. The prayer of the petitioner is to initiate proceedings under Section 142 of the Electricity Act, 2003, against the Assessing Officer under Section 126 of the Act. Section 142 of the Act is quoted hereunder,-

“142. Punishment for non-compliance of orders or directions.-
In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

From the above provision it can be seen that if the Commission is satisfied that any person has contravened any of the provisions of the Electricity Act, 2003, or the rules or regulations made thereunder or any direction issued by the Commission, the Commission is empowered to impose on such person, a penalty not exceeding Rs.1 lakh.

12. KSEB Ltd has submitted that the Assessing Officer under Section 126 of the Act is a quasi-judicial authority while he is performing his statutory functions under the powers conferred on him and therefore the Assessing Officer will not come in the ambit of the word 'person' as mentioned in Section 142 of the Act. Section 126 of the Act is quoted hereunder, -

126 . Assessment.- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) " assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

*(b) " unauthorised use of electricity" means the usage of electricity –
(i) by any artificial means; or*

- (ii) by a means not authorised by the concerned person or authority or licensee; or
- (iii) through a tampered meter; or
- (iv) for the purpose other than for which the usage of electricity was authorized; or
- (v) for the premises or areas other than those for which the supply of electricity was authorized.

From the explanation (a) under Section 126, it can easily be found that the Assessing Officer is an officer of the State Government or of the licensee who has been designated by the State Government for performing the functions under Section 126. Section 126 gives the detailed procedure to be adopted by the Assessing Officer for issuing orders under the said Section. It has been specified therein that the Assessing Officer shall provisionally assess to the best of his judgment the electricity charges payable by a consumer indulging in unauthorized use of electricity. Such provisional assessment can be based on his personal inspection of the premises of the consumer or based on inspection of relevant records. The consumer shall be given the provisional assessment order and the opportunity of being heard on the provisional assessment. Final order is passed subsequent to such statutory procedures. Therefore the Assessing Officer, while he is performing the functions under Section 126 of the Act is a quasi-judicial authority. The Hon'ble Supreme Court has also held in its judgment dated 01.07.2013 in Civil Appeal No.5466/2012 ((2013) 8 SCC) 491) as follows,-

Therefore, it is clear that after notice of provisional assessment to the person indulged in unauthorized use of electricity, the final decision by an assessing officer, who is a public servant, on the assessment of "unauthorized use of electricity" is a "quasi-judicial" decision and does not fall within the meaning of "consumer dispute" under Section 2(1)(e) of the Consumer Protection Act, 1986.

13. KSEB Ltd has further stated that being a quasi-judicial authority, who is performing the statutory functions under Section 126 of the Act, the Assessing Officer is entitled to get protection under Section 168 of the Act for anything done or in good faith purporting to be done under the provisions of the Act or the rules or regulations made thereunder. Section 168 of the Act is quoted hereunder,-

168. Protection of action taken in good faith.- No suit, prosecution or other proceeding shall lie against the Appropriate Government or Appellate Tribunal or the Appropriate Commission or any officer of Appropriate Government, or any Member, Officer or other employees of the Appellate Tribunal or any Members, officer or other employees of the Appropriate Commission or the assessing officer or any public servant for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.

From the above provisions it can easily be found that the Assessing Officer will get protection under Section 168 when,

- (i) He is performing his functions under Section 126 of the Act in the capacity of a quasi-judicial statutory authority, or
- (ii) He is performing functions believing in good faith that such functions are purporting to be done under Section 126 of the Act.

When an officer designated as the Assessing Officer is taking any action willfully violating the statutory provisions or the rules or regulations made thereunder or the directions issued by the Commission, such officer is not performing his duties in accordance with law and therefore he is not entitled to get the protection under Section 168 of the Act for the illegal activities done by him. If an Assessing Officer is exercising the powers with malafide intentions misusing the provisions of law, such officer cannot be said to be performing the legally valid duties in a just and fair manner under Section 126 of the Act. In Kerala the Assistant Engineers in charge of the Electrical Sections of KSEB Ltd have been designated as the Assessing Officers. Only when the person who is holding the post of Assistant Engineer of the Electrical Section, is performing the functions under Section 126 of the Act, he is the Assessing Officer. The Assistant Engineer designated as Assessing Officer may have many other duties in his official capacity. But only the action taken by him under Section 126 of the Act will get protection under Section 168. Therefore no action can be initiated against the Assessing Officer under Section 142 of the Act unless willful violation of the statutory provisions or willful disobedience of directions or actions with malafide intentions are conclusively proved before the Commission.

