

**BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

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

**No.0278/Com.Ex/KSERC/2015**

**Common Order in the objections dated 16.03.2015 filed by The Director (Distribution and Safety), KSEB Limited and in the petition dated 16.03.2015 filed by the Secretary (Administration) of KSEB Limited, against the direction of the Commission given as per letter dated 02.03.2015 to produce certified copy of relevant files in the matter of realization of cost of materials along with labour charges for shifting electric line**

**Common Order dated: 06.07.2015**

1. The Director (Distribution and Safety), KSEB Limited has filed an objection dated 16.03.2015 in the matter of letter No. 278/2015/255 dated 02.03.2015 in relation to realization of cost of materials along with labour charges for shifting electric line. Sri. R. Rajasekharan Nair, S/o N. Ramachandran Nair, aged 50 years working as Secretary (Administration) of KSEB Limited has also filed a petition dated 16.03.2015. In the objections filed by the Director (Distribution and Safety), KSEB Limited and in the petition filed by R. Rajasekharan Nair, Secretary (Administration) of KSEB Limited, the prayers are same and it is quoted hereunder,-

*“Hence in the interest of justice the Hon’ble KSERC may be pleased to review the decision to direct the Secretary of KSERC to request the Full Time Director (Distribution and Safety) KSEB Limited to forward the certified copies of the files described in the letter No. 278/Com.Ex/2015/KSERC/255 dated 02.03.2015 issued by the Secretary, KSERC and the said letter may be recalled.*

*If an order as prayed above is not granted KSEB Limited will be put to irreparable losses, hardships and sufferings”*

2. The Commission has examined the prayer and the facts and circumstances leading to such prayer. The genesis of the case is as stated hereunder.
3. Dr. K.V.Sankaran, former Director of Kerala Forest Research Institute (KFRI), Manasi, Convent Road, Shornur had submitted a complaint before the Commission on 28.11.2014, against the Assistant Engineer, Electrical Section, Cheruthuruthy, Kerala State Electricity Board Limited (KSEBL) for the violation of

the provisions of Supply Code, 2014, in having realized the cost of material along with labour charges for shifting the electric line passing through his property at Thazhappra, Cheruthurthy;

4. On receipt of the complaint, the Commission vide letter No. 372/Com.Ex/KSERC/2014/1346 dated 15.12.2014 directed the Deputy Chief Engineer, Electrical Circle, KSEBL, Thrissur to submit a detailed report on the complaint. The Deputy Chief Engineer, vide his letter No. AEE II /Comp/K V Sankaran/ 14-15/2313 dated 30.12.2014 had reported that the KSEBL had issued certain clarifications on Regulation 95 of the Kerala Electricity Supply Code 2014 vide B.O (FTD) No.1819/2014/KSEB/TRAC/Supply Code, 2014 dated 02-07-2014 and that the order refers to Regulation 63 of the Central Electricity Authority (Measures relating to safety and electric supply) Regulations 2010 which, according to KSEBL, was in contravention of Regulation 95 of the Kerala Electricity Supply Code, 2014. The Commission, as per its letter No.965/Com.Ex/KSERC/2014/1073 dated 9-10-2014 intimated KSEBL, that Regulation 63 of the CEA (Measures relating to safety and electric supply) Regulations 2010 and Regulation 95 of Kerala Electricity Supply Code 2014, were distinct and applicable to different situations. The Commission also directed KSEBL to issue consequential orders. Accordingly the KSEBL had amended its earlier order dated 2-7-2014, vide B.O (FTD) No.3276/2014 (KSEB/TRAC/SCode/R3/2014) dated 15-12-2014 in accordance with the Kerala Electricity Supply Code, 2014. The main contention of the Deputy Chief Engineer was that since the demand raised by the officers of the KSEBL for executing the work of shifting the line was as per the then prevailing order of KSEBL, the realization of cost of materials along with labour charges on 19.11.2014, for shifting the electric line passing through the property of the complainant was in order.
5. The Commission took notice that the Asst. Engineer, Electrical Section, Cheruthurthy was following the order of KSEBL ignoring the provisions in the Kerala Electricity Supply Code, 2014, the regulation framed by the Commission as per Section 50 of the Electricity Act, 2003. Any executive order issued by the licensee contrary to the statutory provisions in the Electricity Act, 2003 or to the regulation issued thereunder is illegal and hence ab-initio void. Hence the reply submitted by the officers of KSEBL was not found satisfactory and the Commission was prima facie satisfied that the officers of KSEBL had contravened the regulations made by the Commission.
6. Therefore, Sri. Kishore T.P. the Assistant Engineer, Electrical Section, Cheruthurthy was, as per the show cause notice No.2372/Com.Ex/KSERC/2014/53 dated 12.01.2015 of the Commission, directed to show cause within 15 days time from the date of receipt of the notice, as to why action under Section 142 of the Electricity Act, 2003 should not be initiated against him for non-

