

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

**Present:** Shri. T.M. Manoharan, Chairman  
Shri.K.VikramanNair, Member  
Shri. S. Venugopal, Member

**OP No. 06/2016**

**In the matter of:** Penalisation u/s 142 of the Electricity Act, 2003 for violating the provisions of the Kerala Electricity Supply Code, 2014.

Aby Alex Abraham, Kizhakkedath House,  
IMAGE School of Animation, 2<sup>nd</sup> floor,  
Kizhakkedathu building, Pathanamthitta : **Petitioner**

The Assistant Engineer, Kerala State Electricity Board,  
Electrical Section Office, Pathanamthitta,  
Pathanamthitta district. : **Respondent**

**Order dated 31.05.2016**

**Background of the Case:**

1. The petition is filed under section 142 of the Electricity Act, 2003 by The petitioner, a registered consumer under Electrical Section, KSEBL, Pathanamthitta bearing Consumer No. 4974 for violation of the provisions of the Kerala Electricity Supply Code, 2014. The premises is a computer education institute having a sanctioned connected load of 5000 W under LT VI F tariff. On 20.11.2015 the APTS wing of KSEBL along with the officials of Electrical Section Pathanamthitta inspected the premises and issued a penal bill for Rs.34,323/- dated 20.11.2015, upon detection of an alleged unauthorized additional load of 7,630 W. The Assessing Officer after hearing the petitioner on 08.12.2015 issued a final assessment order on 18.12.2015,

confirming the provisional bill amount. Aggrieved by the assessment bill issued by the respondent, the petitioner filed this present petition, praying to prosecute and punish the respondent for violating regulation 153 (15) of the Kerala Electricity Supply Code, 2014, by invoking power under Section 142 of the Electricity Act, 2003.

2. The petitioner Sri. Aby Alex Abraham, has submitted the following facts for consideration of the Commission.

(1) The petitioner, a registered consumer under Electrical section, KSEBL, Pathanamthitta bearing Consumer No. 4974. The premises is a computer education institute having a sanctioned connected load of 5000 W and under LT VI F tariff. On 20.11.2015 the APTS wing of KSEBL along with the officials of Electrical Section Pathanamthitta inspected the premises and issued a penal bill for Rs. 34,323/- on 20.11.2015, upon detection of an alleged unauthorized additional load of 7,630 W. The mahazar admits the fact that the unauthorized load was used by the consumer under the very same premises under the very same tariff for which supply was sanctioned to the consumer. Therefore while applying Sub regulation 15 of regulation 153 of the Supply Code, 2014 the usage does not amount to unauthorized use of electricity and hence no penalty can be imposed.

(2) A penalty can be assessed by an authority only on the basis of the law prevailing as on the date of inspection. As such, the law prevailing with regard to unauthorized load was sub-regulation 15 of regulation 153 of the Kerala Electricity Supply Code, 2014 which is quoted hereunder;

*“Unauthorized additional load in the same premises and under same tariff shall not be reckoned as unauthorized use of electricity”.*

(3) Penalty under Section 126 of the Electricity Act, 2003 can be imposed only in a case where unauthorized use of electricity is detected.

(4) Kerala State Electricity Regulatory Commission has framed the Electricity Supply Code by invoking the power under Section 50 of the Electricity Act, 2003 and hence it is a subordinate legislation. The licensee and its officers are legally bound to act in accordance with the regulations framed in the Supply Code.

3. The Assistant Engineer, KSEBL Pathanamthitta, in the capacity of the Assessing Officer under Section 126 of the Electricity Act, 2003 had disposed the objections filed by the petitioner on the following grounds;

(1) The Kerala State Electricity Appellate Authority has given a verdict on the Appeal No. 24/2014 (Smt. Bency Nixon Vs Assistant Engineer KSEB Ltd., Pala) dated 09.07.2015 and the order is quoted as hereunder;

*“The KSERC has issued the said regulation vide Notification No. 215/DD/ TD (Rev) 2014/ KSERC dated, Thiruvananthapuram, 31.10.2014 and well before this date the verdict of Apex Court was in existence. Even though said regulation issued later on 31.01.2014 by the KSERC has not been challenged and set aside by any legal forum till date, the Apex Court is the final authority by virtue of Constitution and it is a well known fact that the interpretation given by the Hon’ble Apex Court shall invariably be treated as the extension of Section 126 of the 2003 Act. From the facts and circumstances of this case, the considered view of this Authority is that the existence of unauthorized additional load shall be reckoned as unauthorized use of electricity and shall be assessed under Section 126 of the Electricity Act, 2003 (amended in 2007)”.*