14. KSEB Ltd has further submitted that the Commission has no jurisdiction to interfere in the proceedings of the Assessing Officer under Section 126 of the Act in view of the directions of the Hon'ble Supreme Court in Seetharam Mill case. It is true that the Commission has no jurisdiction to interfere in the proceedings of the Assessing Officer under Section 126 of the Act. The Hon'ble Supreme Court has made it clear that Sections 126 and 127 of the Act are Codes in themselves and no external authority shall interfere in the proceedings of the Assessing Officer under Section 126 of the Act and of the Appellate Authority under Section 127 of the Act. The petition under consideration of the Commission is not an appeal preferred by the petitioner under Section 127 of the Act. The petition is for initiating action against the Assessing Officer under Section 142 of the Act for contravening the provisions in the Act or in the rules or regulations made thereunder or for the non-compliance of directions given by the Commission or any authorities in exercise of their statutory powers. As per the provisions in the Act, the Commission is the only authority which is empowered to take action under Section 142 of the Act. One of the most important objective of the Act is to protect consumer interest and public interest. Therefore the Commission has

a statutory duty to examine any petition filed under Section 142 of the Act and to take appropriate decisions therein.

15. KSEB Ltd has taken a further contention that individual petitions shall not be entertained by the Commission. KSEB Ltd has quoted several decisions to substantiate their arguments in this regard. Few of them are quoted hereunder

(1) Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd and Others -Civil Appeal No. 2846 of 2006

(2) Maharashtra State Electricity Distribution Company Ltd Vs Lloyds Steel Industries Ltd. – Civil Appeal No. 3551 of 2006.

16. The Commission has examined this contention carefully with reference to the scheme of law for redressing the grievances of the consumers. The scheme of law under the Electricity Act, 2003, gives paramount importance to the protection of consumer interest. Sub-section (5) of Section 42 of the Act provides for establishment of a Consumer Grievances Redressal Forum by the licensee. The Consumer Grievances Redressal Forum has to function in accordance with the guidelines issued by the Commission by way of regulations. Sub-section (6) of Section 42 of the Act provides for establishment of an authority namely Electricity Ombudsman, who is empowered to settle the grievances of the consumers, who do not get their grievances redressed from Consumer Grievances Redressal Forum. Therefore the consumers who have grievances against the licensee, with special reference to the provisions in the Kerala Electricity Supply Code, 2014, and the KSERC (Standards of Performance of Distribution Licensees) Regulations, 2015, are expected to approach either the CGRF or the Electricity Ombudsman for redressal. When special statutory bodies are constituted for the redressal of grievances of the consumers, the Commission is not expected to entertain any such grievance. Further as per clause (f) of sub-section (1) of Section 86 of the Act the Commission has been empowered only to adjudicate upon the disputes between the licensees and the generating companies. The judgments quoted by KSEB Ltd do also support the contentions of KSEB Ltd in this regard. At the same time it has to be specifically noted that the Hon'ble APTEL or the Hon'ble High Court or the Hon'ble Supreme Court has not prevented the Commission from initiating proceedings under Section 142 of the Act. As already stated the Commission is the only authority empowered to take action under Section 142 of the Act. Therefore the grievances redressed by the CGRF under sub-section (5) of Section 42 of the Act and by the Electricity Ombudsman under sub-sections (6) and (7) of Section 42 of the Act are totally different from the petition under Section 142 of the Act. It has also been held by the Hon'ble Supreme Court in its judgment in Electric Supply and Transport Undertaking Vs Maharashtra Electricity Regulatory Commission (AIR 2015 SC 1224) that a public can

approach the Regulatory Commission to enforce the obligation of a distribution licensee under the Act.

