

Kerala State Electricity Regulatory Commission
Thiruvananthapuram

CP 8/2016

- Petitioner** - Shri. C.P. Mathew, Chelattu House.
Kothamangalam-686 691.
- Vs
- Respondents** - 1. M/s Atlas Gold Townships(India)
Pvt.Ltd.Near to Federal Bank,
VappalasseryP.O.Angamali, Ernakulam.
represented by its Executive Director.
2. The Deputy Chief Engineer, Electrical
Circle,KSEBLtd,VydyuthiBhavanam,
Pooapani Road, Perumbavoor-683 542
3. The Assistant Engineer, Electrical
Section,KSEBLtd,Kalady-683 574

CP 9/2016

- Petitioner** - Shri.Madhuraj, SanthaMandiram,
Behind Ayyappa Temple,Kondotty,
Malappuram.
- Vs
- Respondents** - 1. M/s Atlas Gold Townships(India)
Pvt.Ltd, Near to Federal Bank,
VappalasseryP.O.Angamali, Ernakulam.
represented by its Executive Director.
2. The Deputy Chief Engineer, Electrical
Circle, KSEBLtd, VydyuthiBhavanam,
Pooapani Road, Perumbavoor-683 542
3. The Assistant Engineer, Electrical
Section, KSEBLtd, Kalady-683 574

Common Order dated 26.04.2017

T. M. Manoharan, Chairman

1. Shri. C.P Mathew, Chelattu House, Kothamangalamhas, on 07.08.2016 filed Compliance Petition No. 8/2016 before the Commission,pointing out certain serious irregularities on the part of the respondents namely, the KSEB Ltd, the Assistant Engineer, KSEB Ltd, Electric Section, Kalady and the Atlas Gold Township India Private Limited (hereinafter referred to as Atlas Gold Township)

2. Shri.K.Madhuraj, SanthaMandiram, Behind Ayyappa Temple, Kondotty Malappuram has, on 08-08-2016 filed Compliance Petition No. 9/2016 before the Commission, pointing out similar serious irregularities on the part of the respondents namely, the KSEB Ltd, the Assistant Engineer, KSEB Ltd, Electric Section, Kalady and the Atlas Gold Township India Private Limited

Facts of the case

3. Shri. C.P Mathew and Shri. Madhuraj have alleged that Atlas Gold Township is indulging in illegal sale of electricity to various apartments and commercial establishments functioning in the multi-storeyed building namely Atlas Celestial Park (hereinafter referred to as Atlas Celestial Park), after availing electricity by way of a high tension commercial connection from KSEB Ltd. They requested the Commission to take appropriate action including disconnection of the illegally obtained HT Commercial connection. The Commission had issued notice to the respondents and had obtained written statements of defence from the respondents. The Commission has also obtained copies of relevant records from the concerned authorities, such as Chief Electrical Inspector. The Commission conducted a hearing on 18.10.2016, in the above petitions. The petitioners Sri.C.P.Mathew and Sri.K.Madhuraj presented their case. Adv. A. Ramesh Kumar, appeared for the first respondent, M/s. ATLAS Gold Townships (India) Private Limited. Sri.P.A.NarayanaSwamy, Deputy CE, Electrical Circle, Perumbavoor, Smt.Asha Thomas, Assistant Engineer, Electrical Section, Kalady and Sri. N.P. Vijayakumar, Electrical Inspector representing Chief Electrical Inspector, Government of Kerala had also participated in the hearing.
4. In the hearing conducted on 18.10.2016, the following submissions were made before the Commission.
 - (1) Sri.K.Madhuraj explained the grievance of the apartment owners in detail. He submitted that the first respondent has disconnected the electric connection to all the apartments owned by different individuals who have not entered into a lease agreement with the first respondent. It is also submitted that even though eight numbers of separate applications were submitted to the Assistant Engineer, Electrical Section, Kalady, till date they have not been provided with electric supply to their apartments in domestic tariff.
 - (2) The second petitioner Sri.C.P. Mathew submitted that the original High Tension connection was availed by the first respondent by illegally adding the connected load of the individual apartments.
 - (3) Deputy Chief Engineer, Electrical Circle, Perumbavoor submitted that HT Commercial connection was given to M/s. ATLAS Township (India) Private Limited during 2014, after getting clearance from the Electrical Inspectorate. The HT supply was given through two numbers of 750 kVA

transformers. Supply from the secondary of the transformer has been extended through the distribution boxes to the distribution panels installed at various floors of the building. From the distribution panel supply to various apartments are extended. Now eight numbers of applications have been received at Electrical Section, Kalady requesting individual domestic connection to the respective apartments owned by the applicants. The Assistant Engineer, Electrical Section, Kalady has intimated the applicants that supply can be provided only as per the provision of Regulation 49 (1) (c), (2), (4) and (5) of Supply Code, 2014 and also on submission of all recorded documents stipulated in Supply Code, 2014. It is also submitted that LT energy meters are installed in distribution panels from where supply to various apartments are extended.

- (4) On enquiry by the Chairman, KSERC regarding the necessity of providing LT energy meters in an installation, where HT supply is being given by the licensee, the Deputy CE replied that he was not sure of the reasons and remarked that it might have been provided for energy accounting and auditing.
- (5) The petitioners submitted the following documents in support of their claim for individual ownership of the apartments.
 - a. Copy of the sale deed relating to the purchase of apartment by Sri.K.Madhuraj.
 - b. Copy of the special notice issued by Angamaly Municipality to Sri.K.Madhuraj.
 - c. Copy of the certificate R 4- 10590/14 issued by Angamaly Municipality.
- (6) The counsel for the first respondent submitted that there existed various cases before different fora regarding the disputes between the apartment owners and M/s. ATLAS Gold Township (India) Limited. Now the Hon'ble High Court of Kerala vide its judgment dated 10.03.2016 in WP (c) 27140/2015 and 6548/2016 has ordered to the Chief Electrical Inspector to inspect the building and suggest the measures to be taken to give separate electric connection at LT 1A tariff to the apartment owners and the apartment owners shall do the needful by way of incurring the incidental cost and expenses that are necessary for providing the electric connection at LT 1A rates to the apartment including the cost of installation of separate meters required for electric connection. He has requested a further short period for submitting his detailed version on the petition.
- (7) Sri.N.P.Vijayakumar, Electrical Inspector who had, at the request of the Commission, appeared representing the Chief Electrical Inspector submitted that a fresh scheme for LT metering for the individual tenants at the premises was submitted before the Electrical Inspectorate on 11.05.2015 and scheme approval was given on 22.07.2015. But the

completion report has not yet been submitted in their office. On receipt of completion report as per the new scheme proposal sanctioned on 22.07.2015, the Electrical Inspectorate will give sanction for energisation after inspecting the installations.

- (8) Deputy Chief Engineer, Electrical Circle, Perumbavoor, further submitted that no work has been carried out at the premises as per the scheme approval dated 22.07.2015 of the Electrical Inspectorate.
- (9) The Chairman reminded the licensee and the first respondent that, as per the Government policy electrical connection has to be provided for all households in the State. As per Section 43 of the Electricity Act, 2003 electrical connection shall be given within 30 days from the date of application. The reason for the delay in effecting the electrical connection to the eight numbers of applicants by the Assistant Engineer, Electrical Section, Kalady has to be properly explained by KSEB Ltd in the counter statement. It was also directed that certified copies of the following documents shall be submitted before the Commission for detailed examination, which should be available in the office of the Assistant Engineer, Electrical Section, Kalady, Assistant Executive Engineer, Electrical Sub Division, Kalady, Executive Engineer, Electrical Division, Angamaly and Deputy Chief Engineer, Electrical Circle, Perumbavoor.
 - 1) Files relating to the granting of connection to M/s. Atlas Gold Township (India) Private Limited.
 - 2) Files relating to the applications received from the owners of the apartments in the Atlas Celestial Park.
 - 3) Files relating to the petitions/complaints received on the subject matter.
- (10) The Commission also directed that certified copy of the files regarding granting of approval for the scheme and granting of energisation sanction shall be forwarded to the Commission, which are available in the office of the Electrical Inspector, Ernakulum and in the office of the Chief Electrical Inspector, Thiruvananthapuram.
- (11) The Commission further directed that copies of electricity bills issued to the consumer may also be obtained from the Special Officer (Revenue), KSEB Ltd., Pattom. The respondents were allowed to submit their written statements on or before 28.10.2016.

5. The Deputy Chief Engineer, Electrical Circle, Perumbavoor has, as per his statement dated 26.10.2016, submitted as follows,-

- (1) Sri.Harikrishnan.G, Director, M/s. Atlas Gold Township (P) Ltd., had filed an application for HT service connection to their multipurpose township during 12/2011 with all necessary documents. Total connected load applied by the applicant was 1470.95 kW+ 600kVA for

the buildings No.XIV-188 A,(1) A2 and A3. After processing the file and completing all formalities service connection has been effected to the multipurpose high rise township under HT IV commercial tariff having a contract demand of 250 kVA with connected load of 1470 kW as approved by Chief Electrical Inspector vide their energisation approval dated 24.09.2014. Since the building is a high rise multipurpose township, highest tariff among the purposes will be applicable in such case, hence HT supply was provided in commercial tariff.

- (2) From January, 2016 onwards Electrical Circle Office had received complaints from the Secretary, Apartment Owners Association and from another individual Sri.Greenol regarding illegal sale of electricity taking place in M/s. Atlas Gold Township (India) Pvt Ltd and they had enquired about the procedures for getting individual domestic service connection to the apartments owned by them in the said building. They had also approached the Hon'ble CGRF (Central Region) Ernakulam as well as Hon'ble High Court of Kerala seeking remedy to their issues. On receipt of such complaints and Electrical Circle Office had examined the whole issue and confirmed that effecting of service connection in the commercial category as applied by the applicant is in order and no abnormalities existing. The service connection was effected after obtaining all the required documents and after completing all formalities applicable to high rise buildings.
- (3) Since the apartment owners demanded for separate LT connections to their apartments, the office of the Deputy Chief Engineer had explained the procedure to the complainant that HT agreement No.ECP/HT-686/2014-15 dated 31.10.2014 has been still in force and further alteration, if any, in the agreement can be effected only on request of the HT consumer or after termination of the said agreement. The original registered consumer or his authorized representative with documents to prove the authority shall submit application before KSEB Ltd, to provide independent connection to different purposes/ premises and to regularize the connected load and contract demand of existing HT service connection. For this purpose energisation sanction order from Electrical Inspectorate for approved drawing showing the independent beneficiaries is essential. Each individual beneficiary shall be metered separately with meters accessible to the licensee and the same shall be shown in the "As fitted" drawing. Individual beneficiaries should have independent ownership certificate for providing independent LT connections and the total load of the LT connections should be connected from independent / transformer / transformers.

- (4) Meanwhile on 10.03.2016 the Hon'ble High Court of Kerala has passed its Judgment in WP (C) 27140/2015 and 6548/2016 filed by some apartment owners requesting for individual service connections to their apartments with certain directions to the respondents via the builder owner of M/s. Atlas Gold Township, Chief Electrical Inspector and KSEB Ltd, etc for taking some measures to solve the grievance of the petitioners. Accordingly, the General Manager, M/s. Atlas Gold Townships (India) Pvt Ltd., vide his letter dated 09.05.2016, requested Electrical Circle Office to take necessary steps to modify the existing agreement No.ECP/ HT-686/ 2014-15/ dated 31.10.2014 by incorporating the name of petitioners in WP (C) No. 27140/2015 and 6548/2016 and other similarly situated apartment owners within the building so as to provide electricity to them.
- (5) The Hon'ble High Court Order specifically directed the third respondent (ie. M/s. Atlas Gold Townships (India) Pvt Ltd to take steps to provide electricity to the petitioners and other similarly situated apartment owners within the building at the domestic tariff rate. The Hon'ble High Court also directed the Chief Electrical Inspector to "*inspect the building and suggest the measures to be taken to ensure that separate electric connection at LT- 1A tariff is available to the apartment owners*".
- (6) As per Regulation 15(4) (i) & (ii) of Kerala Electricity Supply Code, 2014, approval from Electrical Inspector shall be obtained for electrical installation in the case of HT service and multistoried building. Deputy Chief Engineer is the agreement authority for HT service connection and the Assistant Engineer, Electrical Section, Kalady is the agreement authority for providing LT domestic service connection to the premise, hence incorporating the name of individual beneficiaries in the present HT agreement is not essential. The modification required in the HT agreement is in the contract demand and connected load which can be ascertained only based on the sanctioned drawings from the Electrical Inspector.
- (7) Based on the above Electrical Circle Office requested the building owner to approach the Chief Electrical Inspector with revised scheme with separate metering (accessible to the licensee) for individual beneficiaries feeding from an independent transformer. The matter was already intimated to the Chief Electrical Inspector, Thiruvananthapuram from Electrical Circle Office vide letter dated 10.05.2016. Also intimated the petitioners that on receipt of the sanction from the Chief Electrical Inspector along with his application in the prescribed format, the Deputy Chief Engineer will make necessary modification / termination of the existing HT agreement (if all the connections can be

converted in to LT) and necessary direction will be issued to the Assistant Engineer concerned to effect HT domestic connection to individual beneficiaries based on the individual ownership certificate and LT connections at respective tariff to other facilities.

