

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Sri. T.M. Manoharan, Chairman
Sri. K. Vikraman Nair, Member
Sri. S. Venugopal, Member

File No. 1100/Com. Ex / KSERC/2014

In the matter of the complaint filed by the Electricity Consumers' Welfare Association under Section 142 of the Electricity Act, 2003.

Electricity Consumers' Welfare Association : Petitioner
Thiruvananthapuram
Represented by its Secretary
Shri. K. Anandakuttan Nair

Kerala State Electricity Board Limited : Respondent
and its officers

Order dated 19.08.2015

T.M. Manoharan, Chairman

1. This is a complaint submitted by Electricity Consumers' Welfare Association (ECWA), represented by its Secretary, Shri. K. Anandakuttan Nair. According to the averments in the petition, the complainant Association, came across certain irregularities committed by the First Respondent namely KSEB Ltd and the persons in the offices of Deputy Chief Engineer, Transmission Circle, Thiruvananthapuram, Chief Engineer, Transmission (South), Member (Transmission) KSEB and others down to the level of Assistant Engineer, Transmission, Thiruvananthapuram. In para 1 and 2 of the complaint the complainant has submitted as follows,-

"The complaint hereunder is submitted by Electricity Consumers' Welfare Association and it is represented by its Secretary. This Association had a chance to come across some incriminating, fraudulent and spurious documents created by KSEB, with the connivance of persons in office above and others, with the ulterior intension to extract money illegally from applicants for electricity supply. On the basis of limited enquiry conducted, the Deputy Chief

Engineer, Transmission Circle, Thiruvananthapuram collected pro-rata amounts from the applicants for HT Electricity supply, which were the proportionate cost etc, to their requested quantity of electricity supply, for providing a 12.5 MVA transformer etc at 110 kV substation, TERLS. However, without erecting this 12.5 MVA transformer, electricity supply was provided to the applicants for electricity supply from whom this pro-rata amount were collected, hence the proposal for erection of transformer and collection of amounts was bogus. Thus making false and bogus report to the Board, that erection of 12.5 MVA transformer at 110 kV sub-station. TERLS is required for electricity supply to the applicants and prompted KSEB to issue Board orders to that effect. Due to other reasons as detailed hereunder also, collection of these pro-rata amounts was unauthorized and illegal. Further, the Deputy Chief Engineer, Transmission Circle, Thiruvananthapuram collected development charges / pro-rata amounts from other applicants using some other terms also, from whom the KSEB has not authorized him to collect pro-rata amounts. For these electricity supplies, other estimated amounts were also collected for expenses for electricity supply as advance by the respective Assistant Engineers of Electrical Sections, at which application for electricity supply were normally submitted. Hence this Association is convinced to arrive at a conclusion to believe that, KSEB and the persons who were in authority have independently and jointly contravened the provisions under Electricity Act, 2003, and Rules and Regulations made there under, orders issued by the Hon'ble State Electricity Regulatory Commission and Hon'ble APTEL while collecting pro-rata amounts, which is none other than "development charges".

This complaint is submitted directing against such erred persons in different offices of KSEB who have connived to prompt KSEB to issue orders for these illegal collection of pro-rata amounts / development charges and the person who was the Deputy Chief Engineer, Transmission Circle, Thiruvananthapuram, who has collected pro-rata amounts / development charges from others who were not included in the Board orders and hence not authorized by the Board for him to collect, praying for actions as provided under Section 142, 146 and 149 of Electricity Act, 2003. This complaint is submitted with the intention of protecting the interest of electricity consumers and for preventing further occurrence of this sort of illegal actions and hence cheating of applicants for Electricity Supply."

2. In the hearing dated 07.04.2015 KSEB Ltd has raised a contention to the effect that Shri. K. Anandakuttan Nair has no *locus standi* to file this petition since he is

not an affected person. According to KSEB Ltd only an affected person can file a complaint under Section 142 of the Electricity Act, 2003.

3. The Commission has considered rival contentions raised by the complainant and the KSEB Ltd. The major points for decision are the following,
 - (i) Whether or not Shri. K. Anandakuttan Nair, Secretary, ECWA has *locus standi* to file their complaint.
 - (ii) Whether or not Adv. B. Sakthidharan Nair can represent KSEB Ltd in the proceeding.
 - (iii) Whether or not there are any reasonable grounds in the complaint filed by the complainant, which warrants intervention by the Commission.
 - (iv) Whether or not the allegation of bias, raised by the complaint against Shri. K. Vikraman Nair, Member, KSERC, is valid.