(2) Vide judgment dated 20.05.2011, in the civil appeal number 8859 of 2011 (Executive Engineer Vs M/s. Seetaram Rice Mill 2011 STPL (Web) 942 SC) the Hon’ble Apex Court had stated that *“the excess load consumption would be squarely covered under explanation (b) (iv) of Section 126 of the Electricity Act, 2003”.*

4. The petitioner has submitted that since the Assistant Engineer, Electrical Section, KSEBL, Pathanamthitta had refused to follow the regulation framed by the Kerala State Electricity Regulatory Commission and hence he is liable to be punished under Section 142 of the Electricity Act, 2003 for the non compliance of Sub regulation (15) of regulation 153 of the Kerala Electricity Supply Code, 2014.
5. Hearing was conducted on 05.04.2016 at Thriuvananthapuram. Sri. AbyAlex Abraham, the petitioner and Sri. B. Sakthidharan Nair, the Counsel for the respondent were present for the hearing. The petitioner, submitted that the excess load has been taken by him only for the same purpose, for which the electricity was authorized for. Hence it does not come under Section 126 of the Act which deals with unauthorized use of electricity. It is also submitted that the case is now pending before the Appellate Authority constituted under Section 127 of the Act.
6. The respondent, Assistant Engineer, Electrical Section, Pathanamthitta has submitted that,
  - (1) The petitioner has already preferred an appeal against the decision of the Assessing Officer/ respondent before the Kerala State Appellate Authority under Section 127 of the Act. The same is pending disposal before the Appellate Authority. Hence the present petition is not maintainable before the Hon'ble Commission especially in view of the bar contained in Section 168 of the Electricity Act, 2003.
  - (2) The Assessing Officer, being the Statutory Authority, vested with the Powers conferred on him by the Act, is expected to make decisions strictly in conformity with the legal frame work prevailing in the country. The legal frame work comprise of the Electricity Act, Regulation and Subordinate Regulations etc. Whereas settled position of law & explicit interpretations by the Courts and Higher Statutory Fora also equally important among in arriving at a judicious decision.As regards the dispute related to the instance of assessment consequent on detection of Unauthorised Additional Load at the premises, in the Civil Appeal No: 8859 of 2011 (Executive Engineer & Another Vs M/s Sri Seetharam Rice Mill), the Honorable Apex Court in its mile stone

judgment unequivocally held that “the expression” unauthorized use of electricity means’ as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The case of excess load consumption than the connected load alia would under Explanation (b) (IV) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 & 106 of the Regulations and terms of the Agreement.

- (3) In line with the above settled position of law, the Kerala State Appellate Authority also took consistent view in similar instances and decisively held that existence of Unauthorised Additional Load should be reckoned as unauthorized use of electricity and shall be assessed under Section 126 of the Electricity Act 2003 (amended in 2007). Unless and otherwise any amendments/ revisions of the Section 126 of the Electricity Act, 2003 (amended in 2007), ie., of the parent Act, any decisions in contravention of the above settled position would be void and inoperative, the Respondent constrained to decide upon accordingly. Hence intentional violation or refusal of Regulation 153 (15) by the Assessing Officer could never be attributed to.
- (4) Having concurred with the stand point upheld by the Honorable Supreme Court in this regard, the requisite amendment has already been incorporated by the KSERC to the Sub regulation (15) of regulation 153 vide notification dated 11.11.2015, thereby made the assessment against the detection of Unauthorized Additional Load mandatory for the consumers billed on the basis of connected load. The petitioner will fall within the ambit of the respective amendment.
- (5) Because of the aforesaid factual position, there is no reason or circumstance to initiate proceedings under Section 142 of the Electricity Act, 2003.