compliance of Regulation 95 of the Kerala Electricity Supply Code, 2014. It was also intimated to him that if no explanation was received within the stipulated time, it would be presumed that he had no explanation to offer and action would be finalized accordingly as per rules. He was also directed to state whether he desired to be heard in person before finalization of orders under section 142 of the Electricity Act, 2003 by the Commission.

7. Similar notices were issued to the following officers who were provisionally found responsible for the irregularity of non-compliance of regulation 95 of the Kerala Electricity Supply Code, 2014.
  - (i) Sri. Muhammed Ali Rawther, Director (Distribution & safety), KSEBL, Thiruvananthapuram.
  - (ii) Sri. C.R. Thomas, Dy. Chief Engineer, Electrical Circle, KSEBL, Thrissur
  - (iii) Sri. A.K. Raveendran, Executive Engineer, Electrical Division, Wadakkancherry, Thrissur.
  - (iv) Sri. H. Suresh, Assistant Executive Engineer, Electrical Sub Division, Kundanoor, Thrissur.
8. Subsequently, the full-time Director (Distribution & Safety), Kerala State Electricity Board Ltd. had, as per his letter dated 12-2-2015 informed the Commission as follows:

*“On getting subject matter examined in its entirety, the Kerala State Electricity Board Ltd. is of the view that B.O. (FTD) No.3276/2014 (KSEB/TRAC/S Code/R3/2014) dated 15-12-2014 issued by it, based on the instructions of this Hon. Commission, is liable to be recalled and resolved accordingly, since the statute permits a licensee to realize not only labour charges but also cost of material, if needed additionally, from the beneficiary. Accordingly, Kerala State Electricity Board Ltd. has filed a petition under Regulation 165 of the Kerala Electricity Supply Code, 2014 praying this Hon. Commission to invoke its suo motu power to amend the defect / error in Regulation 95 of the said Code. Today, this Hon. Commission has accepted the matter into file as inward No.267/2015.*

*Now, coming to the individual grievance of Dr. K.V. Sankaran, it may be brought to the kind attention of the Hon. Commission that the field authorities of the KSEB Limited are under instructions to ensure whether Regulation 63 of the Central Electricity Authority (Measures relating to Safety & Electric Supply) Regulation, 2010 has been complied with scrupulously and if not, to make refund accordingly.”*

9. The relevant legal provisions have been examined in detail by the Commission. Regulation 63 of the CEA (Measures relating to safety & electric supply) Regulation 2010 is quoted hereunder.

*“63. Erection or alteration of buildings, structures, flood banks and elevation of roads.- (1) If at any time subsequent to the erection of an overhead line, whether covered with insulating material or not or underground cable, any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building, or structure or flood bank or road, any permanent or temporary addition or alteration, he and the contractor whom he employs to carry out the erection, addition or alteration, shall, give intimation in writing of his intention to do so, to the supplier or owner and to the Electrical Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road or any addition or alteration and scaffolding thereof required during the construction.*