4. Regarding the question of *locus standi* of Shri. K. Anandakuttan Nair, Secretary, ECWA to file this complaint, the Commission expresses the following considered views. Clause (49) of Section 2 of the Electricity Act, 2003, defines person as follows,-

“(49) “person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.

Certainly the ECWA is a person as per the above definition. Such a juridical person can be represented by its secretary. Section 149 of the Act deals with Offences by Companies. Explanation under sub-section (2) of Section 149 states that company means a body corporate and includes a firm or other association of individuals. As per sub-section (1) of Section 149 of the Act, every person, who at the time of the offence was committed, was in charge of or was responsible to the company, can be prosecuted and punished. In the case of Consumer Welfare Association, its Secretary is the person in charge and responsible to the said association. A body of individuals such as the complainant Association, can be represented only by a person authorized for such purpose. In this case, the Secretary of the Association is the person authorized to represent it,

5. Action under Section 142 can be initiated under the following circumstances,
 - (i) In case any complaint is filed before the Commission by any person.
 - (ii) If the Commission is satisfied that any person has contravened any of the provisions of the Electricity Act, 2003, or the rules or regulations made there under.
6. Regulation 22 of the KSERC (Conduct of Business) Regulations, 2003 specifies that proceedings of the Commission may be initiated in one of the following manners,-
 - (i) *Suomotu* by the Commission,
 - (ii) Upon a petition filed by the Board or a licensee,
 - (iii) Upon a petition filed by the Government of Kerala,
 - (iv) Upon a petition filed by an affected party.

It has been provided there under that the Commission shall have the right to decide or order that any part is not an affected party for the purpose of these Regulations. Provided further that the proceedings under (i), (ii), (iii) and (iv) above shall pertain to matters relating to the powers and functions of the Commission as assigned to it under Section 86 and other provisions of the Act.

7. Regulation 30 the KSERC (Conduct of Business) Regulations, 2003 specifies that a party to any proceedings before the Commission may be represented in person or through an authorized employee or through an authorized professional who may be an advocate or a chartered accountant or a cost and works accountant or a company secretary or a graduate / chartered engineer holding a certificate of practice.
8. KSEB Ltd has argued that a person who files a complaint shall necessarily be an affected person. But in Section 142, the term used is only 'any person' and it is not seen qualified as 'any aggrieved person' or 'any affected person'. Therefore a plain reading of the statutory provision indicates that any person can file a complaint. Even if the argument, that the person who file complaint shall be an affected or aggrieved party, is accepted for argument, it cannot be successfully contended that an association formed for the welfare of the consumers of electricity is not aggrieved by the breach of the right of the consumers, if any committed by the licensee or its officers in violation of the relevant statutory provisions and the regulations made thereunder. In this context, it should also be remembered that, one of the objectives of the Electricity Act, 2003, is protection of the rights of the consumers and that the Commission has the duty to protect the interest of consumers. Regulation 31 the KSERC (Conduct of Business) Regulations, 2003, deals with consumer interests and it specifies that the Commission may permit any association or forum or other body corporate or any group of consumers to participate in any proceedings before the Commission with a view to protecting consumer interests. Even if the Commission has to initiate a *suomotu* action against any person who has contravened any of the provision of the Electricity Act, 2003, or the rules or the regulations made thereunder or the orders or directions issued thereunder, the Commission has to receive such an information and satisfy about its veracity after due verification. Therefore submission of reliable information about the violations of the statutory provisions or the rules or the regulations and about the breach of right of consumers, by any person has to be appreciated and welcomed by the Commission.
9. In two recent decisions, the Commission had decided that Shri. K. Anandakuttan Nair had no *locus standi* to appear for the consumers in the said cases. Such decisions were taken in view of the facts and circumstances specific to those cases, as can be seen from the following paragraphs. In the common order dated 30.06.2015 in the petitions 2346/ Com Ex/KSERC/2014, 2347/ Com. Ex/KSERC/2014 and in 2348/ Com. Ex/KSERC/2014 this Commission had decided as follows