7. Sri. B. Sakthidharan Nair, the counsel for the respondent submitted that

(1) The petitioner/Consumer has filed an appeal as appeal No. 09/2016 before the Kerala State Electricity Appellate Authority against the final decision dated 18.12.2015 of the Assessing Officer / Respondent which according to him is in violation of Regulation 153 (15) of the Supply Code 2015. As per the common order dated 13.04.16 in Appeal No. 9&10/2016 the Kerala State Electricity Appellate Authority has confirmed the final decision dated 18.12.2015 of the Assessing Officer / respondent. Thus the present petition has become infructuous.

(2) Explanation (b) to section 126 of the Electricity Act 2003 says that “unauthorised use of electricity” means the usage of electricity –

- (i) By any artificial means or
- (ii) By a means not authorized by the concerned person or authority or licensee or
- (iii) Through a tampered meter
- (iv) For the purpose other than for which the usage of electricity was authorized or
- (v) For the premises or areas other than those for which the supply of electricity was authorized.

(3) In order to consider the question whether unauthorized additional load will come within the meaning of “unauthorized use of Energy” under section 126 of the Electricity Act 2003 one has to consider the principles laid down by the Honourable Supreme Court in (1) Sri. Seetharam Rice Mill’s case (2012) 2 SCC 108 and (2) Punjab State Electricity Board Vs. Vishwa Caliber Builder Private Limited (2010) 4 SCC 539. The following dictums laid down by the Honourable Supreme Court in Seetharam Rice Mills case are noteworthy:-

- (i) *The unauthorized use of electricity means the usage of electricity by the means and for the reasons stated in the sub clause section (i) to (v) of clause (b) of the Explanation to Section 126 of the 2003 Act. Some of the illustratively stated circumstances of unauthorized use, on the section cannot be*

*construed as exhaustive. The unauthorized use of electricity would mean what is stated under that explanation, as well as such other unauthorized use which is squarely in violation of the above mentioned statutory or contractual provisions. (Para 41)*

*(ii) The purpose sought to be achieved is to ensure stoppage of misuse / un-authorized use of electricity as well as to ensure prevention of revenue loss. (Para 50)*

*(iii) The expression “unauthorized use of electricity means” as appearing in section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load interalia would fall under Explanation (b)(iv) to section 126 of the 2003 Act, besides it being in violation of Regulation 82 and 106 of the Regulation and terms of the Agreement.[Para 87(2)]*

(4) The dictum laid down by the Honourable Supreme Court in Punjab State Electricity Board Vs. Viswa Caliber Builders Private Limited (2010) 4 SCC 539) is also noteworthy.

*“The respondent used excess load to the tune of 481.637 KW and this amounted to un-authorized use of electrical energy.”*

(5) Thus the Honourable Supreme Court in the above decisions held in crystal clear terms that excess load than the connected load interalia would fall under Explanation (b) (iv) to Section 126 of the Electricity Act 2003. Perhaps, one would say that since the above decisions were rendered after considering the Regulations of Orissa Supply Code or Punjab Supply Code and not the Kerala Electricity Supply Code 2014, the answer is that the Honourable Supreme Court in Sree Seetharam Rice Mill’s case held that the use of excess load than the sanctioned connected load interalia would fall under the Explanation (b) (iv) to

section 126 of the Electricity Act in answer to the question framed by it in paragraph 12 of the said decision, “Wherever the consumer consumes electricity in excess of the Maximum of the contracted load, would the provisions of section 126 of the 2003 Act be attracted on its true scope and interpretation?” In answer to that question the Honourable Supreme Court in paragraph 87(2) of the above decision held that the cases of excess load consumption than the connected load interalia would fall under Explanation (b) (iv) to section 126 of the 2003 act, besides it being in violation of Regulation 82 and 106 of the Regulation and Terms of the Agreement. Thus the Honourable Supreme Court has made it clear that the cases of the excess load consumption than the connected load would fall under Explanation (b) (iv) to Section 126 in addition to Regulation 82 and 106, that means un-authorized additional load will come within the meaning of unauthorised use of energy u/s 126 of 2003 Act, besides (in-addition to) Regulation 82 and 106.

