

BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

No.254/Com.Ex/KSERC/2015

In the matter of: Review petition under Regulation 67 of The KSERC (Conduct of Business) Regulations, 2003 for the review of the order of the Commission dated 20-01-2015 in petition no.1991/Com.Ex/KSERC/183 filed on alleged non-compliance of the provisions of Electricity Act, 2003, rules and regulations made thereunder, by the officials of KSEB Ltd.

M.K. Johns, : Petitioner
Jesso Cottage, Kizhakkekkara,
Kottarakkara

Versus

1. Smt. Manju K., Respondents
Assistant Engineer,
Electrical Section,
KSEBL, Kottarakkara (West).
2. Shri. Naushad A.,
Assistant Executive Engineer,
APTS, KSEB Ltd,
Kollam.
3. Mr. Udayakumar S.,
Executive Engineer,
Electrical Division,
KSEB Ltd., Kottarakkara.
4. Shri. Udaya Varma B.,
Deputy Chief Engineer,
Electrical Circle,
KSEB Ltd., Kottarakkara.

Order dated: 16.03.2015

Background of the Case:

1. Sri. M.K. Johns, the complainant is running a footwear shop under the geographical jurisdiction of Electrical Section, KSEBL, Kottarakkara (West). There are three single phase electric connections in the three floors of the building. Consumer No.1029 under LT VII A tariff is for the ground floor, Consumer No.19723 and Consumer No.19724 under LT VII B tariff for the first and second floor respectively. On 20/9/2014, the Section authorities along with APTS inspected the premises and disconnected the supply after preparing site mahazar, alleging that the complainant is indulging theft of energy as defined in sub section (1) (b) of Section 135 of the Electricity Act, 2003. A provisional bill amounting to Rs.41,336/- was assessed as civil liability. The consumer remitted the entire amount on 25/09/2014 and on the basis of proceedings of the Executive Engineer, Electrical Division, Kottarakkara, remitted Rs.30,000/- as compounding fee as per Section 152 of Electricity Act, 2003. The complainant submitted a petition before the Commission on 7/10/2014, alleging contravention of the statutes under Electricity Act, 2003. The Commission after perusal of the entire file including the detailed report of the first respondent had intimated the complainant that since the case falls under Section 135 of the Electricity Act, 2003 intervention of the Commission is not warranted. Aggrieved by this, the complainant submitted this Review Petition.

Averments of the Petitioner:-

2. The petitioner submitted the following for consideration of the Commission.

- (1)** The complaint was filed before the Commission on 7/10/2014 for initiating proceedings under Section 142, 146 & 149 of the Electricity Act, 2003, appropriately against the respondents.
- (2)** The allegation as in the mahazar is that, wires were taken from the electric connections bearing Consumer No.10723 and 10724, were brought to the ground floor and connected through a changeover switch and controlling by that switch, the electrical appliances in the ground floor were worked and hence the meter in the ground floor is rendered not working. Therefore, if the allegation is true, electricity is extended to a place where it is not authorized. If so, this use of electricity is invariably recorded in the meters of consumer No.10723 and 10724 of the upper floors from which electricity is extended and used in the ground floor.
- (3)** There is no allegation that, the meters of consumer No.10723 and 10724 of the meter in the ground floor of consumer No.10299 is tampered with, artificial means were used so as to extract electricity or unmetered electricity is used.
- (4)** Therefore, it is submitted that, this is not at all a case of theft of electricity, which falls under section 135 of Electricity Act, 2003, but only an allegation of unauthorized use of electricity which falls only under section 126 of Electricity Act, 2003. Whether the consumer has extended electricity as alleged and whether there was unauthorized use of electricity or not, is also a dispute, which is to be decided by the appropriate forums as under Supply Code, 2014. Even if it is theft of electricity, provisions under Kerala Electricity Supply Code, 2014 are breached by the opposite parties. The opposite parties have played an active role in contravening the statutes under Electricity Act, 2003, for which they are liable to be proceeded against under Section 142, 146 & 149 of the Act, appropriately in accordance with their breach of statutes, which they have committed in this case.

(5) It is further submitted that, copy of the order of the Commission on the petition has not been served to the petitioner. Only the decision of the Commission has been intimated by the Secretary of the Commission. It is intimated by the Secretary that '*since the case fall under Section 135 of the Act, intervention of the Commission is not warranted*'. There is no reason for the Commission to arrive at such a finding. The petitioner was not heard in detail. No opportunity was given to the petitioner to adduce evidence before disposal of the complaint. In fact the complaint was not at all considered on merit by the Commission. Such a categorical finding is made without any objective consideration of the relevant facts and evidences. Therefore, the above finding is not all proper. Such a finding will cause serious harm prejudice to the petitioner in challenging the illegal proceedings taken against the petitioner. This order may have issued, based on the report of the 1st respondent, and no opportunity was given to the petitioner to examine and challenge the report. The order is not at all a speaking order. The findings that this case falls under Section 135 of Electricity Act are not at all correct. Therefore, review of this order is highly essential to meet the ends of justice.