17. The Assessing Officer is seen to have relied on the decision of the Hon'ble Supreme Court in Seetharam Mill case, to proceed against the petitioner for unauthorized additional load, treating it as unauthorized use of electricity. The judgment in Seetharam Mill case has been issued by the Hon'ble Supreme Court based on the provisions of the Electricity Act, 2003, and the regulations made by the Orissa State Electricity Regulatory Commission under the provisions of the Act. The issues in the State of Kerala have to be examined and decided in view of the provisions in the regulations issued by the KSERC. The regulations issued by the Orissa State Electricity Regulatory Commission have no applicability in Kerala. The Hon'ble High Court and the Hon'ble Supreme Court have the power to conduct judicial review on any statute or rule or regulation and to quash or modify or amend any of them. Even such highest judicial fora do also honour the statute or rule or regulation till it is quashed or modified or amended. The Hon'ble APTEL does also take decisions based on the regulations issued by the appropriate Electricity Regulatory Commissions. Therefore the statutory authorities such as the Assessing Officers or the Appellate Authority in Kerala are also bound to honour the regulations issued by KSERC and to take decisions in accordance with such regulations. If any person is aggrieved by the decision taken by the Assessing Officer or the Appellate Authority ignoring the provisions of the regulations issued by KSERC, it is for him to approach the Hon'ble High Court for appropriate remedies.
18. In the common judgment dated 23.08.2016, in Writ Appeal Nos. 1436/2016, 1448/2016 and 1450/2016, the Hon'ble High Court has clarified that the benefit of regulations 153 (15) in the Supply Code, 2014, can be availed by the appellants therein only if the following conditions are satisfied,-
- (i) The additional load should be in the same premises.
 - (ii) The use of additional load should be in the same tariff.
- Since both the above conditions are not satisfied by the appellants, the Hon'ble High Court had dismissed their appeals. But the said judgment clearly shows that the benefit of regulation 153 (15) of the Supply Code, 2014, can be availed if the above conditions are satisfied.
19. Section 126 and Section 127 are the statutory provisions to prevent unauthorized use of electricity by any consumer and thereby prevent financial loss to the licensees. Under Section 126 of the Act the Assessing Officer is empowered to assess to the best of his judgment the electricity charges payable by the accused consumer following the procedures prescribed in the said Section at a rate equal to twice the tariff applicable to the relevant category as specified in sub-section (5) of Section 126. As far as the domestic consumers in the State are concerned, the fixed charge is Rs.20/- per month for single phase connection and Rs.60/- per month for three phase connection irrespective of the connected load. Even if there is excess

connected load in the premises of a domestic consumer, he is paying the fixed charge at the specified rate irrespective of the connected load and the energy charge for his actual consumption at the rates specified in the Tariff Order. Therefore by addition of connected load in a domestic premises, the electricity charges realizable from the consumer do not change and therefore such additional connected load in domestic premises does not cause any financial loss to the licensee as per the terms and conditions of the present tariff order. That is why the Commission had consciously taken a decision not to penalize the domestic consumers for additional loads in their premises. The procedures suggested are mainly intended to regularize such additional load or to get them removed at the discretion of the licensee. If the consumer does not remove the additional load as directed by the licensee, the supply to the premises can be disconnected by the licensee. The Commission has subsequently noted that, when the above procedures as specified in sub-regulation (15) of Regulation 153 of the Supply Code, 2014 are applied to the consumers who are charged on connected load basis, the licensee is likely to incur financial loss. Therefore the Commission has, vide the Kerala Electricity Supply (Amendment) Code 2016 dated 11.01.2016, amended the provisions as given below.

(iv) in sub-regulation (15) of regulation 153, the words “except in the case of consumers billed on the basis of connected load” shall be added at the end.

Therefore the Commission is of the considered view that sub-regulation (15) of regulation 153 of the Kerala Electricity Supply Code, 2014, shall be applicable to unauthorized additional load in the same premises and same tariff till 04.02.2016 (date of publication of the Kerala Electricity Supply (Amendment) Code, 2016 in official Gazette) and the provisions thereof as amended by the Kerala Electricity Supply (Amendment) Code, 2016 will apply thereafter in respect of unauthorized additional load in the same premises and same tariff except in the case of consumers billed on the basis of connected load. All the statutory authorities are expected to honour and implement the regulations issued by the Commission in exercise of its statutory powers of subordinate legislation under various provisions in the Act.

20. Commission delivered an order dated 31.05.2016 in OP No. 06/2016 wherein the Commission has directed the Assessing Officer to take appropriate corrective action on the assessment order issued by him on 02.03.2016, since the action under Section 126 of the Act was initiated against the petitioner consumer, when Regulation 153 (15) of the Kerala Electricity Supply Code, 2014, before the amendment dated 04.02.2016, was in force. The KSERC (Kerala Electricity Supply Code) Amendment, 2016 came into force only on 04.02.2016 wherein the words “except in the case of consumers billed on the

basis of connected load” at the end is added to Regulation 153(15) of the Kerala Electricity Supply Code, 2014.