- (2) On receipt of such intimation, the supplier or owner shall examine, -*
- (i) whether the line or underground cable under reference was laid in accordance with the provisions of these regulations and any other law;*
  - (ii) whether it is technically feasible;*
  - (iii) whether it meets the requirement of Right of Way (ROW);*
  - (iv) whether such person was liable to pay the cost of alteration of the overhead line or underground cable and if so, send a notice without undue delay, to such person together with an estimate of the cost of the expenditure likely to be incurred to so alter the overhead line or underground cable and require him to deposit, within thirty days of the receipt of the notice, with the supplier or owner, the amount of the estimated cost.*
- (3) If such person disputes the cost of alteration of the overhead line or underground cable estimated by the supplier or owner or even the responsibility to pay such cost, the dispute may be referred to the Electrical Inspector whose decision thereof shall be final.*
- (4) The Electrical Inspector shall estimate the cost of alteration of overhead line or underground cable on the following basis, namely:-*
- (i) the cost of material used on the alteration after crediting the depreciated cost of the material which shall be available from the existing line or underground cable;*
  - (ii) the wages of labour employed in affecting the alteration;*
  - (iii) supervision charges to the extent of fifteen per cent of the wages mentioned in sub clause (ii); and charges incurred by the supplier or owner in complying with the provisions of section 67 of the Act, in respect of such alterations.*
- (5) Any addition or alteration to the building or structure shall be allowed only after the deposit of such estimated cost to the supplier or owner.*

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

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

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

10. The Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 has been issued by the CEA as per clause (b) of sub section (2) of section 177 of Electricity Act, 2003, which empowers CEA to make regulations to provide for suitable measures relating to safety & electric supply under section 53 of the Electricity Act, 2003, which is quoted hereunder.

**“53. (1)** *The Authority may in consultation with the State Government, specify suitable measures for –*

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

*(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing a risk of personal injury or damage to property or interference with its use;”*

11. Section 73 of the Electricity Act, 2003, which stipulates the functions and duties of the Central Electricity Authority is quoted hereunder,-

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

*(a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co- ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;*

*(b) specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid;*

*(c) specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines;*

*(d) specify the Grid Standards for operation and maintenance of transmission lines;*

*(e) specify the conditions for installation of meters for transmission and supply of electricity;*

*(f) promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system;*

*(g) promote measures for advancing the skill of persons engaged in the electricity industry;*

*(h) advise the Central Government on any matter on which its advice is sought or make recommendation to that Government on any matter if, in the opinion of the Authority, the recommendation would help in improving the generation, transmission, trading, distribution and utilisation of electricity;*

*(i) collect and record the data concerning the generation, transmission, trading, distribution and utilisation of electricity and carry out studies relating to cost, efficiency, competitiveness and such like matters;*

*(j) make public from time to time information secured under this Act, and provide for the publication of reports and investigations;*

*(k) promote research in matters affecting the generation, transmission, distribution and trading of electricity;*

*(l) carry out, or cause to be carried out , any investigation for the purposes of generating or transmitting or distributing electricity;*

*(m) advise any State Government, licensees or the generating companies on such matters which shall enable them to operate and*

*maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other Government, licensee or the generating company owning or having the control of another electricity system;*

*(n) advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity; and*

*(o) discharge such other functions as may be provided under this Act.”*

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

12. From the scheme of law, relating to CEA, it can be seen that it is the sole statutory authority in our Nation to specify technical standards for construction of electrical plants, electric lines and connectivity to grid, specify the safety requirements for construction, operation and maintenance of electrical plant and electric lines, specify the grid standards for operation and maintenance of transmission lines, and to specify the condition for installation of meter and other matters stipulated in Section 73. As per Section, 53, the CEA has to, in consultation with the State Government, issue regulations specifying suitable measures for various aspects maintained in Section, 53, namely protecting public from dangers, eliminating or reducing risk of injury to person or damage of property, prohibiting supply or transmission by means of a system not conforming to the standards and specifications, action to be taken in relation to electric line, electrical plant or appliance under the control of consumer for eliminating or reducing the risk of personal injury or damage to property. In nut shell, the CEA is the sole statutory authority at national level, authorized to issue regulations, regarding the specifications and standards relating to construction, operation and maintenance of electrical plant and electric lines and regarding the standards of safety required to protect the life and property of the citizens and to protect electrical installations.