- (6) It is submitted that the Law declared by the Honourable Supreme Court is the Law of the land and it shall be binding on all courts, Tribunals, Commissions Forums and Statutory Authorities within the territory of India. Thus there is nothing wrong or illegal on the part of the respondent, the assessing officer, in exercise of his quasi-judicial function, taking a final decision by applying the above principles laid down by the Honourable Supreme Court in Seetharam Mills case.
- (7) Moreover the petitioner has connected an unauthorised additional load of 7630 watts (rounded to 8 KW) without Board’s permission or knowledge, thereby caused huge revenue loss to KSEBL. Because the electric connection provided to the petitioner bearing consumer No. 4974 is an electric connection under LT VI F tariff. As per Tariff order dated 14.08.2014 in OP No. 9 of 2014 current charges under LT VI F tariff includes Fixed charge of Rs. 120/- per KW per month and energy charges on the basis of the energy consumption. Thus the fixed charges for 8 KW was escaped from billing, thereby caused huge



revenue loss to the Board. The Honourable Supreme Court in Seetharam Mills case held that the purpose sought to be achieved under Section 126 of the Act is to ensure stoppage of misuse / unauthorised use of electricity as well as ensure prevention of revenue loss.

(8) As per Regulation 90(iv) of the Kerala Electricity Supply Code 2014 the consumer shall apply in Annexure – 11. Application Form for enhancement of load. If the enhancement is feasible the consumer shall pay additional security deposit and execute a supplementary agreement as per Regulation 99 of the Supply Code. Here the consumer enhanced the connected load without KSEBL's knowledge, without making any application for enhancement, without remitting additional security and also without executing the supplemental agreement, thereby the consumer violated Regulations 90 & 99 of the Kerala Electricity Supply Code 2014, which is also a malpractice and also caused revenue loss to the Board, thereby an "unauthorised use of energy" u/s 126 of the Electricity Act 2003.

(9) As per Section 181 of the Electricity Act, 2003, the State Commissions may make regulations consistent with the Electricity Act and the rules generally to carry out the provisions of the Act. When the Honourable Supreme Court says that the cases of excess load interalia would fall under Explanation (b) (iv) to section 126 of the Electricity Act 2003, regulation 153(15) of the Electricity Supply code 2014 says the unauthorised additional load in the same premises and under the same tariff shall not be reckoned as un-authorised use of electricity. Thus regulation 153(15) restricts the scope of Section 126 of the Electricity act 2003. It is settled law that Regulations cannot limit the meaning of statute, because Regulation is a subordinate legislation. If there is conflict between a statute and the subordinate legislation, the statute prevails over subordinate legislation. The Honourable Supreme Court in Babaji Kondaji Gerad and other Vs. Babasaheb Rajaramji (AIR 1984

SC 192) held that the statutory provision has precedence and must be complied.” Thus the assessing authority has rightly concluded that unauthorised additional load will come within the meaning of “unauthorised use of energy within the meaning of Explanation b(iv) to section 126 of the Electricity Act 2003 by applying the principles laid down by the Honourable Supreme Court in Seetharam Rice Mills case and there is nothing wrong in it. The Honourable Supreme Court in the Central Bank of India Vs. Their workmen (AIR 1960 SC 12) held that “A statutory rule cannot enlarge the meaning of the section. If a rule goes beyond what section contemplates, the rule must yield to the statute.

- (10) The Honourable Supreme Court in Seetharam Mills case held that the provisions of Section 126 read with Section 127 of the 2003 Act are code in themselves. Right from the initiation, of the proceedings by conducting an inspection, to the right to file an appeal before the appellate authority all matters are squarely covered under the said provision. It specifically provides the methods of computation of the amount that a consumer would be liable to pay for excessive consumption of Electricity and for the manner of conducting assessment proceedings. Section 126 has a purpose to achieve ie to put an implied restriction on such unauthorised consumption of electricity. This defined legislative purpose cannot be permitted to be frustrated by interpreting a provision in a manner not intended in law. So in the matter of unauthorised use of energy under section 126 and 127 of the Electricity Act 2003 power of regulation making of the State Commissions are limited to section 181 (2) (zo) of the Electricity Act 2003, which says, the form of and preferring the appeal and manner in which such form shall be verified and the fee for preferring the appeal under sub-section (1) of Section 127. The rule making power of the Central Government in respect of the above matter is confined to Section 176(2)(u) which stipulates that the authority to whom the appeal shall be filed under sub section 127(1) of the 2003 Act. The

Rule making power of the State Government is confined to 180 (2) (k) which stipulates that Rules prescribing the manner of service of provisional assessment u/s 126 (2) of the Act. Therefore the Rule / Regulation making powers of the State / Central Government/ State Commission as the case may be in respect of the un-authorized use of energy, are confined to the above matters only.