(8) M/s. Atlas Gold Township Pvt. Ltd has submitted revised set of drawings approved by the Chief Electrical Inspector, incorporating metering provisions to each of the individual apartments in the respective floors. The builder have to complete the alterations in the existing installation, and obtain energisation sanction from the Electrical Inspectorate for providing individual LT supply in the premises of the complainants and the similarly situated other apartment owners. Only after completing these formalities, Section Office, Kalady can provide individual LT electric connections under domestic tariff to the premises.

6. The General Manager, Atlas Gold Township (India) Pvt Ltd., has, as per his statement dated 26.10.2016, submitted that,-

(1) After completion of construction of the multi-storeyed building, individual apartments were handed over to the petitioners during the year 2012. The concept of the above apartment was to run as apartment hotel from the very beginning of the project. The same was agreeable for all individual apartment owners, including the petitioners. In the above circumstance electricity supply was taken to the above apartment in HT commercial (IV) category with consumer code No.8/7135.

(2) The petitioners herein and other apartment owners were using electricity in HT commercial tariff from 2012 to 2015. Later, when electricity charges were not paid by the individual apartment owners, including the petitioners, electricity supply to the apartment was disconnected by the KSEB.

(3) The following litigations are pending in the above matter before various Courts, Tribunal, including before the Hon'ble High Court of Kerala.

a) WP (C)No.27140/2015- Pending before the Hon'ble High Court of Kerala.

b) WP (C) No. 6548/2016- Pending before the Hon'ble High Court of Kerala.

c) WP (C) No.32153/2016- Pending before the Hon'ble High Court of Kerala.

d) O.S. No.216/2015- Pending before the Munsiff Court Aluva.

e) Appeal No.928/2015 pending before the Hon'ble Tribunal forLocalSelfGovernmentInstitutions, Thiruvananthapuram.

- (4) It was also brought to the notice of the Commission that, the petitioners have also filed the WP No. 27140/2015 and WP No.6548/2016, with prayers to direct the respondents therein to give separate electric supply to their apartments in the multi-storeyed building namely Atlas Celestial Park which is situated in Angamali Village in Ward No. XIV of Angamali Municipality. The Hon'ble High Court had, in the common interim order dated 10.03.2016, in the above WPs, directed as follows,-
- i. The 3rd respondent in W.P.(C).No. 27140 of 2015 shall take immediate steps to modify the existing agreement between it and the Kerala State Electricity Board, so as to ensure that electric supply at LT-1A tariff is made available to the petitioners and other similarly situated apartment owners within the building in question.*
 - ii. In the modified agreement, the names of the apartment owners who require connection at LT 1A rates shall be separately indicated in a schedule and the said apartment owners shall sign as beneficiaries in the said agreement.*
 - iii. On the necessary agreement being entered into, the same shall be forwarded by the Electricity Board to the Electrical inspectorate for the purpose of their approval to the arrangement contemplated under the agreement.*
 - iv. The Chief Electrical Inspector, who is the 3rd respondent in W.P.(C).No. 6548 of 2016 shall, forthwith on receipt of intimation from the Electricity Board and, at any rate within a period of one month, inspect the building and suggest the measures to be taken to ensure that separate electric connection at LT-1A tariff is made available to the apartment owners, whose names are mentioned in the modified agreement referred to above.*
 - v. On receipt of the necessary sanction from the Chief Electrical Inspector, the petitioners in these writ petitions, as also the persons who are named in the agreement, who are desirous of getting a connection at LT-1A rates, shall do the needful by way of incurring the incidental costs and expenses that are necessary for providing the electrical connection at LT-1A rates to their apartments. They shall also bear the cost of installation of the separate meters required in connection with the aforementioned arrangement.”*

A copy of the interim order dated 10.03.2016, in WP (C)6548/2016 and WP (C)27140/2015 was produced by Atlas Gold Township, stating that the direction issued by the Hon'ble High Court in the said interim order governs the field and binding on all the parties to the litigation and therefore the petition is not maintainable.

- (5) The petitioners, Kerala State Electricity Board and M/s. Atlas Gold Townships (India) Pvt. Ltd are parties to the litigation pending before the Hon'ble High Court of Kerala, in the very same matter, M/s. Atlas Gold Townships (India) Pvt. Ltd is bound by the direction issued by the Hon'ble High Court of Kerala in those writ petitions.
- (6) The petitioners herein approached the Hon'ble High Court of Kerala by filing WP (C) No.27140/2015 and 6548/2016, with the very same prayer in this petition. Therefore, present petition in the very same matter is not maintainable before the Regulatory Commission.
- (7) After detailed hearing in the above two writ petitions, the Hon'ble High Court issued a common interim order dated 10.03.2016 directing the parties in that writ petitions to take steps for effecting individual electricity connection to the apartment owners. The direction issued by the Hon'ble High Court in the order governs the field and binding on all the parties to this litigation.
- (8) Considering the request of some group of apartment owners for getting separate electric connection, M/s. Atlas Gold Townships (India) Pvt. Ltd prepared another scheme for installation of separate connection to each consumers and that scheme was got approved from the Chief Electrical Inspector, as per order No.B3-12368/15/CEI dated 22.07.2015.
- (9) All apartment owners are not agreeable for separate individual connection. The majority of apartment owners are of the opinion that they have to continue in HT commercial (IV) tariff. The individual apartment owners, who were objected the individual connection in LT 1A tariff approached the Hon'ble High Court and got themselves impleaded in WP (C) No.6548/2016. Therefore, they are also necessary parties to this litigation.
- (10) In compliance with the High Court interim order, M/s. Atlas Gold Townships (India) Pvt. Ltd, by e-mail dated 30.03.2016 informed the individual apartment owners about the scheme approved by the Chief Electrical Inspector on 22.07.2015 and requested their willingness to implement the same.
- (11) The individual apartment owners were also approached M/s. Atlas Gold Townships (India) Pvt. Ltd for separate connection in LT 1A tariff. Therefore, in compliance with the High Court interim order, M/s. Atlas Gold Townships (India) Pvt. Ltd sent a request dated 09.05.2016 to the Deputy Chief Engineer to modify the existing agreement so as to implement the approved scheme dated 22.07.2015. Along with the above letter M/s. Atlas Gold Townships (India) Pvt. Ltd forwarded the details of individual owners, who want to obtain separate connection in LT 1A tariff. In reply to the request, the Deputy Chief Engineer by letter dated 10.02.2016 informed that it is not essential to modify the existing agreement incorporating the names of the individual beneficiaries in

the existing HT agreement as LT agreement will be executed between individual owners and the Assistant Engineer concerned.

(12) In compliance with the High Court interim order M/s. Atlas Gold Townships (India) Pvt. Ltd invited quotations for implementation of the scheme dated 22.07.2015, by publishing the same in MalayalaManorama daily dated 21.04.2016. Three tenders were submitted. On receipt of the above tenders M/s. Atlas Gold Townships (India) Pvt. Ltd informed the same to the individual owners, including the petitioners and requested them to take further steps in the matter. In the light of the interim High Court order further steps have to be taken by the petitioners and the individual apartment owners. Thus it is clear that there is no lapse on the part of M/s. Atlas Gold Townships (India) Pvt. Ltd in the above matter. It is the petitioner who violated the High Court interim order dated 10.03.2016.

(13) As long as the above writ petitions are pending before the Hon'ble High Court of Kerala and their interim order is in force, without complying with the direction issued by the Hon'ble High Court of Kerala, the petitioners have no right to approach the Commission with the very same prayer.

(14) The allegation in the petition that M/s. Atlas Gold Townships (India) Pvt. Ltd is selling electricity to other apartment owners is incorrect. M/s. Atlas Gold Townships (India) Pvt. Ltd is not selling electricity. The apartment owners, who are paying the electricity charges are getting the electricity. The petitioners and other, who are not willing to pay the electricity charges is not getting electricity.

(15) For the reasons discussed above, the Commission may be pleased to dismiss the above petition with cost.

7. Sri.SajiSebastain, Secretary, Atlas Celestial Park Owner's Association has submitted an affidavit dated 21.10.2016 along with a written statement. He has requested to implead him as the fourth respondent in this petition. He has submitted that,-

(1) Atlas Celestial Park Owner's Association is formed in the year 2015 with more than 124 members who are the owners of the Atlas Celestial Park. The construction of the Apartments was completed by the builder M/s. Atlas Gold Township (India) Pvt. Ltd and handing over was completed by the year 2015. The building was constructed as an integrated hotel apartments under the cover of permit obtained from Angamaly Municipality under the category A-1 Residential Occupancy consisting of 8 floors and occupancy certificate was also issued.

- (2) The ground floor consists of Restaurant, Hotel Lobby, Office Spaces and Coffee Shop. The Hotel is being run under an agreement between the Atlas Holidays, which run the hotel, and the individual owners of the apartments on a profit sharing basis as joint venture. In view of running the Hotel Project electric connection to the builder was obtained under High Tension Category under a single consumer M/s. Atlas Gold Township (India) Pvt Ltd., Nedumbassery.
- (3) Subsequently when some of the owners found that giving the apartments on rent individually is more profitable, they retracted from the original understanding and began to let out their apartments for rent individually. They were all utilizing the High Tension electric connection till 2015, October. However, some of the owners refused to pay their share of electricity charges.
- (4) The proportionate electricity charges of individual apartments was collected by the association, the 4th additional respondent herein from the apartment owners as well as from the commercial spaces and remitted to the KSEB.
- (5) During 2015, October the petitioners herein and some of the owners refused to pay their share of electricity charges demanding installation of individual electric connections under LT-1A tariff. Subsequently these person including the petitioner herein approached the Hon'ble High Court of Kerala with the same prayer. The Honble High Court delivered its judgment on 10th day of March, 2016 in WP (C) No. 27140/2015 and 6548/2016 that, there are certain occupants of the building who are desirous of continuing with the existing electric connection at commercial tariff and that only the petitioners herein are interested in getting a connection at LT-1A tariff. The Hon'ble High Court also issued directions to the 3rd respondent, the builder to take immediate steps to modify the existing agreement between it and the KSEB so as to ensure that electric supply at LT-1A tariff is made available to the petitioners and other similarly situated apartment owners within the building in question. The Hon'ble High Court also directed the apartment owners who required connection on LT-1A rate to sign as beneficiaries in the modified agreement and incur the incidental costs and expenses and bare the cost of installation of separate meters required.
- (6) In pursuance of the directions of the Hon'ble High Court the builder sought for the willingness of those individual apartment owners who need individual electric connection under LT-1A tariff during the month of March itself. The builder has already obtained necessary approvals from the office of the Chief Electrical Inspector.
- (7) Most of the members of the Atlas Celestial Park Owner's Association are desirous of continuing with the existing HT electric connection at

commercial tariff since they want to continue with the existing arrangements with M/s. Atlas Holidays Pvt Ltd.

(8) Since the Hon'ble High Court of Kerala has already considered the matter and issued specific orders to protect the interest of the petitioners interested in getting LT-1A tariff as well as those who are desirous of continuing electric connection with the existing HT tariff to their apartments, the prayer of the petitioner to disconnect the HT commercial connection given to Atlas Celestial Park Apartment Building with consumer number LCN:8/7135, may be dismissed.

8. As per the direction of the Commission, the Compliance Examiner of the Commission inspected the impugned building namely, Atlas Celestial Park. The report dated 20.10.2016, submitted by the Compliance Examiner does also show that Sri.G.Harikrishnan, Director, M/s. Atlas Gold Township (India) Pvt. Ltd., had availed an High Tension Commercial connection, under Electrical Section, Kalady, having a contract demand of 250 kVA with connected load of 1470 kW after executing an HT agreement on 31.10.2014 with Deputy Chief Engineer, Electrical Circle, Perumbavoor. In the ground floor of the said multipurpose building there is a reception area, space for parking and one restaurant and above the ground floor there are seven floors consisting of 208 residential apartments. Two transformers having 750kVA capacity have been installed in an electrical room at the ground floor. From the secondary of the transformers, supply of electricity is extended through distribution boxes to the distribution panels installed at various floors of the building. Low Tension energy meters are installed in the distributing panels from where supply to various apartments is extended.
9. The Commission has also perused the following documents in the light of the submissions made in the public hearing dated 18.10.2016 and in writing,-
- (a) Statement dated 26.10.2016, filed by the Deputy Chief Engineer, Electrical Circle, Perumbavoor, with copy of the mahazer dated 23.03.2016, prepared by the Anti-Power Theft Squad after inspecting the impugned premises in Atlas Celestial Park, in the presence of Assistant Engineer, Electrical Section, Kalady and the other documents enclosed therein.
 - (b) Objection dated 26.10.2016, filed by Shri. Jose Varghese, General Manager, representing Atlas Gold Township India Private Limited, with documents enclosed therein.
 - (c) The affidavit and written statement dated 21.10.2016 filed by Shri. Saji Sebastian, Secretary, Atlas Celestial Park Owners Association, with documents enclosed therein.
 - (d) Statement filed by Shri.K.Madhuraj, President, Atlas Celestial Park Apartment Owners Association with the following documents,-
 - (i) Copy of the receipt dated 05.10.2015 for residential tax paid to Angamali Municipality;

- (ii) Certificate No.R9-12683/2015 dated 28.12.2015, issued by Angamali Municipality, stating that Shri.K.Madhuraj had remitted taxes in respect of apartment No.ACP 428 and Door No.XIV/188-A 124;
 - (iii) Page No. 17, the description of the apartment No.ACP 428 and Door No.XIV/188-A 124 purchased by Shri.K.Madhuraj as per registered document;
 - (iv) Copy of the order dated 07.04.2015 issued by the Court in IA No.712 / 2015 in suit No.216/2015, restraining Atlas Gold Township India Ltd from doing anything to obstruct the apartment owners from using the common amenities; and
 - (v) Copy of the order dated 26.07.2015 issued by the Court in IA No.1299 /2015 in suit No.430/2015, restraining Atlas Gold Township India Ltd from doing anything to obstruct the apartment owners from using the common areas and the areas provided for the common enjoyment.
- (e) Petition dated 13.06.2016 submitted by one Shri. Greenol.K.B, who had applied for individual electric connection to his apartment in Atlas Celestial Park.
- (f) Petition received on 25.10.2016 from Shri. Greenol.K.B with copy of letter No.GB2/Complaint-Atlas/2016-17/2259 dated 30.04.2016.
- (g) Submission dated 01.11.2016 of Shri. K.Madhuraj in reply to the statements of the Deputy Chief Engineer, Electrical Circle, Perumbavoor and the Atlas Gold Township.
- (h) File No.ECP/GB2/T2/ATLAS/2016-17/2562dated22-10-2016 of the office of the Deputy Chief Engineer, Electrical Circle, Perumbavoor.
- (i) File No.GB/KSERC/Atlas/16-17/81 dated 25-10-2016 of the Electrical Section, Kalady.
10. Shri. K. Madhuraj, the petitioner in CP No. 9/2016 has filed interim application No.3413/2017 in Writ Petition No.6548/2016 before the Hon'ble High Court. In the said interim application, the petitioner has prayed for a direction to this Commission to pass final orders stating that the Commission has not passed final orders in CP No. 8/2016 and CP No. 9/2016.