13. Regulation 63 of the CEA (Measures Relating to Safety and Electric Supply), Regulations, 2010 has to be read and understood in this context. The said regulation of CEA primarily deals with the standards of safety and procedure to be adopted where electric lines or electrical plants have to be re-aligned, shifted

or reconstructed for the purposes such as erection of buildings, structures, flood banks and for elevation of roads, especially on the application of authorities like PWD, Irrigation Department, Railways, Airport Authorities or such other institutions. Such works has to be undertaken after prior intimation to the Electrical Inspector along with sketches and plans for his approval.

14. Regulations 95 of Kerala Electricity Supply Code, 2014, has been issued by the Commission to deal with a totally different situation, in view of the statutory provision in clause (19) of Section 2, Section 42, Section 46, Section 50, Section 57 and Section 67 of the Electricity Act, 2003. As per definition in clause (19) of Section 2 of the Electricity Act, 2003, the distribution system means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers. As per sub-section (1) of Section 42 of the Act it shall be the duty of the distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply. As per Section 46 of the Act the State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. The licensee can recover expenditure only as per the regulations issued by the Commission and such recovery shall only be the reasonable expenditure incurred by the licensee. Section 50 of the Act empowers the Commission to specify Electricity Supply Code to provide for recovery of electricity charges, billing of electricity charges, disconnection of supply, restoration of supply, measures for preventing tampering, distress or damage to electrical plant or electric line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and for removing the meter, entry for replacing altering or maintaining electric line or electrical plants or meter and such other matters. The term 'such other matters' refers to any matter relating to supply of electricity, maintenance of distribution system and safeguarding consumer interest. Section 57 of the Act empowers the Commission to specify standards of performance of the licensee and to determine compensation for non-achievement of such standards in addition to the penalty which may be imposed on initiation of prosecution. The licensee is liable to pay such compensation to the affected persons as determined by the Commission. Section 58 empowers the Commission to specify different standards for a class or classes of licensees. Section 59 states that every licensee, within the period specified by the Commission, furnish to the Commission information relating to level of performance achieved, amount of compensation paid etc.

15. Section 67 of the Electricity Act, 2003, deals with opening and breaking up of soil and pavement of any street or railway or tram way or drain or tunnel or construction of electric line or electrical plants or such other activities. Sub-



sections (1), (3), (4) and (5) of the said Section, which are relevant to the issue under consideration, are quoted hereunder,-

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

- (a) to open and break up the soil and pavement of any street, railway or tramway;*
- (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*
- (c) to alter the position of any line or works or pipes, other than a main sewer pipe;*
- (d) to lay down and place electric lines, electrical plant and other works;*
- (e) to repair, alter or remove the same;*
- (f) to do all other acts necessary for transmission or supply of electricity.*

*(2) .....*

*(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.*

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

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

16. A reading of Section 67 will clearly indicate that the licensee can undertake works as mentioned in Section 67 only as per the terms and conditions of licence. As per Section 16 of the Act the appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence. It has been stipulated in the proviso to Section 16 that the Commission shall within one year from the appointed date specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to Section 14. As per the first proviso KSEB was a deemed licensee and as per fifth proviso KSEB Ltd is a deemed licensee. Therefore both KSEB

and KSEB Ltd are bound by the conditions of licence issued by the Commission. KSERC has already issued the KSERC (Conditions of Licence for Existing Distribution Licensee's) Regulations 2006. As per condition (2) in part II "General Condition", the distribution licensee shall comply with the provisions of the Act, rules and regulations, orders and directions issued by the Commission from time to time and the provisions of all other applicable laws for the time being in force. Obligation of the licensee is specified in condition (4). Condition (12) relates to information to be submitted to the Commission. Condition (15) relates to the dispute resolution and the condition (16) relates to standards and procedure. Condition (22) relates to compliance with the grid code and the condition (23) relates to compliance with the Electricity Supply Code. Condition (24) relates to distribution system planning, security standards, distribution system operating standards and performance standards. Condition (25) relates to the procedure for handling complaints and the condition (26) relates to consumer rights statements. Condition (27) relates consumer right to information.