- (i) *A consultant is a professional and a consultant engaged for a specific purpose will not come in the ambit of the term employee as envisaged in regulation 30 of KSERC (Conduct of Business) Regulations, 2003.*
- (ii) *Shri. K. Anandakuttan Nair has been engaged by the petitioner as a consultant for rendering a professional service and that he is not in the regular service of the petitioner.*
- (iii) *Shri. K. Anandakuttan Nair cannot be considered as an employee of the petitioner as envisaged in regulation 30 of KSERC (Conduct of Business) Regulations, 2003 and therefore he cannot represent the petitioner in the proceedings before the Commission.*

The said order dated 30.06.2015, has been issued under a totally different set of facts and circumstances. In the said case, Shri.K. Anandakuttan Nair was appearing before the Commission as a representative of the complainant consumers, in the capacity of a professional consultant. It was strictly against the provisions in regulation 30 of the Kerala State Electricity Regulatory Commission (Conduct of Business), Regulations, 2003, as explained in detail in the said order. Here, in this case, Shri. Anadakuttan Nair is representing the ECWA, in his capacity as its Secretary, which he is bound to and is entitled to do.

- 10.(a) In another order dated 10.3.2015, in the petition No.1151/Com. Ex/KSERC/2014, this Commission had found that Shri. K. Anandakuttan Nair, Secretary, Electricity Consumers Welfare Association, No. TVM/TC/1087/2013, the complainant therein, had no *locus standi* to file such complaint before the Commission, in view of the provisions of KSERC (Conduct of Business) Regulations, 2003. Such an order was issued by the Commission under the special circumstances of the said case, the resume of which is given below.
- (b) In the said case, the affected party was M/s Madhuram Foods, which is an industrial consumer with consumer No.15814 under Electrical Section, Beach, Thiruvananthapuram. One Shri. Anil Ganesh was the proprietor of Madhuram Foods and he had on 24.10.2009, submitted an application to Assistant Engineer, Electrical Section, Beach for additional power. The proposal for giving additional power, was submitted to Executive Engineer, Electrical Division, Kazhakoottam and he had sanctioned an estimate for Rs.10,84,478/- for the works including installation of 100 kVA transformer, RMU etc., required for giving additional power to M/s Madhuram Foods. Demand notice for the estimate amount was issued to the consumer. Subsequently 28 installments was granted to the consumer for remittance of the amount and the first installment was remitted on 23.01.2010. All works, except installation of RMU, were completed by July, 2010. RMU could not be installed due to its non-availability. In order to avoid hardships to the consumer, additional load was provided to the consumer on 11.07.2010, using a double pole structure.

Subsequently in August, 2010, the consumer again requested for additional power. As per application dated 30.09.2010, Smt. Meenakshi, Mudhuram Food Products had applied for change of ownership of the premises and connection No.15814 in her name and it was granted by Assistant Engineer, Beach on 18.10.2010. The consumer had filed OP No. 981/2013 and OP No. 1086/2013 before the CGRF, Kottarakkara alleging collection of excess amount by the officers of KSEB Ltd and deficiency in service. Shri.K. Anandakuttan Nair had represented the consumer in the OP No.981/2013 and OP No.1086/2013 before the CGRF, Kottarakkara. After hearing the petitioner on 26.02.2014, the CGRF, Kottarakkara ordered that KSEB Ltd should evaluate the work done and refund excess amount if any collected. Executive Engineer, Kazhakkootam in compliance of the order of CGRF, refunded the balance amount of Rs.3,38,937/- and the advance of amount of Rs.5000/-, vide cheque No.763044 dated 21.11.2014 and cheque No.763273 dated 29.12.2014 respectively. As already stated, Shri. K. Anandakuttan Nair had represented the consumer before the CGRF, Kottarakkara, both in OP No.981/2013 and in OP No.1086/2013. This fact hasnot been controverted by Shri. K. Anandakuttan Nair, when the issue of his *locus standi* to file petition before the Commission, was raised by the Advocate of KSEB Ltd. The consumer had accepted the amount refunded by the officers of KSEB Ltd and did not file any appeal from the said order of the CGRF, before the Electricity Ombudsman, thereby indicating that the grievance of the consumer was redressed to his satisfaction. But, Shri. K. Anandakuttan Nair, in the capacity of Secretary, Electricity Consumer Welfare Association, Thiruvananthapuram filed the complaint 1151/Com. Ex/KSERC/2014, before the Commission, alleging non-compliance of statutory provisions, regulations and orders issued thereunder. Shri. K. Anandakuttan Nair had alleged that the officers of KSEB Ltd had illegally subjected the consumer M/s Madhuram Foods, to the process of power allocation, collected excess amount under several heads without authorization and had failed to give connection within the time frame stipulated by statute. Shri. K. Anandakuttan Nair, Secretary, Electricity Consumer Welfare Association submitted as follows,-