Analysis and decision

11. The Commission has examined the issues involved in these cases with reference to the relevant statutory provisions, the regulations and the facts. From the records and statements submitted before the Commission it is evident that there are several stakeholders in these cases. They are the following independent juridical or individual persons,-
- (i) Atlas Gold Township India Private Limited, who is the builder of the multi-storeyed building namely Atlas Celestial Park, NSS Junction, Nayathode, Nedumbassery.

- (ii) Atlas Celestial Park Apartment Owners Association with Register No.EKM/TC/885/2014 represented by its President Shri. Madhuraj, the petitioner in Writ Petition No.27140/2015.
- (iii) Atlas Celestial Park Owners Association with Register No.EKM/TC/70/2015 dated 28.01.2015 represented by its Secretary Shri. SajiSebastian, aged 43, S/o Devassy.
- (iv) Atlas Holidays Private Limited which is the company which runs hotel in Atlas Celestial Park after having entered into an arrangement with most of the members of Atlas Celestial Park Owners Association. (as per the statement dated 21.10.2016 submitted by Shri. Saji Sebastian, Secretary, Atlas Celestial Park Owners Association)
- (v) Atlas Airport Hotel which is one apartment hotel functioning in the multi-storeyed building namely Atlas Celestial Park (as per the enquiry report dated 20.10.2016, submitted by the Compliance Examiner of the Commission).
- (vi) Hotel Royal Castle which is another apartment hotel functioning in the multi-storeyed building namely Atlas Celestial Park (as per the enquiry report dated 20.10.2016, submitted by the Compliance Examiner of the Commission).
- (vii) Individual owners of the 208 apartments.
- (viii) The person in charge of the office space and common services such as operation of lift, pumping of water, maintenance of common lights and such other services.

12. In this regard it has to be specifically noted and appreciated that, supply of electricity has become a statutory right of every citizen of our country after the enactment of Electricity Act, 2003. As per Section 6 of the Electricity Act, 2003, it is the joint responsibility of the Central and State Governments, to supply electricity to all areas including village and hamlet. Section 6 of the Act is quoted hereunder.

“6. Joint responsibility of State Government and Central Government in rural electrification.- The concerned State Government and the Central Government shall jointly endeavour to provide access to electricity to all areas including village and hamlets through rural electricity infrastructure and electrification of households.”

The Act provides de-licensing generation, licensing of transmission and distribution and trading, non-discriminatory open access to transmission system, to generators, licensees and consumers, promotion of competition, rationalization of tariff, transparent policies and procedures for determination of tariff, protection of consumer interests and supply of electricity to all areas. The entire scheme of law in the Act is intended for providing 24 x 7 power at affordable rates to all citizens of the country. The Central and State Governments have launched various projects and programmes for rural electrification. Kerala has a prestigious and commendable track record in

electrifying households. Out of the total electric connection of about 120 lakh in Kerala, about 90 lakh connection are domestic connections. Government of Kerala is implementing the ambitious programme for 100% electrification. Government of India and Government of Kerala have also directed the licensees and the State Electricity Regulatory Commission to simplify the procedures and processes for getting electric connection and to insist only on two documents for getting connection. The denial or delay in giving electric connection to the petitioners has to be evaluated in the back ground of the statutory provisions, the policies, the programmes and the facts explained in previous paragraphs and in subsequent paragraphs.

13. As per Section 42 and Section 43 of the Act, every distribution licensee has a statutory duty to supply electricity to the owner or occupier of any premises within 30 days after the receipt of application for electric supply. Sub-section (1) of Section 42 and Section 43 of the Act are quoted hereunder,-

“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.”

“43. Duty to supply on request.- (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply :

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

14. The Commission has issued the Kerala Electricity Supply Code, 2014, in exercise of its power under Section 50 of the Act. The Supply Code came into force with effect from 01.04.2014 and it repealed the Kerala Electricity Supply Code, 2005. The regulations 27 and 29 of the Supply Code reiterates the obligation of the licensee to supply electricity on request within one month from the date of application, provided the supply of electricity is technically feasible and the applicant bears the expenditure for providing supply as stipulated in Section 46 of the Act. Regulation 32 of the Supply Code provides for the recovery of reasonable expenditure as stipulated in Section 46 of the Act. In order to ensure that the expenditure realized by the licensee is reasonable, it has been stipulated in sub-regulation (2) of regulation 32 that the expenditure charged by the licensee shall be based on the cost data approved by the Commission and published by the licensee. Regulation 33 of the Supply Code provides for approval of cost data by the Commission. In the case of multi-storeyed residential / commercial complex, the builder has to construct, as per the scheme approved by the Chief Electrical Inspector, the internal distribution system at his cost, which he realizes from the individual apartment owners by way of cost of electrification of the apartment or as embedded cost of the apartment.
15. Section 55 of the Act stipulates the it is the duty of the license to install correct meter in accordance with the regulations issued by the Central Electricity Authority and that the licensee may require the consumer to give him security for the price of meter and the rent for meter, provided the consumer elects to purchase the meter. Regulation 34 of the Supply Code does also reiterate the above provisions to the effect that the licensee shall provide meter to the consumer. Regulation 34 is quoted hereunder.
- “34. Meter to be provided by the licensee.- The licensee shall provide the meter to the consumer and may require the consumer to give the licensee, security for the price of meter and enter into an agreement for the payment of the hire charge thereof unless the consumer elects to purchase the meter.”*
16. There are and were large number of instances wherein the builders / developers of residential apartment complexes did not, deliberately or otherwise, develop proper internal distribution system for supply of electricity within such residential complexes and consequently the apartment owners were harassed by the builders / developers without giving proper electric connections in time. In such cases, the apartment owners were compelled to depend on temporary connections from KSEB Ltd at exorbitant rate or on diesel generators at prohibitive cost of generation. The individual apartmentowners in a multi-storeyed building complex cannot develop separate internal distribution system for each connection, since it is not

possible technically and financially. Individual apartment owners cannot drill or undertake any structural alterations in the multi-storeyed buildings to make conduits for laying cables for distribution of electricity. Such works including drilling, if any, done without due consideration of the structural designs of the building, would be detrimental to the strength and stability of the entire multi-storeyed building. Further the structural design would be known only to the builder / developer. Therefore the internal distribution system for the electric connections in a multi-storeyed apartment complex has to be well planned and well designed in advance according to the standards and specifications as stipulated by the Central Electricity Authority. Chief Electrical Inspector (CEI) / Electrical Inspector (EI) are the authorities for implementation of the regulations issued by CEA specifying the standards and specifications. Unless the scheme for the internal distribution is planned and got approved by the CEI / EI and unless such approved schemes are executed strictly in accordance with the regulations issued by the CEA and the scheme approved by the CEI / EI, the apartment owners will be put to irreparable damage and difficulties, since no individual apartment owner can provide for the following,-

- (i) Proper and safe place to install transformers;
- (ii) Proper and safe conduits and distribution system for carrying electricity from the transformer to the individual apartments;
- (iii) Secured and accessible place for installation of meters;
- (iv) Proper and safe installation of generators; and
- (v) Electrical installations required for common services such as lift, pumping of water, pumping of sewage and waste water.

Several such issues, wherein the individual apartment owners were harassed and put to difficulties, were brought to the notice of the Commission, by the consumers as well as officers of the licensees, while formulating the Supply Code, 2014.

17. It was in view of the above facts the Commission had taken specific safeguards against such probable irregular practices, by incorporating special provisions relating to multi-storeyed buildings in Regulation 49 of Supply Code, 2014, which is quoted hereunder.

“49. Electricity connection to high rise building, colony and to residential, commercial or industrial complex.- (1) The expenditure for modification, upgradation and uprating of the distribution system of the licensee executed, if any, exclusively for giving connection shall be realised from the applicants in the following cases:-

- (a) colony developed by development authority or private builder or promoter or developer with a total load demand more than one megawatt (MW);*
- (b) domestic or commercial or industrial complex with multiple consumers with a total load demand more than one megawatt (MW);*
- (c) high rise buildings, irrespective of the load demand;*

- (d) a single consumer with a load demand above one MW.
- (2) The total connected load of such colony or residential complex or commercial complex or high rise building shall, for the purpose of this regulation, be the connected load computed as per the norms approved by the Commission, on the basis of the area constructed or the load applied for whichever is higher:
- (3) The connected load of the industrial complex shall, for the purpose of this regulation, be the total connected load as per the scheme of electrification approved by the Electrical Inspector.
- (4) The development authority or the promoter or the builder or the developer or any other person who constructs a colony or a residential complex or a commercial complex or an industrial complex or a high rise building shall prepare and obtain approval from the Electrical Inspector, a detailed scheme of electrification of the entire colony or complex or high rise building, with all necessary equipment namely transformer, ring main unit (RMU) etc., and shall submit the same to the licensee along with application for service connection.
- (5) The development authority or the promoter or the builder or the developer or such other person, as the case may be, who constructs such colony or complex or high rise building under the clauses (a), (b) and (c) of subregulation (1) above, shall, at his cost, construct the required internal distribution network, including the service line, transformer, switchgear etc., as per the detailed scheme approved by the Electrical Inspector, for receiving power from the licensee and for distributing it and shall handover such internal distribution network up to and including the metering point to the licensee before commencement of supply of electricity.
- (6) The security deposit and other charges if any payable by the individual consumer therein shall be borne by each of them at the time of applying for separate electricity connection.
- (7) In the case of colony or residential complex or commercial complex or industrial complex except high rise building, with total load demand of and below one megawatt (MW), the following conditions shall be applicable:-
- (a) the licensee shall bear the expenditure for modification or upgradation or uprating of the distribution system;
 - (b) the responsibility for construction of the required internal distribution network, including the service line, switchgear etc. for receiving power from the licensee and distributing it, shall be that of the authority or promoter or builder or developer or any other person who constructs such complex;
 - (c) the security deposits and other charges if any payable by the consumer shall be borne individually by each applicant at the time of applying for electricity connection.

(8) If the authority or promoter or builder or developer or any other person submits an application for single point supply, the same shall be processed as per the regulations for single point supply under regulation 56 and such other relevant provisions in the Code.”

18. As per Regulation 54 of the Supply Code, it is the duty of the consumer to provide space for the installation of service line, meter and other equipment up to the point of supply.

“54.Space for installation of service line, meter and other equipment.-*The consumer shall provide free of charge, the space of requisite dimensions at convenient location as mutually agreed between the consumer and the licensee, for erection and installation of transformer, switch gear, meter, other equipment and that part of service line within his premises, up to the point of supply.*

Therefore, the construction of internal distribution network up to and including the metering points at the cost of the builder is the statutory responsibility of the builder. Taking over such internal distribution network including service line, transformers, switch gear etc., after due inspection and satisfaction, is the statutory responsibility of the distribution licensees so that the interest of the owners / occupants of apartments in a multi-storeyed building and their statutory right to get electricity are safeguarded and the performance of the statutory duties of the licensees to give connection within one month as stipulated in Section 43 of the Act is facilitated.

19. As per Section 12 of the Act no person shall transmit electricity or distribute electricity or undertake trading in electricity unless he is authorized to do so by a licence issued by the Commission under Section 14 of the Act. Section 12 of the Act is quoted hereunder.

“12. Authorized persons to transit, supply, etc, electricity – No person shall-

(a)transmit electricity; or

(b)distribute electricity; or

(c)undertake trading in electricity,unlesshe is authorised to do so by a licence issued under section 14, or is exempt under section 13.”

Further Regulation 55 of the Supply Code, 2014, does also stipulate as follows,

“55. Restriction on re-sale of electricity.-*No person shall sell the energy supplied to him by the licensee to any other person, firm or to other premises unless he holds a suitable sanction or licence for distribution and sale of energy issued by the Commission or has been exempted by the Commission from holding such licence for sale.As per Section 46 of the Act, the licensee can recover the reasonable*

expenditure for construction of service line and for installation of electrical plant used for the purpose of giving supply.”