- (11) There is no Rule / Regulation making power conferred on the governments / State Commissions to limit or enlarge the meaning of “unauthorised use of energy” in Section 126 of the Electricity Act 2003. Perhaps, one may say that as Section 50 of the Electricity Act 2003 empowers the State Commissions to specify an electricity supply code to provide interalia for recovery of electricity charges, hence the recovery of penal charges for un-authorized use of energy will also come within the meaning of recovery of electricity charges, hence the recovery of penal charges for un-authorized use of energy will also come within the meaning of recovery of Electricity charges under Section 50 of the 2003 Act. It is submitted that ‘recovery of Electricity charges’ within the meaning of section 50 of the 2003 Act is regular electricity charges and does not apply to an assessment for unauthorised use of energy u/s 126 of the 2003 Act as the provisions of Section 126 read with section 127 are code in themselves, which prescribes initiation of the proceedings by conducting an inspection, appeal, method of computation of the amount that, a consumer would be liable to pay for excessive consumption of electricity and for the manner of conducting assessment proceedings. In an identical situation the Honourable Supreme Court in M.P Electricity Board Jabalpur and others Vs. Harsh Wood Products (AIR 1996 SC 2258) held that the notice for discontinuance of supply for non-payment of electricity charges u/s 24 of the Electricity Act 1910 does not apply to a demand on detection of pilferage. It would apply to a case of regular supply. By applying the same principle it is very clear that recovery of electricity charges under section 50 of the 2003 Act is in respect of

regular supply and does not apply to an assessment for un-authorised use of electricity under section 126 of the Electricity Act, 2003.

- (12) From the arguments advanced above, it is very clear that the respondent, the assessing officer in exercise of his quasi-judicial function u/s 126 of the Electricity Act 2003 acted within his jurisdiction. The Petitioner has no cause of action u/s 142 of the said Act. Hence the petition may be dismissed with costs.

### **Analysis of the Commission:**

8. The petitioner consumer, Sri. Aby Alex Abraham, Kizhakkedath House, IMAGE School of Animation, 2<sup>nd</sup> floor, Kizhakkedathu building, Pathanamthitta has filed the petition under Section 142 of the Act for contravening the provisions of the Kerala Electricity Supply Code 2014, by Kerala State Electricity Board Ltd. There is no prayer in the petition to the effect that the penal bill issued by Kerala State Electricity Board Ltd is to be quashed as the same was not in accordance with the provisions of Regulations issued by the Commission. Hence the argument of the respondents that the petition is infructuous with the order of the Appellate Authority under Section 127 of the Act is not sustainable.
9. The Asst. Engineer, Electrical Section, Pathanamthitta will get protection under Section 168 of the Act, for the issuance of the Assessment order, which was issued under the capacity of an Assessing officer under section 126 of the Act. The Commission is only examining whether or not the assessing officer has willfully violated any of the provisions of the Electricity Act, 2003 or of the regulations made thereunder.
10. Section 126 (1) of the Electricity Act 2003 deals with assessment of unauthorized use of electricity by any person. As per this section, if on an inspection of any premises of any person by an Assessing Officer, comes to the conclusion that, such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment, the electricity charges payable by such person. Sub section (2) of Section 126 provides

that, the order of provisional assessment shall be served upon the person in charge of the premises. Sub section (3) of Section 126 provides that, the assessing officer shall pass a final order of assessment within 30 days from the date of service of provisional assessment, after affording a reasonable opportunity of hearing to such person. Sub section (5) of Section 126 provides that, if the assessing officer reaches to the conclusion that, unauthorized use of electricity has taken place, the assessment shall be made for the entire period and if, the period of unauthorized use of electricity cannot be ascertained, such period shall be limited to a period of twelve months from the date of inspection. Sub section (6) of Section 126 provides that, the assessment shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

11. As per explanation given to Section 126, “unauthorized use of electricity” means the usage of electricity-
- (i) by any artificial means; or
  - (ii) by a means not authorised by the concerned person or authority or licensee; or
  - (iii) through a tampered meter; or
  - (iv) for the purpose other than for which the usage of electricity was authorised; or
  - (v) for the premises or areas other than those for which the supply of electricity was authorised.