“Therefore, this petition has reasons to arrive at a conclusion to believe and then to submit before this Hon’ble Commission that, this non-compliance and breaches requires actions under Section 142 and 146 of Electricity Act, 2003, penalty in accordance with sub-section (3) of Section 43 of the Act and as detailed under sub-clause (3) of Clause 6 of Supply Code, 2005 and other, which this Hon’ble Commission may decide and order, hence this petitioner respectfully submit for that.

Upon the facts and grounds detailed above and that are urged during the hearing, if opportunity is allowed, it is most respectfully submitted that, appropriate actions may be taken against the

persons who were in office who have committed the above detailed non-compliance of law and hence breach of law, rules and regulations under Electricity Act, 2003.”

(c) When the counsel of KSEB Ltd, raised the question of *locus standi* and argued that Shri. K. Anandakuttan Nair was neither the affected party nor a lawfully authorized representative of the consumer, Shri. K. Anandakuttan Nair, had, in his written submission dated 06.01.2015, stated that “Here in this case, the complainant, who is the Secretary to the Electricity Consumer Welfare Association, is a complainant and at the same time an informer. KSEB Ltd had also raised several grounds to establish that Shri. K. Anandakuttan Nair, had no *locus standi* to file the complaint. The main grounds were

- (i) Shri. K. Anandakuttan Nair was not an affected party.
- (ii) Shri. K. Anandakuttan Nair cannot represent the consumer in view of regulation 30 of KSERC (Conduct of Business) Regulations, 2003.
- (iii) As per decision of the Hon’ble Supreme Court in MERC Vs Reliance Energy Ltd (2008) 7 SCC 381, the Electricity Regulatory Commissions cannot adjudicate individual grievances.
- (iv) The grievances of the consumer had already been redressed by complying with the order of CGRF, Kottarakkara in this regard.
- (v) Shri. K. Anandakuttan Nair had represented the Commission in OP No. 981/2013 and OP No. 1086/2013 before CGRF, Kottarakkara.

(d) In view of the above facts and circumstances, the Commission had in its order dated 10.03.2015 in 1151/Com. Ex/KSERC/2014 found as follows;

“The complainant can be treated as an informer of the Commission for initiating suomotu proceedings as per 22 (a) of KSERC (Conduct of Business) Regulations, 2003. The role of complainant ends at the point of giving information to the Commission regarding breach of statutes by a ‘person’ as defined as sub-section (49) of Section 2 of the Electricity Act, 2003, and he cannot proceed with the petition thereafter.

In the circumstances stated above, the complainant Shri. Anandakuttan Nair, is neither an affected party as defined in 22 (d) of the KSERC (Conduct of Business) Regulations, 2003 nor an authorized representative of the consumer as defined in regulation 30 of the KSERC (Conduct of Business) Regulations, 2003, and therefore his complaint cannot be accepted for initiating proceedings under Section 142 of the Electricity Act, 2003.”

(e) Further, in the OP No.981/2013 and OP No. 1086/2013, Shri. K. Anandakuttan Nair had already represented the consumers before CGRF, Kottarakkara and appropriate relief was ordered by the CGRF, Kottarakkara in redressal of the grievances of the consumers. The consumers had

accepted the refund of money given by the officers of KSEB Ltd, in compliance of the said order of CGRF and they had not filed any appeal from the said order before the Electricity Ombudsman. In view of the above facts, Shri. K. Anandakuttan Nair cannot be allowed to play a dual role of complainant and informer and to re-agitate the same issues before the Commission for taking action against the officers of KSEB Ltd under Section 142 of the Act. The above decisions were taken in view of the above facts, circumstances and regulations.