Therefore Atlas Gold Township cannot purchase electricity from KSEB Ltd and sell it to the apartment owners or commercial units in Atlas Celestial Park.

20. As per clause (17) in Section 2 of the Act the distribution licensee means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply. As per clause (70) in Section 2 of the Act, the word 'supply' has been defined in relation to electricity, as sale of electricity to a licensee or consumer. The Commission has also specifically prohibited resale of electricity by any consumer as per regulation 55 of the Supply Code, except in the case of single point supply as stipulated in Regulation 56 of Supply Code, 2014 which is quoted hereunder.

“56. Single point supply and sharing of electricity charges.- (1) *The licensee may give single point supply to the following premises with multiple beneficiaries subject to the conditions specified in the subregulations hereunder:-*

- (i) multi-storeyed buildings;*
- (ii) colony developed by any development authority or private builder or promoter or developer;*
- (iii) domestic, commercial or industrial complex;*
- (iv) residential complex constructed by any employer for his employees or by a panchayat or a cooperative society or a registered association of beneficiaries.*

(2) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall submit an application to the licensee for availing single point supply with a detailed project report (DPR) on the scheme for giving supply to all beneficiaries and such other necessary particulars.

(3) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall bear the expenditure for the augmentation or upgradation or uprating of the distribution system, exclusively required for the supply of electricity to the entire premises included in the detailed project report (DPR) and shall also construct at his cost the internal distribution network within the project area as per the standards and specifications stipulated in this Code.

Provided that the expenditure to be borne by the development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall be governed by the relevant provisions in regulation 36.

(4) Supply may be provided by the development authority or promoter or builder or developer or panchayat or cooperative society or registered

association of beneficiaries to the individual beneficiaries and for common service by installing sub-meters.

(5) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall remit the charges for the entire electricity availed at such single point of supply as per the bill preferred by the licensee within such time as indicated in the bill.

(6) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall collect, on a no profit no loss basis, the cost of energy consumed by individual beneficiaries.

(7) The tariff charged from the individual beneficiaries shall under no circumstances exceed the tariff specified by the Commission for the respective category of consumers.

(8) Providing of connection to individual beneficiaries in such premises with multiple consumers and sharing of expenses of consumption of electricity as per the above provisions shall not be construed as unauthorised extension of supply or resale of energy.

(9) The maintenance of internal distribution network and providing services to individual beneficiaries shall be the responsibility of the development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries.

(10) The tariff applicable to the single point supply shall be as determined by the Commission:

Provided that the provisions of this regulation shall not in any way affect the right of a person residing in the housing unit sold or leased by such development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries, to demand supply of electricity directly from the distribution licensee of the area.

The Atlas Gold Township has not so far applied for and obtained sanction from the Commission for single point supply under Regulation 56 of the Supply Code. Therefore Atlas Gold Township cannot, legally and validly sell electricity to the apartment owners in the multi-storeyed apartment building namely Atlas Celestial Park.

21. The impugned multi-storeyed building, as per the submission made by Atlas Gold Township, is a multi-storeyed residential cum commercial complex, with 208 residential apartments, restaurant and office. Each of the above unit, for the purpose of giving supply of electricity is individual premises, which has been defined as follows in clause (67) of Regulation 2 of Supply Code, 2014.

“premises” includes any land or building or structure which is included in the details and sketches specified in the application or in

the agreement for grant of electric connection or in such other records relating to revision of connected load or contract demand.”

The premises to which the HT connection was availed by Atlas Gold Township include only the following

- i. Building No. 188 A1 - restaurant building with area of 286.58 sq. m.
- ii. Building No. 188 A2 - reception lobby with area of 162.44 sq. m.
- iii. Building No. 188 A3 - office with area of 15.03 sq. m.

Section 126 of the Act stipulates the procedures for penal assessment for unauthorized use of electricity. As per sub-section (6) of Section 126 the assessment under this Section shall be made at a rate equal to twice the tariff applicable for the relevant category of services. As per clause (v) of note (b) under Section 126, usage of electricity for the premises or areas other than those for which supply of electricity was authorized, will constitute unauthorized use of electricity. Therefore use of electricity in the premises outside the above 3 spaces will constitute unauthorized use of electricity.

22. As admitted by the officers of KSEB Ltd, the petitioners and few other apartment owners in Atlas Celestial Park have submitted to Assistant Engineer, Electrical Section, Kalady the applications for separate electric connection to their apartments. In accordance with the statutory provisions in the Electricity Act, 2003, and the regulations in the Supply Code, 2014, the petitioners should have been given electric connection within one month from the date of their application. If the builder namely, Atlas Gold Township had constructed the internal distribution network for giving independent connections to all the individual residential apartments and if the officers of the KSEB Ltd had taken over such internal distribution network up to and including the points for installation of meters, in accordance with regulation 49 of the Supply Code, 2014, the individual connection could have been granted by the Assistant Engineer, Electrical Section, Kalady within the statutory time limit of one month. But the officers of KSEB Ltd have not so far given connection to the petitioners in spite of the specific directions of the Hon'ble High Court as per its order dated 10.03.2016 and the statutory provisions in Section 43 of the Electricity Act, 2003. Further the officers of KSEB Ltd are seen to have taken a strange stand to the effect that, the apartments of the petitioners and the connected loads in such apartments have to be excluded from the connected load of Atlas Gold Township, before giving separate electric connections to such apartments. This stand taken by the officers of KSEB Ltd in this regard does not appear to be legal, logical or reasonable for the following reasons. The premises to which HT connection has been given to Atlas Gold Township include only the following,-
- (i) Building No. 188 A1 - restaurant building with area of 286.58 sq. m.
 - (ii) Building No. 188 A2 - reception lobby with area of 162.44 sq. m.
 - (iii) Building No. 188 A3 - office with area of 15.03 sq. m.

The connected load and contract demand for the electric connection given to Atlas Gold Township, can be determined only based on the connected loads of the above three spaces. Each individual apartment in the building complex namely, Atlas Celestial Park, is a separate premise, independent of the premises to which HT connection was availed. The owner / occupier of each apartment is entitled to get separate electric connection to his / her apartment as a matter of his / her statutory right under Section 43 of the Act. The connected loads of individual apartments cannot be included in the connected load assessed for granting HT connection to Atlas Gold Township. Connected load of each apartment can validly be included in the connected load of Atlas Gold Township, only if the owner of the individual apartment has leased out his / her apartment to Atlas Gold Township. The officers of KSEB Ltd are not seen to have insisted on any valid lease deed or any similar valid document for including the connected load of individual apartments to the connected load of Atlas Gold Township. If the connected loads of the individual apartments of the petitioners have been, without any valid lease deed, included by the officers of KSEB Ltd in the connected load of Atlas Gold Township, it is illegal. Therefore there is no need to exclude the connected load of individual apartments from the connected load of Atlas Gold Township. Thus for adopting illegal procedures for giving connection to Atlas Gold Township, the officers of KSEB Ltd were not insisting on any valid document. For giving separate connections to the individual apartments of the petitioners in accordance with the provisions of Electricity Act, 2003, and of the Supply Code, and in accordance with the order dated 10.03.2016 of the Hon'ble High Court, the officers of KSEB Ltd are strangely and illegally insisting on the consent of Atlas Gold Township, which is the beneficiary of the illegal connection. In spite of the legal provisions and the directions of the Hon'ble High Court in the order dated 10.03.2016, in support of the application for individual connection submitted by the petitioners and by the similar apartment owners, they have not been given electric connection so far.

23. In accordance with the provisions of the Electricity Act, 2003, with special reference to Section 6 and Section 43 of the Act, the access to electricity and supply of electricity have become a statutory right of every citizen of our country. The Commission has also incorporated necessary and sufficient conditions and safeguards in the Kerala Electricity Supply Code, 2014 (hereinafter referred to as the Supply Code), to ensure that the applicant gets the electric connection in least possible time. Yet the petitioners herein, and the other similarly placed apartment owners in Atlas Gold Township, in the jurisdiction of Kalady Electrical Section of KSEB Ltd, are made to run in vain, from pillar to post, for getting electric connection as per the statutory provisions and the order dated 10.03.2016, of the Hon'ble High Court. It is informed that the petitioners and similarly placed apartment owners in Atlas Celestial Park building, who have applied for individual electric connection under domestic tariff, have not been given electric connection, whereas the

adjacent apartment owners in the same building who have rented out their apartments to the hotels functioning therein, have been given electric connection by Atlas Gold Township. The Commission is of the prima-facie view that there have been serious irregularities and misrepresentation of facts on the part of the Atlas Gold Township in collusion with certain officers of KSEB Ltd and of Electrical Inspectorate, which have resulted in undue delay in giving electric connection to the petitioners. It is also noticed that the said irregularities have resulted in huge financial loss to KSEB Ltd by way of under realization of electricity charges. The intention of the Hon'ble High Court in issuing the interim order dated 10.03.2016 in WP (C)27140/2015 and WP (C)6548/2016, was to provide without any delay, the electric connection to the petitioners and the similarly placed apartment owners in the multi-storeyed building namely 'Atlas Celestial Park', who desire to avail electricity at LT I-Domestic tariff. In view of the above facts and circumstances, it has to be reasonably suspected that the Atlas Gold Township in collusion with the delinquent officers of KSEB Ltd and of Electrical Inspectorate are misinterpreting the well-intentioned order dated 10.03.2016, issued by this Hon'ble High Court in WP (C)27140/2015 and WP (C)6548/2016, to camouflage and conceal the lapses and irregularities on their part.

24. In view of the statutory provisions, the facts and the documents submitted before the Commission, the following issues are examined in detail below.
- (i) Whether or not there were irregularities and illegalities in obtaining the impugned HT connection No. 8/7135 as per HT agreement No.ECP/HT-686/2014-15 dated 31.10.2014 by Atlas Gold Township India Private Limited?
 - (ii) Whether or not the Atlas Gold Township is illegally selling electricity to various apartments and commercial units in the multi-storeyed building namely Atlas Celestial Park?
 - (iii) Whether or not the irregularities committed by the officials of KSEB Ltd have resulted in huge financial loss to KSEB Ltd?
 - (iv) Whether or not the officials of KSEB Ltd have so far taken any action against Atlas Gold Township even after knowing fully well that Atlas Gold Township has obtained the connection at HT level and selling electricity contrary to the statutory provisions and regulations, resulting in huge financial loss to KSEB Ltd and Government?
 - (v) Whether or not the orders dated 10.03.2016 of the Hon'ble High Court are being misinterpreted to deny or to delay illegally the electric connection to the petitioners and the petitioners have not so far been given electric connection to their apartments?
 - (vi) Whether or not the officers of KSEB Ltd have submitted the relevant regulations and such other details before the Hon'ble High Court?
 - (vii) Whether or not the approval for electrification given by the Electrical Inspector / Chief Electrical Inspector and the sanction for energizing

the internal distribution system in the multi-storeyed building namely, Atlas Celestial Park were in accordance with the relevant regulations?

25. **Whether or not there were irregularities and illegalities in obtaining the impugned HT connection No. 8/7135 as per HT agreement No.ECP/HT-686/2014-15 dated 31.10.2014 by Atlas Gold Township India Private Limited.**

- (a) The impugned HT commercial connection was given as per the agreement dated 31.10.2014 between M/s Atlas Gold Township India Private Limited and the Deputy Chief Engineer, Electrical Circle, Perumbavoor. The relevant statutory provisions applicable to the said connection are the Electricity Act, 2003, which came into force on 10.06.2003 and the Supply Code, 2014, which came into force on 01.04.2014. The procedures and processes for obtaining new connection have been provided in detail in the Supply Code. As per Section 43 of the Act only the owner or occupier of any premise is entitled to get supply. Regulation 45 of the Supply Code stipulates the documents that should be produced in proof of ownership or occupancy of the premises. The said regulation 45 is quoted hereunder,-

“45.Proof of ownership or occupancy of the premises.-(1)

The licensee shall accept any of the following documents as proof of ownership or occupancy of premises:-

- (i) certified copy of title deed or lease agreement;*
- (ii) letter of authorisation from the Punja / Kole Special Officer in the case of agricultural connections for dewatering;*
- (iii) ownership certificate from Municipal Corporation or Municipality or Panchayat or Township in the case of buildings;*
- (iv) ownership certificate issued by competent revenue authority in the case of land;*
- (v) letter of allotment in the case of industrial estates or industrial parks or Special Economic Zones;*
- (vi) possession certificate from Revenue authorities.*

(2) An applicant who is not an owner but an occupier of the premises, shall furnish a no objection certificate from the owner of the premises along with any one of the documents listed at clauses (i) to (vi) in subregulation (1) above.”

Admittedly by the petitioners as well as the Atlas Gold Township, the apartments in Atlas Celestial Park building were handed over to the apartment owners as early as in 2012. Therefore the Atlas Gold Township cannot claim ownership over the impugned apartments in Atlas Celestial Park building. Further the Atlas Gold Township has not produced any valid registered lease deed as specified in clause (i) of

sub-regulation (1) or any no objection certificate from the owners as specified in sub-regulation (2) of Regulation 49 of the Supply Code.