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

18. Regulation 95 of Kerala Electricity Supply Code, 2014, has been incorporated in exercise of the powers conferred on the Commission under Section 181 of the Electricity Act, 2003, read with Section 14, Section 16, Section 50, Section 57, Section 67 and such other statutory provisions with a view to safeguard consumer interest and public interest. The said regulation states as follows,-

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

*may apply for shifting the electric line or electrical plant to any other portion of his land for genuine purposes.*

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

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

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

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

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

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

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

19. The letter No. 965/Com.Ex/KSERC/2014/1073 dated 09.10.2014 was issued in view of the above statutory provisions. Accordingly B.O (FTD)1819/2014/KSEB/TRAC/ Supply Code-2014 dated 02.07.2014 was amended by BO (FTD)/3276/2014 (KSEB/TRAC/ S Code/R3/2014) dated 15.12.2014. Thereafter, KSEB Limited is seem to have taken a somersault on this issue and intimated the Commission as per the letter dated 12.02.15 of Director (Distribution and Safety) that the Board has resolved to recall the B.O dated 15.12.2014, since the statute permits a licensee to realise not only the labour charges, but also cost of materials, if needed additionally from the beneficiary.

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

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

From the above Section it can easily be seen that the statute does not authorize the distribution licensee directly to recover expenditure. It empowers only the State Commission to issue regulations authorizing the distribution licensee to recover reasonable expenditure relating to the construction of electric line or electrical plant used for giving supply to the consumer. It appears that, apparently the KSEB Ltd and the petitioners herein who represent KSEB Ltd have either misunderstood or misinterpreted the said statutory provisions conveniently to their undue advantage.

21. The legal connotation of the Section 46 has to be clearly understood in view of clause (19) of Section 2, Section 14, Section 16, Section 42 and Section 67 of the Electricity Act, 2003. As per the definition of the distribution system in clause (19) of Section 2 of the Electricity Act, 2003, all electrical installations consisting of electrical plants and electric lines up to and including the electric meter are parts of the distribution system. As per Section 42 (1), the distribution licensee has the duty to develop and maintain an efficient distribution system. Thus, in the normal course the distribution licensee has to construct distributing mains and service line and to install meters. But as per Section 46, the Commission may, by regulations, authorize the distribution licensee to recover the expenditure reasonably incurred for providing any electric line or electrical plant for the purpose of giving supply to a consumer. The discretion to authorize the distribution licensee by regulations is with the Commission. Unless the Commission authorizes by regulation, the distribution licensee cannot recover any expenditure. The licensee cannot confer authority on itself or usurp the authority conferred by the statutory provisions on the Commission.
22. Regulation 63 of the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010, deals with erection or alteration of buildings, structures, flood banks and elevation of roads. Sub-regulation (1) states that if at any time, subsequent to the erection of an overhead line, whether covered with insulating material or not, any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building or structure or flood bank or road any permanent or temporary addition or alteration, shall, give intimation in writing of his intention to do so, to the supplier or owner or to the Electrical Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road or any addition or alteration and scaffolding thereof required during the construction. Sub-regulation (2), (3), (4), (5), (6) and (7) deals with procedures on receipt of such intimation as mentioned in sub-regulation (1). As per clause (iv) of sub-regulation (2), the supplier or owner shall examine whether such person was liable to pay the cost of alteration of overhead line and if so sent a notice without undue delay to such person together with an estimate of cost of expenditure likely to be incurred to so alter the overhead line and require him to deposit within thirty days of the receipt of the

notice, with the supplier or owner, the amount of the estimated cost. As per sub-regulation (3) the disputes relating to cost of alteration of the overhead line may be referred to the Electrical Inspector whose decision thereof shall be final. From the above provisions it can be seen that the subject matter of regulation 95 of Kerala Electricity Supply Code, 2014 and the subject matter of Regulation 63 of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010, pertain to and deals with totally different situations and purposes. Section 46 of the Electricity Act, 2003, deals with the power to recover expenditure incurred by the distribution licensee in providing electric line or electrical plant. Regulation 95 of the Kerala Electricity Supply Code, 2014 has been issued in view of Section 46 and Section 67 of the Act. Section 181 of the Act deals with the power of the State Commission to make regulations. Clauses (a) to (zo) stipulate specifically the matters on which Commission shall make regulations. As per clause (zp) of sub-regulation (2) the Commission has also been given power to make regulations on any other matter consistent with the Act, to carry out the provisions of the Act.