As per clause (i), (lii) and (v) above, it is very clear beyond any doubt that, usage of electricity by any artificial means or through a tampered meter or for the premises or areas other than those for which the supply was authorised will amount to unauthorized usage of electricity. But as per clauses (ii) and (iv) above, the word “unauthorized usage of electricity” has a wider meaning and has to be construed accordingly.

The word ‘means’ has mainly two meanings in the common parlance. One meaning of the word means is an object or a system by which a result is

achieved, as is used in phrases 'means of transport', 'means of communication', and 'means of contacting'. The other common meaning of the word means is the money which a person has, as is used in phrases 'pay according to ones means' and 'live within your means'. In this context the word means in clause (ii) in the explanation quoted above is used to denote an object or a system. As per the definition in clause (6) of Section 2 of the Electricity Act, 2003, the term authority means the Central Electricity Authority. The term 'the concerned person' should indicate the officer of the licensee who is authorized to impose conditions on use of electricity by the consumer. Therefore the usage of electricity by any means, that is, by any manner or by any equipment which is not authorised by the concerned officer of the licensee or the Central Electricity Authority or licensee will amount to unauthorized use of energy. The expression used in clause (2) in the explanation in Section 126 is 'means not authorized'. Therefore there should be a prohibition imposed by the officer of the licensee or by the Central Electricity Authority or by the licensee against use of electricity by any manner or by any equipment. Thus usage of electricity by adding more unauthorized equipment and thereby increasing load without authorization will fall under unauthorized use of electricity as per Explanation (b) (ii) to Section 126 of the Electricity Act.

12. The judgment of the Hon'ble Supreme Court in Seetharam Mills case been issued based on Section 126 of the Electricity Act, 2003 and the regulations issued by the Orissa Electricity Regulatory Commission. The Application of the judgment of the Hon'ble Supreme Court of India in Seetharam Mills case has to be distinguished depending upon the regulations issued by each State Commission. It is a well- established legal position that the regulations issued by the Commission are subordinate legislations and hence are binding on all licensees until it is quashed by the Hon'ble Supreme Court or by the Hon'ble High Court. The important observation made by the Hon'ble Supreme Court of India in paragraphs 39, 40, 61, 62, 64, 67, 71 of the judgment in Seetharam Mills case are quoted below,-

**Para 39**

*In order to explain these expressions, it will be necessary for us to refer to certain other provisions and the Regulations as well. These expressions have to be understood and given meaning with reference to their background and are incapable of being fairly understood, if examined in isolation. It is always appropriate to examine the words of a statute in their correct perspective and with reference to relevant statutory provisions. The expression 'unauthorized use of electricity' on its plain reading means use of electricity in a manner not authorized by the licensee of the Board. 'Authorization' refers to the permission of the licensee to use of electricity', subject to the terms and conditions for such use and the law governing the subject.*

**Para 40**

*To put it more aptly, the supply of electricity to a consumer is always subject to the provisions of the 2003 Act, State Acts, Regulations framed there under and the terms and conditions of supply in the form of a contract or otherwise. Generally, when electricity is consumed in violation of any or all of these, it would be understood as 'unauthorized use of electricity'. But this general view will have to be examined in the light of the fact that the legislature has opted to explain this term for the purposes of Section 126 of the 2003 Act. The said provision, along with the Explanation, reads as under:-*

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

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

*(3) The person, on whom an order has been served under subsection (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within*

*thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.*

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

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

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

*Explanation : For the purposes of this section,-- (a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government; (b) "unauthorized use of electricity" means the usage of electricity – (i) by any artificial means; or (ii) by a means not authorized by the concerned person or authority or licensee; or (iii) through a tampered meter; or (iv) for the purpose other than for which the usage of electricity was Authorized; or (v) for the premises or areas other than those for which the supply of electricity was authorized."*

#### **Para 61**

*Unauthorized use of electricity cannot be restricted to the stated clauses under the explanation but has to be given a wider meaning so as to cover cases of violation of terms and conditions of supply and the regulations and provisions of the 2003 Act governing such supply. "Unauthorized use of electricity" itself is an expression which would, on its plain reading, take within its scope all the misuse of the electricity or even malpractices adopted while using electricity. It is difficult to restrict this expression and limit its application by the categories stated in the explanation. It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the regulations framed and the provisions of the 2003 Act.*