- (b) As per the relevant statutory provision and the regulations, the individual apartment owner or the person who lawfully occupies the apartment can only apply for electric connection to their individual premises. The builder namely Atlas Gold Township cannot apply for electric connection for the apartments which were handed over by it to the owners of the apartments as early as in 2012. Even if the builder applies for and obtains electric connections to the individual apartments before the sale of such apartments, the electric connections obtained by the builder have to be transferred to individual owners as and when the apartments are sold and handed over to the individual owners. The tariff category will depend on the purpose for which electricity is used in individual premises. If the individual apartment is used for residential purpose, the apartment owner is entitled to get electric supply under category LT I Domestic. If the apartment is rented for residential purpose on lease, the same category will continue. If the apartment is rented out for commercial purpose, such as for running hotel, the tariff category has to be changed to LT VII Commercial with due sanction of the licensee.
- (c) It is clear beyond any doubt from the documents submitted by the petitioners and the respondents that, the impugned building complex had 208 apartments. The sanction for construction was obtained from Angamali Municipality only for multi-storeyed building containing 208 apartments. The construction was also completed accordingly. The individual apartments owners were also given possession certificate by Angamali Municipality. Tax was also assessed and realized from the individual apartment owners. It is not known whether or not, any sanction from the Municipality is required for the use of residential apartments for commercial purposes and whether or not the tax for individual residential apartment would enhance if such apartments are used for commercial purposes. If so, the Angamali Municipality might have lost revenue on account of under realization of taxes.
- (d) In the application dated 01.10.2014, copies of which are available in the office of Deputy Chief Engineer, Electrical Circle, Perumbavoor and in the Section Office, Kalady, it has been stated that the applicant is the owner of the premises. The premises to which supply of electricity is applied for are XIV-188 A1 (1), A2 and A3 of Angamali Municipality. In letter No. GB2/Atlas/2016-17 dated 03.01.2017 of the Deputy Chief Engineer, Electrical Circle, Perumbavoor it has been clarified that the premises to which supply of electricity is given include only the following,-
- (i) Building No. 188 A1 - restaurant building with area of 286.58 sq. m.

- (ii) Building No. 188 A2 - reception lobby with area of 162.44 sq. m.
- (iii) Building No. 188 A3 - office with area of 15.03 sq. m.

(e) From the above facts it is clear that the connection was availed by M/s Atlas Gold Township only for the premises comprising of the above three areas. It is contended that the sketches of electrification submitted are for the entire building and therefore the entire building complex comes under the purview of premises of the said HT connection. The impugned connection was availed only for the above three areas. It was for the Deputy Chief Engineer, who was the agreement authority to clearly mark the premises comprising of the above three areas in the sketch and plan of the building. The action of the Deputy Chief Engineer and his subordinates in having accepted the sketch of the entire building as premises of the HT connection is totally wrong and illegal. A valid offer, a valid acceptance, a valid and lawful consideration and '*consensus ad idem*' are inevitable for a valid agreement. If the intention of M/s Atlas Gold Township and of the Deputy Chief Engineer as well as other staff of KSEB Ltd was to permit such illegal sale on the ground of accepting such a sketch, the consideration of the agreement is illegal. Therefore, the agreement itself loses its validity. The action of the officers of KSEB Ltd including the Deputy Chief Engineer, Electrical Circle, Perumbavoor who is the agreement authority, is therefore illegal. Though the Deputy Chief Engineer, Electrical Circle, Perumbavoor has submitted before the Commission in para 1 of his written statement of defence dated 26.10.2016, that Atlas Gold Township had submitted application for electric connection in 12/2011 with all necessary documents, it is seen from the relevant file in his office that it was only an application for requirement of power to the tune of 1390 kW (letter No.02/12-13/ESKLD/226 dated 21.11.2012 of Assistant Engineer, Kalady). A copy of the scheme for electrification as approved by the Chief Electrical Inspector vide B3/3170/2011/CEI dated 12.05.2011 was also submitted. Copy of the building permit No. BA 777/08-09 dated 16.08.2010 issued by Angamali Municipality shows that the building was constructed for residential purposes in the category of A1-Occupancy Building. In the application dated 08.07.2011 for power requirement the connected load was shown as 2086.91 kW plus 600 kVAR and contract demand was shown as 800 kVA. A copy of the occupancy certificate dated 28.06.2012, issued by Angamali Municipality is seen to have been produced. The said certificate is only to certify that the building was ready for occupation and it is not the ownership certificate. From the letter No. 4/12/13 ESDKLD/HT-Atlas/41 dated 02.08.2013 of the Assistant Executive Engineer, Electrical Sub-Division, Kalady and from the letter dated 07.09.2013 from Assistant Engineer, Kalady it can be seen that Atlas Gold Township had only applied for power requirement

to the tune of 800 kVA as contract demand and 2087 kW as connected load. It is also noted that as per letter No. T3/HT/Atlas Gold / 2013-14/2418 dated 03.09.2013 the Deputy Chief Engineer had returned the power requirement application for rectification and re-submission. The Deputy Chief Engineer, Transmission Circle, Thrissur had, as per his letter dated 17.10.2013, informed the Deputy Chief Engineer, Electrical Circle, Perumbavoor that the requirement of power by M/s Atlas Gold Township Ltd was above permissible limit. Deputy Chief Engineer, Electrical Circle, Perumbavoor had, on 23.10.2013 ordered to keep the power requirement application pending. Subsequently as per letter dated 20.01.2014, Atlas Gold Township is seen to have reduced the demand to 400 kVA. The Assistant Executive Engineer, Electrical Sub-Division, Kalady is seen to have recommended the said request as per his letter dated 21.01.2014. Subsequently as per letter dated 10.10.2014, the Atlas Gold Township had reduced their power requirement to 250 kVA. On 30.10.2014, the Deputy Chief Engineer, Electrical Circle, Perumbavoor is seen to have ordered in his file to collect Cash Deposit and other amounts. It is also noted therein that he will carry out inspection in the meantime. The application dated 01.10.2014 for HT connection was also submitted wherein the connected load is shown to be 1470.95 kW and contract demand as 250 kVA.

- (f) Thus it is found that there is no provision to grant a single connection to the builder for illegal distribution to the individual apartment owners. When the documents relating to construction and electrification clearly shows the existence of 208 apartments, the KSEB Ltd should have given separate connections for the individual apartments and for the common services and such connections should have been included in the tariff category depending on the purpose for which electricity is used. The facts as revealed from the records in the office of the Deputy Chief Engineer, Electrical Circle, Perumbavoor and in the Electrical Section, Kalady show that the HT commercial connection given for commercial activities of running hotel in the apartments in Atlas Celestial Park building was irregular and illegal since the premises permitted for the use of electricity were only the common space for the reception lobby, office and common services in Atlas Celestial Park.

26. **Whether or not the Atlas Gold Township is illegally selling electricity to various apartments and commercial units in the multi-storeyed building namely Atlas Celestial Park.**

- (a) Admittedly by every stakeholder in these cases, the hotels namely, Atlas Airport Hotel and Hotel Royal Castle are functioning in the building namely Atlas Celestial Park. It is also reported that the hotels are run by Atlas Holidays Private Limited. These units are legally independent commercial entities which are functioning outside the premises permitted for use of electricity as per the agreement dated 31.10.2014 in respect of the HT connection availed by M/s Atlas Gold Township. The premises for which HT connection was availed include only the following,-
- (i) Building No.188A1 - restaurant building with area of 286.58sq. m.
 - (ii) Building No. 188 A2 - reception lobby with area of 162.44 sq. m.
 - (iii) Building No. 188 A3 - office with area of 15.03 sq. m.

As per the Mahazar prepared by Anti Power Theft Squad on 28.03.2016, copy of which has been submitted by the Deputy Chief Engineer, Electrical Circle, Perumbavoor, it is seen that electricity was being supplied to 73 apartments outside the above permissible premises, after installing LT meters. The readings of meters and the apartment numbers are also mentioned in the mahazar. Strangely in the Mahazar, the apartment numbers are shown to be room numbers.

- (b) As per clause (v) of explanation (b) in Section 126 of the Act unauthorized use of electricity means usage of electricity in the premises or areas other than those for which supply of electricity was authorized. Unauthorized use of electricity is an illegal activity which calls for penal action under Section 126 of the Act. The officers of KSEB Ltd including those in Anti Power Theft Squad used to consider even additional load in the permitted premises as unauthorized use of electricity, though the Commission has clarified as per the provisions in the Supply Code that additional load in the same premises under same tariff will not constitute unauthorized use of electricity. Further as per Section 12 of the Act and Regulation 55 of the Supply Code sale of electricity by a person without licence is illegal. It remains a riddle how the officers of KSEB Ltd, including those in Anti Power Theft Squad have closed their eyes towards the unauthorized extension, the illegal sale and the unauthorized use of electricity in the apartments outside the premises permitted under the agreement dated 31.10.2014.
- (c) It has to be further noted that, if there is an arrangement of running an apartment hotel as submitted by the Atlas Gold Township and the Atlas Celestial Park Owners Association, the individual apartment owners must have leased out their apartments to the apartment hotel. But no copy of any of the registered lease deeds in this regard has so far been produced before the Commission. In the absence of valid lease deed to substantiate the lawful occupation of the apartments by the apartment hotel or by Atlas Gold Township, the management of the said apartment

hotel or of Atlas Gold Township cannot apply for connection to such apartments. Neither can the connected loads of such apartments be added to the connected load of such apartment hotel or of Atlas Gold Township in the absence of a lawfully executed lease deed. The officers of KSEB Ltd are seen to have illegally considered the impugned apartments as a part of the premises of the Atlas Gold Township and the connected loads of such apartments as connected load of Atlas Gold Township, without any legally valid lease deed.

- (d) From the statement dated 26.10.2016 submitted by General Manager, Atlas Gold Township India Private Limited it is seen that,
- (i) All the apartments were handed over to the individual owners in 2012.
 - (ii) The original idea was to run an Apartment Hotel
 - (iii) Single connection with HT IV commercial was availed accordingly by Atlas Gold Township.
 - (iv) The petitioners and other apartment owners were using electricity from HT IV Commercial connection from 2012 to 2015.
 - (v) When electricity charges were not paid by the apartment owners, the supplies to such apartments were disconnected by KSEB Ltd.

The above statement submitted by the General Manager, Atlas Gold Township clearly proves that the apartments were handed over to their owners and the apartment owners were availing electric supply from Atlas Gold Township. There is absolutely no provision in the Electricity Act, 2003, or in the Supply Code, 2014, which permits giving such a connection or such sale of electricity. It is further stated by the Atlas Gold Township that, when electricity charges were not paid, the supply was disconnected by KSEB Ltd. It is clear that, Atlas Gold Township was supplying electricity to the apartment owners illegally and collecting charges from them illegally. When the apartment owners did not pay the electricity charges to Atlas Gold Township, how can the officers of KSEB Ltd disconnect the supply is the moot question. The officers of KSEB Ltd have not refuted this statement. KSEB Ltd has not supplied electricity to individual apartments and therefore the apartment owners are not consumers of KSEB Ltd. There is no licensee–consumer relationship between KSEB Ltd and the apartment owners. Thus it is abundantly clear that the Atlas Gold Township, after availing supply of electricity at HT level, was illegally selling electricity to the apartment owners who rented out their apartments for the commercial purpose of running an apartment hotel namely Atlas Airport Hotel and Hotel Royal Castle.

- (e) Even after brining such irregularities to the notice of the officers of KSEB Ltd, no corrective measures were taken by them. This fact itself is ample proof that the Atlas Gold Township and the local officers of KSEB Ltd were working hand in glove to continue the illegal sale of

electricity to the apartment owners by Atlas Gold Township. In view of the above facts it can easily be found that, the Atlas Gold Township has been indulging in illegal sale of electricity and therefore the agreement is liable to be terminated.

27. Whether or not the irregularities committed by the officials of KSEB Ltd have resulted in huge financial loss to KSEB Ltd.

The Commission had published in the Government Gazette dated 09.09.2013, the notification on schedule of tariff and terms and conditions for retail supply by KSEB with effect from 01.05.2013 to 31.03.2014, which was issued vide order dated 30.04.2013 in OP No.2/2013. General conditions 8, 9 and 10 of Part B – Low Tension tariff in the said notification are quoted hereunder,-

“8.Power supply to common facilities such as fire-fighting, common lighting, lifts, water pumping, sewage treatments facilities, waste disposal facilities, etc. in apartment complexes and individual houses for domestic use shall be billed under domestic tariff.

9.Power supply to common facilities in the multi-storeyed building with non-domestic / commercial occupation only shall be charged under the appropriate LT-VI or LT-VII tariff. When there is a combination of occupation of different categories of consumers, common facilities shall be charged at the highest LT-VI or LT-VII tariff applicable among such categories.

10. Power supplies to common facilities in multi-storeyed building mainly for domestic occupation shall be under the under the domestic tariff if the connected load other than domestic is less than 5% of the total load.”

Note 3 under HT-V-Domestic Tariff is quoted hereunder.

“If the apartment /flat/ room is rented out or made use of for any other purpose, he shall take individual LT connection at his cost. Appropriate LT tariff shall apply in such cases, based on the purpose of electricity usage. The consumer shall maintain the transformer and allied equipment at his cost in such cases.”