23. It was in view of the above facts, circumstances and the statutory provisions the Commission issued notice to the licensee to produce the certified copy of the records, with a view to understanding the grounds and circumstances which led the licensee to the reversal of its earlier stand, revocation of B.O (FTD)No.3276/2014(KSEB/TRAC/SCode/R3/2014Thiruvananthapuram dated 15.12.2014 and issuance of instructions as stated in the letter dated 15.02.2015of the Director (Distribution and Safety), which amounts to disobedience of orders of the Commission and non-compliance of the regulations issued by the Commission to safeguard public interest and consumer interest. But, for reasons known only to the authorities of the licensee, the documents called for by the Commission were not submitted. On the other hand, the Director (Distribution and Safety) of the licensee submitted an application dated 16.03.2015 with a prayer to recall the letter of the Commission dated 02.03.2015 directing him to submit certified copies of the relevant files.

24. As per the provisions in Section 94 of the Act the Commission has been conferred with the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. The said section states as follows,-

**“Section 94 – Powers of Appropriate Commission.-** (1) *The Appropriate Commission shall, for the purpose of any inquiry or proceedings under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-*

- (a) *Summoning and enforcing the attendance of any person and examining him on oath;*
- (b) *Discovery and production of any document or other material object producible as evidence;*

- (c) *Receiving evidence on affidavits;*
  - (d) *Requisitioning of any public record;*
  - (e) *Issuing commission for the examination of witnesses;*
  - (f) *Reviewing its decisions, directions and orders;*
  - (g) *Any other matter which may be prescribed.*
- (2) *The Appropriate Commission shall have the power to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.”*

25. As already indicated KSEB Ltd can function as a licensee only under the provisions of Section 14 of the Electricity Act, 2003. KSEB Ltd has to function in accordance with the terms and conditions of licence specified by the Commission under Section 16 of the Act. KSERC has already issued the KSERC (Conditions of Licence for Exiting Distribution Licensees) Regulations, 2006 as stipulated under Section 16 of the Act. Condition 12 in part II ‘General Conditions’ as specified in the said regulations states as follows,-

**“12.Provision of information to the Commission.-** (1) *The distribution licensee shall furnish to the Commission without delay such information, documents and details related to the licensed business or any other business of the distribution licensee as the Commission may require from time to time.*

(2) *The distribution licensee shall duly make available all books, registers and documents as required under sub-section (3) of Section 128 of the Act.”*

Section 128 of the Electricity Act, 2003, deals with investigation of cases relating to non-compliance of conditions of licence by a licensee or failure of the licensee to comply with any of the provisions of the Act, or the rules or the regulations made there under. As per sub-section (3) of Section 128 it shall be the duty of every manager or managing director or other officer of the licensee to produce any books of accounts, registers or other documents and to furnish any statement and information relating to the affairs of the licensee within such time as may be stipulated by the investigating authority.

26. It should also be noted that every citizen of this Country has, under the provisions of the Right to Information Act, 2005, a right to obtain a copy of any document available with KSEB Ltd. KSEB Limited is a public authority under the provisions of said act and therefore KSEB Ltd is duty bound to furnish to any citizen of this Country, the copy of the records and documents of KSEBL, on submission of application. Only the documents mentioned in Section 8 of the RTI Act are exempted from the obligation to provide information under Section 6. Even such documents which are exempted under Section 8 of the RTI Act shall be produced before the Court of Law, if called for.