11. Here in this case, Shri. K. Anandakuttan Nair has clarified that he is only an informer and has submitted certain commissions and omissions on the part of the officers of KSEB Ltd, in contravention of the statutory provisions, for appropriate action. The issue raised relates to the collection of developmental charges or pro rata amount, contrary to statutory provisions, by the State Transmission Utility and Transmission licensee under KSEB Ltd.
12. In view of the facts and circumstances and legal provisions explained above, it is found that, the complainant namely, Electricity Consumers Welfare Association (ECWA), represented by its Secretary, Shri. K. Anandakuttan Nair has the *locus standi* to file this petition before the Commission for the purpose of providing information to the Commission required for initiating action under Section 142 of the Act.
13. The second issue to be decided is whether or not Adv. B. Sakthidharan Nair can represent KSEB Ltd in this case. In the light of the provisions in Advocates Act 1961 and various decisions of the Hon'ble High Court, it is evident that, Adv. B. Sakthidharan Nair can represent KSEB Ltd in this case.
14. The third point to be considered is whether or not there is any reasonable ground in the complaint filed by the petitioner. The scheme of law relating to the recovery of expenditure under Section 46 of the Electricity Act, 2003, is explained hereunder.
15. The legal and technical aspects relating to recovery of expenditure relating to transmission works are as explained hereunder.
16. After the enactment of Electricity Act, 2003, the activities in power sector have to be regulated in accordance with the provisions therein and the regulations made thereunder. Before the enactment of Electricity Act, 2003, all the activities in power sector namely generation, transmission and distribution were under taken by the State Electricity Board, constituted under Section 5 of the Electricity (Supply) Act 1998. After enactment of Electricity Act, 2003, the erstwhile State Electricity Board have to be reorganized into a Government Company or Company or Companies as provided in sections 131, 132, 133 and 134 in Part XIV of the Act namely '*Re-organisation of Board*',. As per Section 185 of the Act, the Electricity Act 1910, the Electricity (Supply) Act 1948 and the Electricity Regulatory Commission Act, 1998 have been repealed.
17. Section 12 of the Electricity Act, 2003, states that no person shall transmit electricity or distribute electricity or undertake trading in electricity unless he is

authorized to do so by a licence issued under Section 14 or is exempt under Section 13. Thus for undertaking transmission, distribution and trading of electricity, licence is inevitable.

18. The erstwhile KSEB has been re-organized as per the provision of the Act. A Government company namely KSEB Ltd has been incorporated and all assets, liabilities rights and interests of the erstwhile KSEB have been transferred and vested in the new Government company namely, KSEB Ltd. Both KSEB and its successor in interest namely KSEB Ltd, are deemed licensees as per the provision of Section 14 of the Act. Though KSEB has been re-organized into the Government Company namely, KSEB Ltd, it has not been unbundled into separate companies for generation, transmission and distribution. KSEB Ltd is now functioning as the State Transmission and Distribution licensee owing generation assets. As per second proviso under Section 14, the State Transmission Utility shall be deemed to be a transmission licensee. Transmission licensee has to function in accordance with Section 25 to 41 in Part V of Electricity Act, 2003, namely, '*Transmission of Electricity*'. The distribution licensee has to function in accordance with Section 42 to 60 in Part VI of Electricity Act, 2003, namely, '*Distribution of Electricity*'. As per proviso under Section 39 of the Electricity Act, 2003, State Transmission Utility shall not engage in trading in electricity. As per the ninth proviso under Section 14 of the Electricity Act, 2003, a distribution licensee shall not require a license to undertake trading in electricity. From the above legal provisions, it can easily be found that the State Transmission Utility and the distribution licensee have to function in two distinct fields of operation and perform independent duties. A State Transmission Utility and Transmission licensee can undertake only transmission functions under a transmission licence and it cannot undertake distribution or trading business. Distribution licensee can undertake distribution and trading of electricity.
19. Section 42 of the Act, stipulates the duty of distribution licensee. As per sub-section (1) of Section 42, the distribution licensee has to develop and maintain an efficient and economical distribution system. As per clause (19) of Section 2 of the Act, distribution system includes all electric line and electrical plants up and including the meter in the premises of the consumer. As per sub-section (1) of Section 43 of the Act, the distribution licensee shall give supply of electricity within one month from the date of submission of application. As per sub-section (2) of Section 43, it shall be the duty of the distribution licensee to provide, if required, electrical plant or electric line for giving electric supply to the premises specified in sub-section (1) of Section 43. Section 46 of the Act empowers the Commission to authorize the distribution licensee to recover reasonable expenditure incurred by it for providing electric line or electrical plant for the purpose of giving electric supply to a consumer. Section 46 of the Act is quoted hereunder, states as follows;

“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.”