Identical conditions are there in the ‘Schedule of Tariff and Terms and Conditions for Retail Supply of Electricity by KSEB Ltd and All Other Licensees with effect from 16.08.2014 to 31.03.2015’, published by the Commission in Government Gazette dated 27.09.2014. In view of the provisions in the Supply Code and the notifications cited above, the proper course of action should have been to give connection to individual apartments in Atlas Celestial Park under LT-I Domestic Tariff and to allot LT

VII commercial tariff to those apartment which are rented for running hotels. The electricity charges for common facilities should also have been realized in accordance with the conditions 8, 9 and 10 quoted above. The energy charge under HT IV commercial tariff is Rs.6.30 / unit whereas the energy charge under LT VII commercial is Rs.9.30 / unit for consumption above 500 units per month. It has been submitted by the Secretary of Atlas Celestial Park Owners Association that, out of the total of 208 apartments, about 124 apartment owners, who are members the said association, would continue with the present arrangement with the apartment hotels and they would prefer to avail electricity from the HT Commercial connection of Atlas Gold Township. Only the owners of other apartment want separate electric connection to their apartments. It is quite natural that the hotels and apartment owners in Atlas Celestial Park building are interested in illegally availing power from Atlas Gold Township at cheaper rates without taking separate electric connection, without entering into agreement with KSEB Ltd and without remitting security deposits. Further if the Atlas Gold Township, which is the HT consumer, was proceeded against under Section 126 of the Act for the unauthorized use of electricity outside the permitted premises, KSEB Ltd would have realized electricity charges at a rate equal to twice the tariff applicable to the relevant category, as stipulated in sub-section (6) of Section 126 of the Act. It is seen that KSEB Ltd has been incurring huge loss on account of this illegal sale and unauthorized use of electricity, against which no action has been taken by the officers of KSEB Ltd, thereby indicating collusion on their part.

28. **Whether or not the officials of KSEB Ltd have so far taken any action against Atlas Gold Township even after knowing fully well that Atlas Gold Township has obtained the connection at HT level and selling electricity contrary to the statutory provisions and regulations, resulting in huge financial loss to KSEB Ltd and Government.**

No action has been taken by the officers of KSEB Ltd to stop such illegal sale of electricity. The petitioners had brought the facts relating to illegal sale of electricity to the notice of the officers of KSEB Ltd including the Deputy Chief Engineer, Electrical Circle, Perumbavoor, who is seen to have written as per his letter No.ECP/GB2/T2/HT-ATLAS/2016-17/2529 dated 20-10-2016 to Atlas Gold Township that the supply to HT connection No. 8/7135 as per HT agreement No.ECP/HT-686/2014-15 dated 31.10.2014, would be disconnected if there is illegal sale of electricity. But for such an empty statement, no further action is seen taken in this regard in spite of the above facts and legal provisions, about to which such officers cannot feign ignorance.

29. **Whether or not the orders dated 10.03.2016 of the Hon'ble High Court are being misinterpreted to deny or to delay illegally the electric connection**

to the petitioners and the petitioners have not so far been given electric connection to their apartments.

- (i) As per regulation 49 of the Supply Code, the internal distribution system in the multi-storeyed building namely Atlas Celestial Park should have been constructed by Atlas Gold Township at its cost for the reasons explained in para 25. Therefore alteration or modification, if any, to the internal distribution system should be done by the builder himself at his cost. Instead of making such alterations or modifications, if any, necessary for giving individual connections the builder namely, Atlas Gold Township has stated in its submission dated 26-10-2016 that it has invited tenders for the work.
- (ii) The Assistant Engineer, Kaladyhas, as per letter No. 4/15-16/KLD-87 dated 22.01.2016 intimated one Shri. Greenol, the apartment owner who has applied for individual connection, that he has to obtain approval from Electrical Inspectorate for energization as per sub-regulations (2), (4) and (5) of Regulation 49 of the Supply Code, 2014, that there is already one HT connection in the said building, that litigation between the apartment owners and the HT consumer is pending before the Hon'ble High Court and that his request for connection can be considered as and when the Hon'ble High Court passes orders. From the Regulation 49 it may please be seen that electricity should not have been supplied without taking over the entire internal distribution system constructed at the cost of the builders suitable for granting separate connection to all the individual apartments. If the officers of KSEB Ltd had taken over the internal distribution system in accordance with Regulation 49 of the Supply Code, there should not have been any delay in granting connection to the apartments of the petitioners and other apartment owners in Atlas Celestial Park building.
- (iii) As Assistant Engineer, Electrical Section, Kalady and the Deputy Chief Engineer, Electrical Circle, Perumbavoor have stated that the electrical wiring has to be changed for giving individual domestic connections. In this regard the following facts have to be specially noted. The building complex was designed and constructed as residential cum commercial complex with 208 residential apartments, a restaurant and office space. The Angamali Municipality had given sanction for construction of multi-storeyed building with 208 residential apartments, restaurant and office space. The construction of building was completed in accordance with the plans and schemes sanctioned by the Municipality. It is a matter of common knowledge that, the Municipal authorities will not grant occupation certificate, if the construction of building is not completed as per the scheme sanctioned by the Municipality.
- (iv) As per the regulation 49 of the Supply Code, 2014, it is the duty of Atlas Gold Township to develop the entire internal distribution system and as per Section 55 read with regulation 34 of the Supply Code; it is the duty of the distribution licensee to install the meter. Further the spots, at which the

meters have to be installed, shall be inspected and approved by the officers of KSEB Ltd. before giving connection. The officers of KSEB Ltd ought not have given connection and supplied electricity to the impugned multi-storeyed building namely Atlas Celestial Park without satisfying about the standards of construction of internal distribution network and without taking over them.

- (v) It is noted from the records that the impugned multi-storeyed building namely Atlas Celestial Park is a seven storeyed building with 208 apartments. The ground floor has only restaurant, office space and parking space. Therefore 208 apartments must be in six floors. The space for installing meters is provided in the electrical room in each floor. As per regulation 54 the space and spot for installing meter have to be jointly decided by the consumer and the licensee. As per Section 55 of the Electricity Act, 2003, and regulation 34 of the Supply Code, meter has to be provided by the licensee unless the consumer opts for purchase of meter. As per regulation 49 of the Supply Code, the internal distribution system in a multi-storeyed building has to be constructed by the builder and handed over to the distribution licensee. The statements and documents submitted before the Commission clearly show that the officers of KSEB Ltd have failed in their duty to ensure that a proper internal distribution system was in place in the Atlas Celestial Park. KSEB Ltd should also have installed correct meters for individual apartments in the electrical room in each floor. The officers of KSEB Ltd cannot legally take a stand to the effect that when Atlas Gold Township illegally distributes and sells electricity to the apartment owners, the meters are installed correctly and when individual apartment owners like the petitioners, apply for separate LT connection, the very same metering arrangements are not proper. This dichotomous strategy of the officers of KSEB Ltd, is a totally wrong and illegal, which ultimately resulted in harassment and delay to the apartment owners who want separate LT connection.
- (vi) The Hon'ble High Court, passed an interim order dated 10.03.2016, with a view to ensuring that the legitimate right of the petitioners therein, to get electric connection without any undue delay, is safeguarded. The Atlas Gold Township and the local officers of KSEB Ltd are seen to have misinterpreted and misused the said order to delay or to delay electric connection to the petitioners so far. It is a well-known legal dictum that justice delayed is justice denied. As already explained with reference to Section 6, Section 43 and the relevant regulations, supply of electricity is a statutory right of any Citizen of India. The above period of one month can be relaxed only by the Commission as stipulated in the proviso to sub-section (1) of Section 43 of the Act. As per sub-section (3) of the Section 43, the distribution licensee is liable to pay penalty which may extend up to Rs.1000/- per day of default. Here in this case, the licensee has not

submitted any reason for delay beyond the statutory period of one month as stipulated in Section 43 of the Act.

- (vii) The Deputy Chief Engineer, Perumbavoor as per his letter dated 10.05.2016 is seen to have taken a stand to the effect that the apartment owner has to approach the Chief Electrical Inspector with a revised scheme with separate metering (accessible to the licensee) for individual beneficiaries feeding from a separate transformer. This stand taken by the Deputy Chief Engineer is totally illegal and unwarranted.
- (viii) It is with a view to ensuring granting of electric connection within the time frame as stipulated in Section 43 of the Act, the Commission had specifically incorporated the provisions in regulation 49 of the Supply Code, stipulating that, it is the responsibility of the builder to construct at his cost the internal distribution system in accordance with the scheme approved by the Chief Electrical Inspector. The rationale for incorporating regulation 49 has been explained earlier in this order. It is with a view to minimizing the time taken for granting connection and minimizing the probable exploitation and harassment of the owners of the apartments by the builder, it has been stipulated in regulation 49 of the Supply Code, that
- (i) The builder shall, at his cost, construct the internal distribution system.
 - (ii) The internal distribution system shall be constructed strictly in accordance with the scheme approved by Chief Electrical Inspector.
 - (iii) The internal distribution system shall be handed over to the distribution licensee.
 - (iv) The energization shall be only after getting energization sanction from Chief Electrical Inspector.

Therefore the Deputy Chief Engineer should have given direction to the builder to construct the internal distribution network sufficient to give separate connections to all the 208 individual apartments and to hand over the same to KSEB Ltd.

- (ix) The officers of the licensee cannot take a dichotomous stand that if the apartment is used for commercial purpose by apartment hotel, no further modification is necessary and if it is used for domestic purpose by the owners of the apartments, further modification is necessary. It does not require more than common sense to understand that the standards and specification for wiring in a residential apartment do not depend on the subsequent legitimate use of it for other purposes.

30. Whether or not the officers of KSEB Ltd have submitted the relevant regulations and such other details before the Hon'ble High Court.

- (a) The officers of KSEB Ltd have not submitted the relevant statutory provisions, the regulations and the facts before the Hon'ble High Court as is evident from the statement submitted by the standing counsel on

10.12.2015 in WP 27140/2015. The officers of KSEB Ltd have, either by default or by design, refrained from filing an affidavit in this regard.

- (b) In the first, second and third directions in the order dated 10.03.2016, the Hon'ble High Court had directed the third respondent in WP (C) 27140/2015, to modify existing agreement (ie., the HT agreement dated 31.10.2014) so as to ensure that the petitioner and other apartment owners in Atlas Celestial Park get electric supply at LT – IA tariff, to include the name of apartment owners who require connection LT –IA rates in a separate schedule and to forward the agreements to the electrical inspectorate for their approval to the arrangement contemplated under the said agreement. There is absolutely no need to modify the existing HT agreement with Atlas Gold Township as can be seen from the following facts. The total connected load of Atlas Celestial Park was originally assessed at 2086.91 kW and the contract demand was assessed at 800 kVA. Connected load is the sum of the capacities of equipment and gadgets connected to the distribution network in the premises of the consumer. The consumer will not use all the equipment and gadgets at the same time. Depending on the load of equipment and gadgets which are likely to be used at a time simultaneously, the consumer can fix the contract demand for his connection. The consumer need pay fixed charges only for the contract demand. The connected load and contract demand of Atlas Celestial Park were subsequently reduced to 2086.91 kW and 400 kVA and then to 1470.95 kW and 250 kVA respectively. Now as per the HT agreement dated 31.10.2014, the supply of electricity is given only to the restaurant, the reception lobby, the office and for the common services such as water pump and lift as explained earlier in this order. The loads of the above spaces and common services have only been taken to assess the connected load included in the impugned HT agreement dated 31.10.2014. No apartment in Atlas Celestial Park has been included in the premises to which HT connection has been given and therefore all the apartments are outside the premises of the HT connection. Further as explained earlier in this order, Atlas Gold Township cannot apply for and obtain electric connection for the apartment in Atlas Celestial Park, since Atlas Gold Township was not the owner or occupier of the apartments. Therefore, there is no need for making any modification or alteration in the HT connection agreement, for giving LT connection to the petitioners and other apartment owners. The apartment owners who have applied for independent connection can be given connection by executing LT agreement with Assistant Engineer, Electrical Section, Kalady. There is no need to show the names of such apartment owners as separate schedule in the modified agreement or for any approval from Electrical Inspectorate for the LT connection agreement.
- (c) In direction iv, the Hon'ble High Court had instructed the Chief Electrical Inspector to inspect the building Atlas Celestial Park and to suggest

measures to be taken to ensure that separate domestic connection are ensured to the petitioners and other apartment owners. The impugned building was constructed as a seven storeyed apartment complex with 208 apartments, restaurant, reception lobby and office. As already submitted, the electrification in a multi-storeyed building can be done only as per the scheme approved by the Chief Electrical Inspector in accordance with the regulations issued by the Central Electricity Authority. Here in this case the Chief Electrical Inspector is seen to have approved the electrification scheme in which 208 apartments, restaurant, reception lobby, office, two 750 kVA transformers, generators, lifts, water pumps and associated equipments were involved. As per Regulation 49, it is the duty of the builder to construct at his cost, the internal distribution system, up to and including the metering point. Only on completion of the electrification work, including the internal distribution network up to and including metering point, in accordance with the scheme approved by him, the Chief Electrical Inspector can issue the energization sanction.