(6) Hence it is prayed that the Commission may review the order by removing the findings as to the commission of the act under section 135 of the Act by the petitioner, and dispose the complaint on merits after giving an opportunity of hearing to the petitioner

The averments submitted by KSEBL:-

3. The main contentions and submissions of KSEBL against the original petition were as narrated below.

1) A change over switch had been kept on the ground floor of the complainant's premises and the complainant was abstracting the low cost energy, by extending wires from the upper floors, using this device to idle the function of the energy meter at the ground floor, where high cost energy is provided by KSBL. It is submitted that the

above action of the petitioner with dishonest intention, comes within the purview of subsection 1(b) of Section 135 of the Electricity Act, 2003.

- 2) From the site mahazar, it is clear that none of the meters has been tampered. But the complainant was using artificial means in the electric circuit to prevent the recording of electrical energy in the meter provided at the ground floor, which is under a higher tariff. The consumption of entire showroom at the ground floor is recorded at the energy meters provided at the first and second floors where lower tariff energy is provided by KSEBL as and when the complainant desires so. It is submitted that the above action of the complainant clearly comes under the purview of theft of electricity under Section 135 of the Electricity act, 2003.
- 3) Regarding the functioning of the meter, KSEBL was never in doubt. But the Complainant had been using the changeover switch ingeniously to get a balanced consumption among the three electricity connections provided inside the premises.
- 4) It is further submitted that the respondents have not contravened any of the provisions of the Act, Rules or Regulations made thereunder, but acted only in good faith to detect the misappropriation of energy at the premises of the complainant.

Analysis and decision of the Commission

4. In the site mahazar, prepared at the time of inspection of the premises, it is recorded as that a changeover switch was seen fitted at the ground floor of the premises where Consumer No.1029 under LT VII A is installed for the lighting purpose of the ground floor. Wires are drawn, from the first and second floor where Consumer No.10723 and 10724 is installed to extend the electricity to the ground floor. The changeover switch has been connected to the electrical circuit, thereby preventing the recording of electricity in the

meter at the ground floor which is at higher tariff. The above action by the petitioner was clearly established the deliberate intention which comes under the purview of theft of electricity under Section 135 of the Electricity Act, 2003.

5. The argument of the petitioner that this case is not a case of theft of electricity, which falls under section 135 of the Electricity, 2003, since the meter fitted at the ground floor of the building ie., Consumer No. 1029 is not tampered with using artificial means to extract electricity cannot be accepted. Extension of electricity from the premises where lower tariff is in vogue, to the premises where a higher tariff energy is provided comes under Section 135 of the Electricity Act, 2003, since the above action can be taken only as an act of dishonest deliberate intention of the petitioner, thereby causing undue gain to him and loss to the licensee.
6. The review petition was filed under Regulation 67 of the KSERC (Conduct of Business) Regulation, 2003. The Commission can review its order, either on its own motion or on application of any person aggrieved by an order, on the following grounds, namely:-
 - a) On the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not with his knowledge or could not be produced by him.
 - b) Mistake or error apparent on the face of the record.

In the instant review petition, no such grounds are adduced by the petitioner. The argument of the petitioner is that

- (i) This is not a case of theft of electricity, which falls under Section 135 of the Electricity Act, 2003, but only an allegation of unauthorized use of electricity which falls only under Section 126 of the Electricity Act, 2003.
- (ii) The order of the Commission in the complaint was not a speaking order.
- (iii) The petitioner was not given an opportunity to be heard by the Commission.

7. The above argument of the petitioner cannot be accepted by the Commission, since the evidences and circumstances narrated in mahazar, gives conclusive proof for the theft of energy committed by the petitioner. The petitioner had not challenged the facts narrated in the mahazar. Moreover, he has not adduced any fresh evidence to substantiate his arguments, in the review petition.

Order of the Commission:

8. The Commission had considered all the contentions and arguments raised by the petitioner in the review petition and came to the conclusion that the contentions raised are devoid of merits for a review on the decision already made and communicated on 29-01-2015. Hence the review petition stands dismissed. Ordered accordingly.

Sd/-
K. Vikraman Nair
Member (Engg)

Sd/-
T.M. Manoharan
Chairman

Approved for issue

SECRETARY