20. As per the statutory provisions explained above, it can easily be seen that,
- (i) It is the duty of the distribution licensee to develop and maintain an efficient and economical distribution system, up to and including the meter in the premises of the consumer.
 - (ii) It is the duty of distribution licensee to provide electric line or electrical plant, required for giving electric supply to the premises of the consumers.
21. However State Electricity Regulatory Commission has been given power under Section 46 of the Electricity Act, 2003, to authorize the distribution licensee by regulation, to recover the expenditure for providing electric line or electrical plant for giving supply to any applicant for supply of electricity. From the above statutory provisions it can easily be found that such recovery of expenditure can be made only by the distribution licensee, provided the following conditions are satisfied,-
- (i) The SERC should authorize the distribution licensee for such recovery of expenditure by a regulation.
 - (ii) The expenditure should be reasonable.
 - (iii) The expenditure should have been actually incurred by the distribution licensee.
 - (iv) The expenditure should be for providing electric line or electrical plant for giving that particular supply to the applicant.
22. From the above scheme of law in Electricity Act, 2003, it can easily be seen that the transmission licensee cannot recover any expenditure from the consumer, under Section 46 of the Act. Only the distribution licensee can recover the expenditure, as authorized by the Commission by regulation, subject to the condition explained above. Except under Section 46 of the Act, there is absolutely no provision in Electricity Act, 2003, to recover expenditure from the applicant / consumer.
23. As already indicated earlier, the erstwhile KSEB constituted under Section 5 of the Electricity (Supply) Act, 1948, has not been unbundled and re-organized into Generation Company, Transmission Company and Distribution Company. It has only been reorganized into a Government Company namely KSEB Ltd, and all the assets, liabilities right and interest of erstwhile KSEB Ltd, have been vested in

KSEB Ltd. The Government Company namely, KSEB Ltd., is functioning as a composite unit, of State Transmission Utility and distribution licensee, owing generation assets. Before the reorganization into a Government company, KSEB was performing the duties relating to generation, transmission and distribution under three distinct profit centre namely, Generation Profit Centre, Transmission Profit Centre and Distribution Profit Centre. After the reorganization into company, such functions are undertaken by distinct Strategic Business Units namely the Strategic Business Unit-Generation, the Strategic Business Unit-Transmission and the Strategic Business Unit-Distribution.

24. In view of the facts and scheme of law explained above, it can easily be found that no expenditure incurred by the Transmission Profit Centre of the erstwhile KSEB or by the Strategic Business Unit-Transmission of KSEB Ltd, can be recovered from the consumer under Section 46 of the Act and the regulations made there under, whether or not, it is called development charge or proportionate expenditure or any other name.
25. The following technical aspects of the issue should also be considered. Electricity is supplied to the consumer at various voltage levels, depending on the load (connected load or contract demand) of the consumers. The voltage levels for transmission and distribution of electricity have been standardized in accordance with the regulations issued by the Central Electricity Authority. The voltage level up to 430 volts is called low tension (LT), the voltage levels of 11 kV, 22 kV and 33 kV are called high tension (HT) and the voltage level of 66 kV, 110 kV, 220 kV and above are called extra high tension (EHT).
26. Transmission of electricity is the function of Transmission Utility. The terms 'transmission line' and 'transmit' have been defined in clause (72) and (74) of Section 2 of the Electricity Act, 2003, respectively. Usually transmission lines at the voltage levels of 66 kV, 110 kV, 220 kV and 400 kV and the substations at those levels are the assets of the 'transmission utility'. The law or rules or regulations do not prohibit a distribution licensee from owning or operating an electric line or sub-station at 66 kV, 110 kV or 220 kV. An electric line at EHT level will become a transmission line, when it carries electricity for a generating station to another generating station or to a substation and thus conforms to the definition of transmission line as given in clause (72) of Section 2 of the Act.
27. An EHT line can be a part of distribution system, if it is used for supplying electricity to a consumer at EHT level. Distribution system is defined in clause (19) of Section 2 of the Act. Clause (18) of Section 2 of the Act defines distribution main as the portion of any main, with which, a service line is or intended to be connected. As per clause (42) of Section 2 of the Act, a main means any electric supply line through which electricity is or intended to be supplied. As per clause (70) of Section 2, supply in relation to electricity means, the sale of electricity to be a licensee or consumer. Clause (61) of Section 2 has defined service line.