- (d) Neither the builder namely Atlas Gold Township nor the Chief Electrical Inspector has reported any deviation in respect of electrification works including the internal distribution network. According to the Regulation 49, of the Supply Code, 2014, the distribution licensee has to take over the internal distribution network up to and including the metering point. The officers of KSEB Ltd should not have given electric connection to the impugned building without taking over the internal distribution system. It is understood that metering points for the apartments have been provided in the common space for meters in each floor. The meter reader of KSEB Ltd, will have to go to such common metering points in each floor by lift for taking meter reading. Even now, the Atlas Gold Township has installed meters and is supplying electricity to the apartments rented out for the hotels in the Atlas Celestial Park building. If the petitioners and other apartment owners are renting out their apartments to the hotels the same procedure would be adopted by Atlas Gold Township. According to the information to the undersigned, if the internal distribution network is taken over by the officers of KSEB Ltd, electric connection can be given to individual apartments, after fixing the meters in the common metering points on each floor. The expenses for making alterations or modifications, if any, shall be borne by the builder namely, Atlas Gold Township as per Regulation 49 of the Supply Code. Meters for individual connections to the apartments have to be supplied and installed by the licensee for which, the licensee can realize Security Deposit for the value of the meter and the meter rent in accordance with Section 55 of the Electricity Act, 2003, read with regulation 34 of the Supply Code as explained earlier.
- (e) The Chief Electrical Inspector should have given approval for the electrification of the 208 apartments, restaurants, common lobby, office and common services and generators, including the internal distribution

network. It is noted that the Chief Electrical Inspector has now approved a revised scheme for giving connection to the petitioners and other apartment owners. This clearly indicates that the original scheme approved by the Chief Electrical Inspector was not proper. It is also not known how and why such modifications, if any necessary, have not been made so far by the Atlas Gold Township, who has the statutory duty for making such modifications.

- (f) The petitioners and other apartment owners have to pay only cash deposit for connection and security deposit for meters as per Section 47 and Section 55 of the Act and the relevant regulations. In view of the above facts the undersigned is of the view that the Atlas Gold Township, is trying to deny electric connection to the petitioners and other apartment owners, with collusion of the officers of KSEB Ltd and the Chief Electrical Inspector, misinterpreting the well intentioned orders of the Hon'ble High Court. After having obtained illegally the electric connection without properly constructing the internal distribution system at its cost and without handing over the same to KSEB Ltd and after having engaged in the illegal sale of electricity, Atlas Gold Township cannot be allowed to deny electric connection to the petitioners and to take shelter under the orders of the Hon'ble High Court which was issued with a view to expediting connection to the petitioners. Similarly the officers of KSEB Ltd, who have illegally given connection to Atlas Gold Township for the building namely Atlas Celestial Park without taking over the internal distribution system, who have permitted the illegal sale of electricity by Atlas Gold Township, who have failed to take action for unauthorized extension and unauthorized use of electricity outside the permitted premises, who have denied the statutory right of the petitioners and who have failed to perform their statutory duties cannot be permitted to take shelter under the orders of the Hon'ble High Court which was issued with a view to expediting connection to the petitioners.
- (g) The proper cause of action, according to the undersigned is to,
- (i) terminate the HT commercial connection granted to Atlas Gold Township for sale to the Atlas Airport and Royal Castle Hotels and other apartments.
 - (ii) stop illegal sale of electricity by Atlas Gold Township.
 - (iii) take appropriate legal action against Atlas Gold Township
 - (iv) take over the internal distribution system in Atlas Celestial Park.
 - (v) install meters at the space in each floor and give connection to the individual apartments, restaurant, lobby, office and to common services, and
 - (vi) apply appropriate tariff to each connection depending upon the purpose for which electricity is used.

- (h) In this regard sub-sections (2) and (3) of Section 41 are highly pertinent. As per sub-section (2) of the Act, KSEB Ltd has the statutory duty to provide electric plant and electric line for giving supply electricity to the premises. Further as per sub-section (3), if the licensee fails to supply electricity within one month, the licensee is liable to penalty which may extend to Rs.1000/- per day of default. This aspect may also please be considered by the Hon'ble High Court. The undersigned honestly believes that the appropriate legal provisions and relevant facts were not placed before the Hon'ble High Court by the respondent.
- (i) In the office of the Commission there is a Compliance Examiner to examine the grievances and complaints relating to non-compliance of the statutory provisions, the rules, the regulations and the orders issued under the Electricity Act, 2003. From the records relating to the cases before the Commission the undersigned is constrained to note that, the seriousness of the irregularities done by the officers of KSEB Ltd and by Atlas Gold Township and the consequent injustice done to the petitioners and other apartment owners by the denial of their statutory right to get electricity, have escaped the notice of the concerned officers in the Commission, in spite of their expertise in the technical matters relating to electrical engineering and their long experience in KSEB Ltd. Therefore the undersigned believes that placing the entire statutory provisions and facts before the Hon'ble High Court is inevitable to meet the ends of justice.
- (j) Any delay in adopting the proper course of action by the officers of KSEB Ltd would result in gross injustice to the petitioners and other apartment owners and in huge loss to KSEB Ltd. The Hon'ble Court may also be pleased to issue orders for enquiries into the irregularities.

31. Whether or not the approval for electrification given by the Electrical Inspector / Chief Electrical Inspector and the sanction for energizing the internal distribution system in the multi-storeyed building namely, Atlas Celestial Park were in accordance with the relevant regulations.

As per the relevant regulations, the builder or developer of a multi-storeyed building shall get approval of the Chief Electrical Inspector / Electrical Inspector for the scheme for electrification in the said building. The scheme for electrification has to be prepared in accordance with the provisions in the regulations issued by the Central Electricity Authority as well as by the Commission. The impugned building namely Atlas Celestial Park, is a multi-storeyed building with 208 residential apartments. The licence for construction was granted by Angamali Municipality only for the construction of multi-storeyed building for residential purpose. Therefore the scheme for electrification in the said building shall contain provisions for installation of distribution transformer; provisions for common services such as lift, pumping

of water and lighting in common areas; provisions for installation of meters for individual connections to the apartments, provisions for internal distribution of electricity to the individual apartments and such other installations ancillary to the distribution of electricity to all apartments. If the electrification in the multi-storeyed building has not been done in accordance with the scheme approved by the Chief Electrical Inspector / Electrical Inspector, the sanction for energizing the internal distribution system cannot be granted as per the relevant regulations. From the records presented before the Commission, it has to be concluded that the Chief Electrical Inspector / Electrical Inspector, had given sanction for energizing the internal distribution system, without necessary provisions for installing meters and giving connections to individual apartments. The approval given by the Chief Electrical Inspector / Electrical Inspector for the scheme for internal distribution system without provisions for installing meters and giving connections to individual apartments does not appear to be in order. Further, the sanction accorded by the Chief Electrical Inspector / Electrical Inspector for energizing the internal distribution system without provisions for installing meters and giving connections to individual apartments is also not in order. If the scheme approved and the sanction for energizing the internal distribution system, granted by the Chief Electrical Inspector / Electrical Inspector, contained necessary provision for installing meters and giving connections to individual apartments, the application of the petitioners for electric connection could have been granted without any modification to the present system and without any consequent delay. The Chief Electrical Inspector / Electrical Inspector, has submitted before the Hon'ble High Court, the requirements for modification in the internal distribution system. This is an ample proof that the original scheme approved and the sanction for energizing the internal distribution system, did not contain the provisions for installing meters and giving connections to individual apartments. It should also be noted that as and when the individual apartment owners agreed to lease out their apartments to the hotels namely Atlas Airport Hotel and Hotel Royal Castle, the Atlas Gold Township is giving connection to such apartments after fixing meters. Thus there is an anomalous situation wherein an apartment owner will get connection if he leases out his apartment to the hotels and he will not get connection if he wants to get independent domestic connection for occupying his apartment. This anomalous situation clearly indicates that there were serious lapses on the part of the Chief Electrical Inspector / Electrical Inspector, which have resulted in denial of individual electrical connection to the petitioners.

32. From the statutory provisions and the regulations explained earlier in this order, it can easily be seen that,-
 - (a) Every individual apartment owner in a multi-storeyed building complex has a statutory right to get electric connection to his apartment.

- (b) The distribution licensee namely, KSEB Ltd has a statutory duty to provide electric connection to the petitioners within one month from the date of submission of application.
- (c) All the 208 apartments, the common services and the commercial units such as hotels in the multi-storeyed building namely Atlas Celestial Park, are separate premises for the purpose of giving electric connection.
- (d) It is the duty of Atlas Gold Township to get the scheme for electrification of all such premises approved by the Chief Electrical Inspector.
- (e) It is the duty of the Atlas Gold Township to construct at its cost, the internal distribution system as per the scheme approved by the Chief Electrical Inspector.
- (f) Only the security deposit and other charges, if any, need be borne by the individual apartment owner.
- (g) As per sub-regulation (5) of Regulation 49, the Atlas Gold Township, the builder of the multi-storeyed building namely Atlas Celestial Park, shall construct at his cost the internal distribution system including the transformer, service lines, RMU and other switch gear as per the scheme approved by the Chief Electrical Inspector / Electrical Inspector and hand over such internal distribution network up to the metering point to the distribution licensee.
- (h) The distribution licensee namely KSEB Ltd can legally give electric connection to the multi-storeyed building namely Atlas Celestial Park, only after taking over the internal distribution network including transformer, switch gear, service lines etc., up to and including metering point, which has been constructed at the cost of Atlas Gold Township in accordance with the scheme approved by the Chief Electrical Inspector.
- (i) The internal distribution system can be energized only after getting the energization sanction from the Chief Electrical Inspector, who shall satisfy himself that the internal distribution system has been constructed strictly in accordance with the scheme approved by him.
- (j) A development authority or promoter or builder or developer or panchayat or co-operative society or registered association of beneficiaries can avail single point supply under Regulation 56 only with the permission of the licensee and of the Commission and the tariff applicable to such single point supply shall be decided separately by the Commission.
- (k) Even in the case of single point supply, as per sub-regulation (10) of regulation 56 of the Supply Code, the right of a person residing a housing unit sold or leased by such development authority or promoter or builder or developer or panchayat or co-operative society or registered association of beneficiaries to avail electricity directly from the distribution licensee cannot be denied.

- (l) No person can, without a valid licence issued by the Commission or without due authorization for single point supply granted by the Commission, sell electricity to any consumer.
- (m) No consumer can authorize use of electricity outside his premises for which supply was availed and any use of electricity outside the premises for which supply was availed will constitute unauthorized use of electricity under Section 126 of the Act.

33. The following facts are also evident from the above records and submissions,-
- (a) As per the Building Permit No.BA 777/08-09 dated 16-08-2010 issued by the Angamaly Municipality the impugned building namely, Atlas Celestial Park was permitted to be constructed as a multi-storeyed residential building.
 - (b) The Chief Electrical Inspector should have issued approval as per B3/3170/2011/CEI dated 12-05-2011, only for the scheme for electrification of all the 208 apartments including the construction of necessary internal distribution system and the common services such as water supply and lift in Atlas Celestial Park building. If the said scheme did not include the provisions for electrification of all the 208 apartments, the approval granted to the said scheme is irregular.
 - (c) As per the statement dated 26.10.2016 submitted before the Commission by Shri. Jose Varghese, General Manager, Atlas Gold Township India Private Limited, after completion of construction, the individual apartments were handed over to the petitioners who had taken over possession of the apartments without any objection during the year 2012.
 - (d) The copy of registered sale deed in respect of the apartment owned by Shri.K.Madhuraj, Santha Mandiram, Behind Ayyappa Temple, Kondotty Malappuram, which has been produced by Shri.K.Madhuraj as per letter dated 26-09-2016 shows that the sale deed was executed on 14-09-2012, thereby substantiating that the ownership of the apartments were transferred to the petitioners and similar apartment owners as early as in 2012.
 - (e) As per the statement dated 21.10.2016 submitted before the Commission by Shri. Saji Sebastian, Secretary, Atlas Celestial Park Owners Association, more than 124 members who are the owners of the apartments in Atlas Celestial Park, are members of the said association, which was registered in 2015. It is also noted that the Atlas Celestial Park Apartment Owners Association of which Shri. Madhuraj is the President, was registered in 2014. All the above facts clearly prove beyond doubt that the individual apartments in Atlas Celestial Park were owned and possessed by their owners with effect from 2012.

- (f) The Chief Electrical Inspector should have, as per order No.B3/18545/14/CEI dated 24-09-2014, issued the sanction for energizing the internal distribution system in Atlas Celestial Park only after ensuring that the internal distribution system was for electrification of all the units in Atlas Celestial Park including the 208 apartments.
- (g) As per the statement dated 21.10.2016 submitted before the Commission by Shri. Saji Sebastian, Secretary, Atlas Celestial Park Owners Association, the apartments owned by the Members of the said association were being used by M/s Atlas Holidays Private Limited for running apartment hotel in accordance with an arrangement. But no valid registered lease deed has been produced to substantiate the said arrangement.
- (h) As per Section 43 of the Act, the owner or occupier of any premises only is entitled for supply of electricity. As per clause (6) of regulation 2 of the Supply Code, the applicant means an owner or occupier of any land or premises who files an application with a licensee for the supply of electricity or for the increase or reduction in sanctioned load or contract demand or for the change in title etc. Therefore only the owners of the apartments in the Atlas Celestial Park or the lawful occupiers of such apartments can apply for electric connection to such apartments, which had been handed over by Atlas Gold Township and taken over by the owners of the apartments as early as in 2012.
- (i) As per clause (15) of Section 2 of the Act, 'consumer' means any person who is supplied with electricity for his own use, by a licensee.
- (j) As per the statement dated 21.10.2016 submitted before the Commission by Shri. Saji Sebastian, a company namely Atlas Holidays Private Limited is running apartment hotel in the Atlas Celestial Park building.
- (k) As per the report dated 20.10.2016 submitted before the Commission by the Compliance Examiner of the Commission two hotels namely Atlas Airport Hotel and Hotel Royal Castle are functioning in the Atlas Celestial Park building. It is also informed by Shri. Saji Sebastian that the apartment hotels are run by Atlas Holidays Private Limited. As admitted by the Deputy Chief Engineer, Electrical Circle, Perumbavoor, the Assistant Engineer, Electrical Section, Kalady and Atlas Gold Township, certain apartment hotels are functioning in the multi-storeyed building complex namely Atlas Celestial Park.
- (l) As per the statements of the petitioner and the respondents including the officers of KSEB Ltd, the electricity supplied by KSEB Ltd under the impugned HT connection was only for the following three spaces,-
- (i) Building No. 188 A1 - restaurant building with area of 286.58 sq. m.
 - (ii) Building No. 188 A2 - reception lobby with area of 162.44 sq. m.
 - (iii) Building No. 188 A3 - office with area of 15.03 sq. m.