**Para 62**

*The requirement of grant of licence itself suggests that electricity is a controlled commodity and is to be regulated by the regulatory authorities. If a person unauthorisedly consumes electricity, then he can certainly be dealt with in accordance with law and penalties may be imposed upon him as contemplated under the contractual, regulatory and statutory regime. The Orissa Electricity Regulatory Commission, in exercise of its powers under Section 181 (2) (t), (v), (w) and (x) read with Part VI of the 2003 Act, Orissa Electricity Reforms Act, 1995 and all other powers enabling it in that behalf, made the regulations to govern distribution and supply of electricity and procedure thereof such as system of billing, modality or payment, the powers, functions and applications of the distribution licenses form for supply and/or suppliers and the rights and obligations of the consumers. These were called 'Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004 (hereinafter referred to as 'Conditions of Supply) vide notification dated 21st May, 2004*

**Para 64**

*Minimum energy charges are to be levied with reference to 'contract demand' at the rate prescribed under the terms and conditions. These clauses of the Agreement clearly show that the charges for consumption of electricity are directly relatable to the sanctioned/connected load and also the load consumed at a given point of time if it is in excess of the sanctioned/connected load. The respondent could consume electricity up to 110 KVA but if the connected load exceeded that higher limit, the category of the respondent itself could stand changed from 'medium industry' to 'large industry' which will be governed by a higher tariff.*

**Para 67**

*On the cumulative reading of the terms and conditions of supply, the contract executed between the parties and the provisions of the 2003 Act, we have no hesitation in holding that consumption of electricity in excess of the sanctioned/connected load shall be an 'unauthorized use' of electricity in*

*terms of Section 126 of the 2003 Act. This, we also say for the reason that overdrawal of electricity amounts to breach of the terms and conditions of the contract and the statutory conditions, besides such overdrawal being prejudicial to the public at large, as it is likely to throw out of gear the entire supply system,, undermining its efficiency, efficacy and even increasing voltage fluctuations.*

#### **Para 71**

*Consumption in excess of sanctioned load is violative of the terms and conditions of the agreement as well as of the statutory benefits. Under Explanation (b)(iv), 'unauthorized use of electricity' mans if the electricity was used for a purpose other than for which the usage of electricity was authorized. Explanation (b)(iv), thus, would also cover the cases where electricity is being consumed in excess of sanctioned load, particularly when it amounts to change of category and tariff. As is clear from the agreement deed, the electric connection was given to the respondent on a contractual stipulation that he would consume the electricity in excess of 22 KVA but not more than 110 KVA. The use of the negative language in the condition itself declares the intent of the parties that there was an implied prohibition in consuming electricity in excess of the maximum load as it would per se be also prejudiced. Not only this, the language of Regulations 82 and 106 also prescribe that the consumer is not expected to make use of power in excess of approved contract demand otherwise it would be change of user falling within the ambit of 'unauthorized use of electricity'.*

13. The Honorable Supreme Court has expressed its view about unauthorized use of electricity mainly on the basis of Regulations 80 (9), 80(10), 82 and 106 of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply Code), 2004. (hereinafter referred to as the Orissa Regulations) read with section 126 of the Electricity Act 2003. In the judgment, clause (2) of the agreement executed between the consumer and the licensee is also seen mentioned. Clause (2) of the agreement deals with the application of conditions of supply. Thus as per clause (2) of the agreement, all the terms and conditions

of the Orissa Regulations are binding on the consumer. Clause (2) of the said agreement states that, "Consumer had obtained and perused a copy of the Grid Corporation of Orissa Ltd. (General Conditions of Supply) Regulations 1995, understood its content and undertook to observe and abide by all the terms and conditions stipulated therein to the extent that they are applicable to him". As per clause (A) of the said terms and conditions, applicable to medium industry category, the respondent Sree Seetharam Rice Mills was a consumer under the 'Medium Industry Category'. Clause (A) reads as under:

*"This tariff rate shall be applicable to supply of power at a single point for industrial production purposes with contract demand/ connected load of 22 KVA and above up to but excluding 110 KVA where power is generally utilized as a motive force".*

The above clause of the agreement clearly shows that, the charges for consumption of electricity are directly related to the sanctioned/ connected load and also the load consumed at a given point of time if it is in excess of the sanctioned/ connected load. Thus the consumer can consume electricity up to 110 KVA but if connected load exceeded that higher limit, the category of the consumer itself could stand changed from 'medium industry' to 'larger industry' which will be governed by a higher tariff.