28. From the above legal provisions, it can be seen that, an EHT line, when it transmit electricity from a generating station to another generating station or sub-station is a transmission line and when it is used for supply of electricity to a consumer, it becomes part of distribution system of the distribution licensee. Thus it can be seen that, if a distribution licensee constructs electric line or electrical plant at LT or HT or EHT level, exclusively for giving supply of electricity to any LT or HT or EHT consumer as the case may be, the expenditure for construction of such electric line or electrical plant can be recovered by the distribution licensee under Section 46 of the Act, irrespective of the voltage level at which supply is given.
29. At the same time it is made clear that even the distribution licensee cannot realize pro-rata development charge per kilo watt or connected load or contract demand. This is because, it is not an expenditure actually incurred by the licensee for giving that particular supply. The development charge per kilo watt of connected load or contract demand is a standard pro-rata amount worked out by the State Transmission Utility, for developing its transmission system or by the distribution licensee for developing its distribution system. KSERC has already rejected the proposal submitted by KSEB for collection of developmental charges as per its order dated 16.11.2009 in OP 13/2009.
30. In Kerala, the system of two part tariff is adopted, which consists of demand charges and energy charges. The demand charge is meant to meet the expenditure relating to development and maintenance of distribution system of the distribution licensee. Similarly the transmission charges realised by the transmission licensee takes care of all expenditure incurred by the transmission licensee for the development and maintenance of transmission lines owned by it.
31. The methodology for determination of tariff provides for recovery of capital expenditure as explained below. The capital expenditure required for a transmission or distribution project is divided into debt and equity in the normative ratio of 70:30. The interest on capital liability, the return on equity @ 14%, the depreciation on the capital asset meant for repayment of the principal amount of loan, the employee cost, the repairs and maintenance charges and the administrative and general expenses are approved while assessing the aggregate revenue requirement for meeting the revenue expenditure of the licensee and they are allowed to be recovered through tariff.
32. In the order in appeal 22/2007, the Maharashtra State Electricity Distribution Company Ltd Vs the Maharashtra Electricity Regulatory Commission, the Hon'ble APTEL had rejected the proposal of the distribution licensee to collect service line charges from the prospective consumers, except in the cases of consumers who required dedicated lines. The Hon'ble Supreme Court in Orissa State Electricity Regulatory Commission Vs IP Steel Ltd (1995) 4 SCC 320/AIR 1995 SC 1553 has also issued similar orders.
33. In view of the above facts, it is clear that neither the transmission licensee nor the distribution licensee can collect developmental charges or any pro-rata charges

per kilowatt. The transmission licensee cannot recover from a consumer or from a perspective consumer any expenditure for construction of electric line or electrical plant. The distribution licensee can recover only the reasonable expenditure incurred for constructing any electric line or electrical plant exclusively for giving a particular supply, irrespective of voltage level at which supply is given, provided the conditions stated above are satisfied.

34. The complainant has placed before the Commission, copies various records such as,-

1. B.O (FM) No.417/2009 (TPC 2/314/2009) dated 13.02.2009,
2. B.O (FB) No.2390/2009 (TPC 2/314/2009) dated 15.09.2009.
3. Note to the Board No.TPC 2/IV/314/09 dated 04.02.2010 on agenda item No. 18/2010.
4. B.O (FB) 604/2010 (TPC 2/IV/314/09) dated 06.03.2010.
5. Proceedings of the Board meeting dated 22.02.2010 on Note to the Board No.TPC 2/IV/314/09 dated 04.02.2010 on agenda item No. 18/2010.
6. Letter No. DB-11/TDP/TERLS/2011-12/1170 dated 29.08.2011.
7. Letter No. DB-2/TCT/TERLS/2011-12/721 dated 28.09.2011.
8. Letter No. DB-2/TCT/TERLS/2011-12/822 dated 27.10.2011.

All the above records prove beyond doubt that the pro-rata amounts were realized by the Deputy Chief Engineer (Transmission) Thiruvananthapuram from the following consumers.