27. As per the preamble of the Act one of the objectives of the Electricity Act, 2003, is protection of interest of the consumers. The Hon'ble Supreme Court in the case of MSEDCL Vs Reliance Energy Ltd., 2007 (8) SCC 381 has held that,-

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

28. It cannot be presumed that, KSEB Ltd, with such a large contingent of legal professionals and senior officers, is not aware of the above legal provisions and its duties under the provisions of law. It has also a duty to protect consumer interest. Strangely, KSEB Ltd has taken a ground that the directions of this Commission to produce records, will amount to testimonial compulsion. The Commission anticipates that KSEB Ltd is aware of the meaning of testimonial compulsion against which the Constitution of India has given protection to an individual. The said ground taken by KSEB Ltd necessarily infers that the impugned documents are incriminating in nature, as far as KSEB Ltd is concerned. As averred in the affidavit, the Director (Distribution and Safety) and the Secretary (Administration) of KSEB Ltd do also fear that if the impugned records are produced, the KSEB Ltd will be put to irreparable losses, hardships and sufferings. A public institution cannot take shelter under this argument to refuse to produce before a Court or a statutory authority with powers of a Civil Court like the Commission, the records, registers and documents in its custody and possession. If such an argument is sustained, no Court or statutory authority can call for records from the concerned authorities or persons for the purpose of adjudication of disputes or prosecution of offences. After resolving to recall the B.O (FTD) No.3276/2014 dated 15.12.2014, KSEB Ltd filed a petition under regulation 165 of the Kerala Electricity Supply Code, 2014, praying the Commission to invoke its *suomotu* power to amend regulation 95 of the said Code, contending that there was defect / error in the said regulation. In view of the facts and legal provisions it can easily be found that the ground taken by KSEB Ltd is not legal or valid. After submitting such a petition in the office of the Commission on 12.02.2015 and after having got an inward number as 267/2015, the Director (Distribution and Safety) is seen to have written to the Secretary of the Commission on the same day stating that '*the Commission has accepted the matter into file as inward No.267/2015*'. It is well known that accepting a petition in the tapal or by an officer of the Commission and entry in the inward register does not amount to accepting the petition into file by the Commission. In the said letter, the Director (Distribution and Safety) has intimating that '*the field authorities of KSEB Ltd are under instructions to ensure whether regulation 63 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 has been complied with scrupulously and if not to make refund*

*accordingly.* The licensee has no authority to disregard, neglect or disobey the regulations issued by the Commission after following the due process of law. If there is any illegality in any of the provisions in the regulations issued by the Commission, it can be challenged before the Hon'ble High Court or before Hon'ble Supreme Court. Till any of the regulations or any of the provisions therein are declared illegal by the Hon'ble High Court or by the Hon'ble Supreme Court, the regulations issued by the Commission remain valid and the licensee has to implement them. The licensee cannot assume the powers of the Hon'ble High Court or the Hon'ble Supreme Court and sit in judgment on the issue relating to legal validity or otherwise of the regulations issued by the Commission. After having issued an illegal order, the KSEB Limited is attempting to conceal it by another illegal act of refusing to submit the relevant records as called for by the Commission in exercise of its powers under Section 94 of the Act, which they are bound to submit as per the statutory provisions and conditions of licence. It is pertinent to note in this context that, despite the fact that even every citizen of this Nation is entitled as a matter of right under the Right to Information Act, 2005, to obtain an application, a copy of such records from the licensee, the KSEB Ltd has illegally refused to submit the copy of such records to the Commission which has the statutory authority to call for and obtain such records. Intransigence about the illegal stand taken by the licensee, the impertinence towards the statutory authority and recalcitrance to implement regulations and orders issued by the Commission are writ large on the above actions of KSEB Ltd. The grounds raised by Director (Distribution and Safety), KSEB Ltd in his objection dated 16.03.2015 and by the Secretary (Administration), KSEB Ltd in his petition dated 16.03.2015 are therefore baseless and contrary to the legal provisions and therefore they do not merit any consideration.

29. In view of the facts and circumstances explained above, the objection dated 16.03.2015 filed by Director (Distribution and Safety), KSEB Ltd and the petition dated 16.03.2015 filed by the Secretary (Administration), KSEB Ltd. are dismissed.

Sd/-  
K. Vikraman Nair  
Member

Sd/-  
S. Venugopal  
Member

Sd/-  
T.M. Manoharan  
Chairman

Approved for issue

SECRETARY