The HT connection was availed by Atlas Gold Township for the use in the above spaces.

- (m) Atlas Gold Township is neither a licensee nor a person who was availed connection under single point supply system and therefore Atlas Gold Township cannot sell electricity to any other person or consumer.
- (n) The records and submissions made before the Commission prove beyond doubt that Atlas Gold Township was selling electricity to commercial units such as Atlas Airport Hotel and Hotel Royal Castle run by Atlas Holidays Private Limited.
- (o) The records and submissions made before the Commission do also prove beyond doubt that the supply of electricity availed by Atlas Gold Township for the premises consisting of the three spaces mentioned above, was being extended to other premises namely, the apartments which were leased out for running hotels. The Mahazar prepared by Anti Power Theft Squad dated 28.03.2016 proves beyond doubt that unauthorized use of electricity and unauthorized sale of electricity was going on in the building namely Atlas Celestial Park.
- (p) The officers of KSEB Ltd has not taken any action against the unauthorized use of electricity and the unauthorized sale of electricity, in spite of the fact that such illegal actions were brought to the notice of such authorities in writing by the petitioners.

34. From the above statutory provisions and facts it can easily be found that,
- (i) there were irregularities and illegalities in obtaining the impugned HT connection No. 8/7135 as per HT agreement No.ECP/HT-686/2014-15 dated 31.10.2014 by Atlas Gold Township India Private Limited.
 - (ii) the Atlas Gold Township is illegally selling electricity to various apartments and commercial units such as Atlas Airport Hotel and Hotel Royal Castle in the multi-storeyed building namely Atlas Celestial Park.
 - (iii) the Atlas Gold Township has been engaging in unauthorized use of electricity by extending the supply of electricity availed for the three spaces covered by the HT supply agreement, to various apartments and commercial units such as Atlas Airport Hotel and Hotel Royal Castle in the multi-storeyed building namely Atlas Celestial Park.
 - (iv) the officials of KSEB Ltd have not so far taken any action against Atlas Gold Township even after knowing fully well that Atlas Gold Township has been engaging in the illegal sale of electricity and unauthorized use of electricity.
 - (v) the irregularities committed by the officials of KSEB Ltd have resulted in huge financial loss to KSEB Ltd.
 - (vi) the orders dated 10.03.2016 of the Hon'ble High Court are being misinterpreted to deny or to delay illegally the electric connection to the

petitioners and the petitioners have not so far been given electric connection to their apartments.

- (vii) the officers of KSEB Ltd have not, either before the order dated 10.03.2016 of the Hon'ble High Court or thereafter, insisted on the builder namely Atlas Gold Township to develop at its cost the internal distribution system in accordance with the regulation 49 of the Supply Code, 2014.
 - (viii) the officers of KSEB Ltd had not taken over the internal distribution system of the Atlas Celestial Park building.
 - (ix) the approval for electrification given by the Electrical Inspector / Chief Electrical Inspector and the sanction for energizing the internal distribution system in the multi-storeyed building namely, Atlas Celestial Park were not in accordance with the relevant regulations.
 - (x) the officers of KSEB Ltd have not submitted the relevant regulations and such other details before the Hon'ble High Court.
35. It is seen from the Mahazar dated 28.03.2016 prepared by the Anti-Power Theft Squad that supply of electricity is given illegally to 73 apartments, after installing meters. It is also informed that the other apartment owners also would be given supply of electricity in a similar manner, if they give their apartments on lease for running the hotels. If supply of electricity can be given to an apartment for running hotel, there cannot be any valid reason why supply cannot be given to the very same apartment for the residential purpose of its owner. It is also informed that spaces for installing meters have been earmarked in each floor of the impugned building namely Atlas Celestial Park. The probable problem that can arise is only that the meter reader of KSEB Ltd will have to go to the space provided for installing meter in each floor, for the purpose of meter reading. The officers of KSEB Ltd should also take over the internal distribution system. However this would require closer scrutiny by the technical officers of KSEB Ltd and the Electrical Inspector.
36. The Hon'ble High Court had passed interim order dated 10.03.2016 in Writ Petition (C) 27140/2015 and Writ Petition (C) 6548/2016, directing the respondents and all other concerned officials to give separate connection to the apartments of the petitioners and similar applicants. The said direction was issued by the Hon'ble High Court to the officers of KSEB Ltd, the officers of Electrical Inspectorate and to the builder of Atlas Celestial Park building, based on the information submitted before it. The intention was that concerned authority, the builder and the petitioners shall do the needful for facilitating granting separate connection to individual apartments. But so far connection has not been given to the petitioners and the other apartment owners as directed by the Hon'ble High Court. As already explained the impugned multi-storeyed building namely, Atlas Celestial Park is for residential purpose with 208 individual apartments. If the original scheme for electrification in Atlas Celestial Park contained necessary and sufficient provisions for giving separate connections to all the 208 apartments and, if the sanction for

energizing was granted after ensuring that there were sufficient provisions for giving separate connections to all the 208 apartments, there should not have been any necessity for giving approval for a modified scheme by the Chief Electrical Inspector. The supply of electricity was given for the impugned HT connection only as per the application dated 01.10.2014, when the Supply Code, 2014, was in force. Therefore the connection to the multi-storeyed building namely Atlas Celestial Park should have been given only in accordance with the provisions in regulation 49 of the Supply Code, 2014. The officers of KSEB Ltd should have taken over the internal distribution system constructed at the cost of the builder before giving connection. The expenses to be met by the petitioners and other applicants for individual connection can only be the expenses relating to service connection charges, the security deposits, cost of meter (if the consumer opts for purchase of meter), etc. The modifications in the internal distribution system, if any, as directed by the Chief Electrical Inspector should also be done by the builder at his cost. The builder namely Atlas Gold Township cannot legally sell electricity to any other persons, including Atlas Airport Hotel as well as Hotel Royal Castle and individual apartment owners. The Atlas Gold Township cannot also indulge in unauthorized use of electricity by allowing the electricity availed by it under the HT connection, to be used outside the premises for which supply was availed. Thus the Atlas Gold Township has been indulging in unauthorized use of electricity for which it is liable to be proceeded under Section 126 of the Act.

37. The KSEB Ltd is the statutory distribution licensee in the State which has a statutory duty to provide to the petitioners, electric connection within 30 days as stipulated in Section 43 of the Act. The consumers have a corresponding statutory right to get electric connection within 30 days from the date of application. It is with a view to ensuring the above right of the consumers, the Commission has specified in regulation 49 of the Supply Code, 2014, that the internal distribution system in a multi-storeyed building shall be constructed by the builder / developer and shall be handed over to the distribution licensee. The Chief Electrical Inspector is the highest statutory authority in the technical matters in the power sector in the State. The officers of KSEB Ltd as well as the Chief Electrical Inspector / Electrical Inspector are therefore the authorities who have a statutory duty to safeguard the right of the petitioners to get electric connection in accordance with Section 43 of the Act. Similarly no action is seen taken against the consumer namely, Atlas Gold Township for the illegal sale of electricity and for the unauthorized use of electricity resulting in huge loss to KSEB Ltd. The Commission is constrained to note that the seriousness of the above said irregularities and the consequent injustice done to the petitioners have escaped the notice of the officers of KSEB Ltd and of the Chief Electrical Inspector / Electrical Inspector. From the above facts and circumstances, the Commission is constrained to observe that the officers of KSEB Ltd, the officers of Electrical Inspectorate, the management of Atlas Gold Township, Atlas Airport Hotel and Hotel Royal Castle appear to be

workinghand-in-glove to perpetuate the illegal HT connection availed by Atlas Gold Township, to continue illegal sale and unauthorized use of electricity and to deny individual connection to the apartment owners who have refused to lease out their apartments for running the hotels. A thorough and impartial enquiry by appropriate authorities in Government and in KSEB Ltd is required to unearth the root causes which have lulled the statutory authorities and the officers of KSEB Ltd to sleep over,-

- (i) the statutory rights of the petitioners to get electric connection in accordance with the Section 43 of the Act and the relevant regulations, and
- (ii) the illegal sale and unauthorized use of electricity resulting in huge loss to KSEB Ltd.

Order of the Commission

38. In view of the statutory provisions and regulations as well as the facts and circumstances explained above and the judgment dated 03.04.2017 of the Hon'ble High Court in Writ Petition No.27140/2016 and Writ Petition No. 6548/2016, the Commission hereby issues the following orders,-
- a) KSEB Ltd shall take immediate action to rectify the defects and to stop the irregularities and illegalities as pointed out in this order, with special reference to paragraphs 25 to 36 of this order.
 - b) KSEB Ltd shall, to begin with, take corrective measures for curing the defects for which the following direction shall be implemented forthwith.
 - (i) KSEB Ltd shall stop forthwith, the illegal sale of electricity by Atlas Gold Township to the commercial units such as Atlas Airport Hotel and Hotel Royal Castle and to the individual apartments rented out to the said hotels.
 - (ii) KSEB Ltd shall take forthwith, action against Atlas Gold Township for the unauthorized use of electricity and for realization of the electricity charges at twice the LT –VII (A) Tariff in accordance with the provisions in Section 126 of the Act.
 - (iii) KSEB Ltd shall give immediate direction to Atlas Gold Township, the builder of the impugned multi-storeyed building, to complete within a period of one month from the date of this order, the internal distribution system in all respects in accordance with regulation 49 of the Supply Code, 2014 and the revised scheme approved by the Chief Electrical Inspector and to handover the completed internal distribution system to KSEB Ltd.
 - (iv) KSEB Ltd shall, within one month from the date of this order, take over the internal distribution system complete in all respects and shall give electric connection to the petitioners and other apartment owners in Atlas Celestial Park who have applied for individual connection, by using the internal distribution system taken over by it.

- c) KSEB Ltd shall enquire into the irregularities committed by its officers with regard to,-
- (i) Irregular connection granted to Atlas Gold Township without completing the internal distribution system.
 - (ii) Failure to take-over the internal distribution system in accordance with regulation 49 of the Supply Code, 2014.
 - (iii) Failure to give connection to the petitioners and similar apartment owners within the time stipulated in Section 43 of the Act.
 - (iv) Failure to take action against the illegal sale of electricity done by Atlas Gold Township in spite of receiving the written complaint in this regard.
 - (v) Failure to take action under Section 126 of the Act, against the unauthorized use of electricity done by Atlas Gold Township in spite of receiving the written complaint in this regard.
 - (vi) The financial loss caused to KSEB Ltd on account of the irregular action or inaction on the part of the delinquent officers of KSEB Ltd.
39. The impugned multi-storeyed building namely, Atlas Celestial Park is for residential purpose with 208 individual apartments. If the original scheme for electrification in Atlas Celestial Park contained necessary and sufficient provisions for giving separate connections to all the 208 apartments and, if the sanction for energizing was granted after ensuring that there were sufficient provisions for giving separate connections to all the 208 apartments, there should not have been any necessity for giving approval for a modified scheme by the Chief Electrical Inspector. The supply of electricity was given for the impugned HT connection only as per the application dated 01.10.2014, when the Supply Code, 2014, was in force. Therefore the connection to the multi-storeyed building namely Atlas Celestial Park should have been given only in accordance with the provisions in regulation 49 of the Supply Code, 2014. The Chief Electrical Inspector shall enquire into the reasons and circumstances leading to the approval of the scheme for electrification and the sanction for energizing the internal distribution system, without necessary provisions for giving individual connections to the apartments in the multi-storeyed residential building namely Atlas Celestial Park, which resulted in denial of the statutory right of the apartment owners to get electric connection as per Section 43 of the Electricity Act, 2003.
40. The Hon'ble High Court has, by its judgment dated 03.04.2017 in Writ Petition No.27140/2016 and Writ Petition No. 6548/2016, dismissed the said Writ Petitions as withdrawn, leaving all the contentions of the petitioners open. The Hon'ble High Court has stated that the petitioners sought for withdrawal of the Writ Petition leaving open their contentions and reserving their liberty to agitate their contentions before the Commission. The Hon'ble High Court has also held that the Commission could decide on the issue of jurisdiction and if found clothed with the power could also deal with the issue on merits. The KSEB Ltd and the Chief Electrical Inspector shall submit to the Commission, a report on

the action taken on the orders issued by this Commission, as expeditiously as possible, at any rate within two months from the date of this order.

Dated this 26th day of April, 2017.

Sd/-
S. Venugopal
Member (F)

Sd/-
K. Vikraman Nair
Member (E)

Sd/-
T.M. Manoharan
Chairman

By Order of the Commission

Santhosh Kumar K.B
Secretary