1. M/s Brahmos Aerospace Ltd – Rs.68.9344 lakh
2. M/s Air India Engineering Base – Rs.68.9344 lakh
3. M/s Sky line Builders (SFS Cyber Palm Project) – Rs.117.3412 lakh

35. These facts have not been controverted by KSEB Ltd. On the other hand, it has attempted to justify the collection of such amounts citing various grounds. It is seen from the records that the full time Members had sanctioned an estimate for an amount of Rs.255.21 lakh for the transmission works as per B.O (FM) No.417/2009 (TPC 2/314/2009) dated 13.02.2009. In the said B.O it is seen stated that the cost of distribution portion of the work is not included in this and will be prepared separately by distribution wing. As per B.O (FB) No.2390/2009 (TPC 2/314/2009) dated 15.09.2009, the Full Board of KSEB Ltd is seen to have allowed collection of pro-rata amount from the following consumers as shown below,-

1. M/s Brahmos Aerospace Ltd – Rs.68.9344 lakh
2. M/s Air India Engineering Base – Rs.68.9344 lakh
3. M/s Sky line Builders (SFS Cyber Palm Project) – Rs.117.3412 lakh

The Full Board is also seen to have issued an order to collect pro-rata amount from the other bulk consumers also who request for power allocation from any transformer. Subsequently, M/s Heera Infocity and M/s Skyline Builders also

submitted application for electric supply for a load of 0.910 MVA and 0.9474 MVA respectively. Hence the estimate was revised on 06.03.2010 to Rs.292.68 lakh and the estimate amount was divided as shown below;

1. M/s Brahmos Aerospace Ltd – Rs.44 lakh
2. M/s Air India Engineering Base – Rs.44 lakh
3. M/s Sky line Builders (SFS Cyber Palm Project) – Rs.69.13 lakh
4. M/s Heera Infocity – Rs.27.875 lakh
5. M/s Skyline Builders – Rs.25.58 lakh

36. It has also been admitted that the works as per the estimate have not been executed and the connections have been given to the above consumers without executing the works as per the estimate sanctioned for the same.

37. In view of the legal provisions, the facts and records, it is found that KSEB Ltd is also the State Transmission Utility and therefore the officers of the Transmission Profit Centre of erstwhile KSEB and the officers of Strategic Business Unit – Transmission of KSEB Ltd cannot realize any amount from any consumers under Section 46 of the Electricity Act, 2003.

38. The petitioner Shri. K. Anandakuttan Nair has raised an allegation that Shri. K. Vikraman Nair, Member, KSERC cannot hear and decide this case, since he was the Director (Transmission) in KSEB Ltd and consequently he is likely to be biased. It is true that Shri. K. Vikraman Nair had worked as Director (Transmission) in KSEB Ltd. All decisions which he had taken was only in his official capacity and he has no personal interest to safeguard in this case. He has not taken any decision in favour of KSEB Ltd in this case and therefore there is absolutely no ground to allege bias against him. The Hon'ble Supreme Court in various cases has held that a mere apprehension of bias is not enough and there must be cogent evidence available on record to come to the conclusion. In the following judgments, the Hon'ble Supreme Court has reiterated this legal position.

- (i) ABP Private Limited and others Vs Union of India. (Writ Petition 246/2011) para 35 and 36
- (ii) Kumaon Mandal Vikas Nigam Ltd Vs Girija Shankar Panth (2001) 1 SCC 182.
- (iii) State of Punjab Vs V.K. Khanna (2001) 2 SCC 330.

Therefore it can easily be found that the allegation of bias against Shri. K. Vikraman Nair, Member, KSERC is baseless in this case.

39. In view of the scheme of law explained in earlier paragraphs it is provisionally found that the collection of development charge or pro-rata amount by way of recovery of expenditure incurred by the Strategic Business Unit- Transmission of KSEB Ltd or by Transmission Profit Centre of the erstwhile KSEB, for developing the transmission system including the transmission lines and associated sub-stations, is contrary to the relevant statutory provisions in the Electricity Act, 2003, and the regulations made thereunder. Therefore it is decided to initiate

suomotu proceedings under regulation 23 of KSERC (Conduct of Business) Regulations, 2003 against KSEB Ltd for the illegal collection, if any, of development charges or pro rata charges for the development of transmission system including the transmission lines and associated sub-stations. It is also decided to issue notice under regulation 23 read with regulation 27 of KSERC (Conduct of Business) Regulations, 2003 to KSEB Ltd represented by its Chairman and Managing Director and by its Secretary.

Sd/-
Vikraman Nair
Member

Sd/-
S. Venugopal
Member

Sd/-
T.M. Manoharan
Chairman

Approved for issue,

Santhosh Kumar. K. B.
SECRETARY