21. As per letter No. DB 13/LTSC/2012-13/ESSRR/36 dated 20.07.2012 of the Assistant Engineer, KSEB Ltd, Shornur, copy of which has been submitted by the petitioner along with the additional statement dated 19.10.2016, it can be seen that the KSEB Ltd had sanctioned a load of 30 kW to the petitioner. When the petitioner failed to avail power as per the sanctioned load, KSEB Ltd is seen to have realized the minimum demand charges Rs.2700/- (for two months at the rate of 45 / kW), in accordance with regulation 10 of the Supply Code, 2005. It may be true that the total connected load in the premises of the consumer at the time of giving connection might have been 13.236 kW. But that does not prevent the petitioner from adding further load up to 30 kW which is the limit sanctioned by KSEB Ltd.
22. As per the submission of the petitioner, she had submitted application for enhancement of connected load on 17.01.2014, 17.06.2014 and 17.12.2014. The AE, KSEB Ltd, Shornur had also collected fee for the application. The petitioner has submitted copies of the relevant bills. The claim of the petitioner in this regard has not been denied by the respondents. The second application dated 17.06.2014, was submitted after 01.04.2014, the date of coming into force of the Supply Code, 2014. Therefore the provisions of the Supply Code, 2014, will apply to the application of the petitioner dated 17.06.2014, for the enhancement of connected load. The regulation 99 of the Supply Code, 2014, deals with the procedures for enhancement of connected load / contract demand. In sub-regulation (2) of regulation 99 it has been specified that the licensee and applicant shall follow, *mutatis mutandis* the procedure and time lines as laid down in the regulations 77 to 83 of the Supply Code. In sub-regulation (7) it has been specified that the licensee shall issue order on the application for enhancement of load within 30 days from the date of its receipt and intimate the applicant whether or not the enhancement of load is sanctioned. In sub-regulation (8) it has been specified that, *“if the licensee does not intimate its decision on the application for the enhancement of load within the above period, sanction for enhancement of load or contract demand, as the case may be, shall be deemed to have been granted with effect from the 31st day of the date of submission of the application by the consumer”*. In view of the provisions in sub-regulation (8) the additional load of the 21kW applied by for the consumer as per her application dated 17.06.2014, should be deemed to have been sanctioned with effect from 18.07.2014.
23. The petitioner has alleged malafidies in the actions of the respondents and stated that the applications for enhancement of connected load were not processed due to unlawful reasons. It has also been alleged that the inspection by APTS and consequential actions under Section 126 of the Act were due to antipathy of the respondents towards the petitioner and her husband, who is the Area Secretary of “Laghu Udyog Bharathi” which is an All

India level organization of small scale industrialists. However the petitioner has not adduced any evidence in this regard to substantiate such allegations.

Order of the Commission:-

24. In view of the relevant provisions of the Supply Code and the facts as revealed from the documents and averments submitted, the Commission hereby arrives at the following decisions,-

- (i) In view of the statutory provisions, the relevant regulations and the case laws explained in paragraphs 11 to 19, the Commission has jurisdiction and duty to examine and decide the petition.
- (ii) The sanctioned load of the petitioner is 30 kW at the time of availing connection though the connected load was only 13.236 kW.
- (iii) The application dated 17.06.2014 submitted by the petitioner for enhancement of connected load shall be deemed to have been sanctioned with effect from 18.07.2014, in view of the provisions in sub-regulation (8) of regulation 99 of the Supply Code, 2014.
- (iv) The amount remitted as advance on 17.06.2014 shall be accounted towards the charges to be remitted if any by the consumer at the time of regularization of additional load or to be refunded with interest @ twice bank rate. The amount remitted as advance on 17.12.2014 with interest @ twice bank rate shall be refunded to the consumer.
- (v) The petitioner is directed to approach the concerned authorities under Section 126 and Section 127 of the Act for appropriate remedies based on the above decisions.
- (vi) The first respondent namely the Assistant Engineer, KSEB Ltd, Shornur, is eligible to get the protection under Section 168 of the Electricity Act, 2003, for their actions taken by him as Assessing Officer under Section 126 of the Act and therefore the Commission finds no reason to proceed against him under Section 142 of the Act.

Sd/-
S. Venugopal
Member (F)

Sd/-
K. Vikraman Nair
Member (E)

Sd/-
T.M. Manoharan
Chairman

Approved for issue,

Santhosh Kumar.K.B
Secretary