14. Similar provisions are included in Regulation 80 (9) of the Orissa Regulations which reads as quoted hereunder,-

*"(9) LT/HT Industrial (M) Supply*

*This category relates to supply of power for industrial production with a contract demand of 22 KVA and above but below 110 KVA, where power is generally utilized as a motive force".*

If the consumer exceeds the contract/ sanctioned load, the category of such consumer will change from medium industry to large industry as per regulation 80(10) of the Orissa Regulations which reads as follows:

*"(10) Large Industries*

*This category relates to supply of power to industries with contract demand of 110 KVA and above but below 2500 KVA where power is substantially utilized as motive force for industrial production”.*

15. From the above categorization it can be seen that, once the category stands changed because of the excess load the tariff and other conditions applicable to the consumer would automatically be changed. Then the licensee has a right to reclassify the consumer under Regulation 82, of the Orissa Regulations, if it is found that a consumer has been classified in a particular category erroneously or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category etc.

Regulation 82 of the Orissa Regulations reads as follows:

*“If it is found that a consumer has been classified in a particular category erroneously or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category or any order of reduction or enhancement of contract demand has been obtained, the engineer may reclassify him under appropriate category after issuing notice to him to execute a fresh agreement on the basis of the altered classification or modified contract demand. If the consumer does not take steps within the time indicated in the notice to execute the fresh agreement, the engineer may, after issuing a clear seven days show cause notice and after considering his explanation, if any, may disconnect the supply of power”.*

16. Regulation 106 of the Orissa Regulations also places specific prohibition on consumption of excessive electricity by a consumer. The said Regulation 106 reads as follows;

*“No consumer shall make use of power in excess of the approved contract demand or use power for a purpose other than the one for*

*which agreement has been executed or shall dishonestly abstract power from the licensee's system".*

17. From the above facts and statutory provisions it can easily be found that it was on a cumulative reading of the Orissa Regulations the agreement executed between the consumer and the licensee and the provisions of the Electricity Act 2003, the Honorable Supreme Court had come to the conclusion in the judgment in Seetharam Mills Case that, the consumption of electricity in excess of the sanctioned load would fall within the ambit of "unauthorized use" of electricity in terms of Section 126 of the Electricity Act, 2003. On examination of the judgment it can be seen that, the Honorable Supreme Court had come to the said conclusion not only based on the statutory provisions of the Electricity Act, but also based on the relevant terms and conditions of the Orissa Regulations and of the agreement executed between the parties. Besides being violation of Regulations 82 and 106 of the Orissa Regulations and the terms of the agreement between the licensee and the consumer, the case of excess load over the sanctioned load would also fall under explanation (b) (iv) to Section 126 of the Electricity Act, 2003, since such excess load would change the category of consumer from medium industry to large industry. Use of electricity which was supplied for medium industry, by a large industry would amount to use of electricity for a purpose other than for which it was authorized. It was under these circumstances the Hon'ble Supreme Court held that, consumption of excess load would fall under explanations (b)(iv) to Section 126 besides it being in violation of the terms of the agreement and the regulations in force. As per the said explanation unauthorized use of electricity means the usage of electricity for the purpose other than for which the supply electricity was authorized. In the decided case, due to the consumption of excess load, the category of the consumer has been changed from LT /HT industrial (medium) supply to large industries as per Regulation 80(9) & (10) of the Orissa Regulations. As per Regulation 80(9) the purpose of the supply of power is to promote industrial production with a contract demand in between 22 kVA and 110 kVA where power is generally utilized as motive force. But as per Regulation 86(10) the

purpose of the supply of power is to promote industrial production with a contract demand in between 110 kVA and 2500 kVA where power is substantially utilized as motive force for industrial production. From the above it is clear that, the purpose of categorization is different in the two cases. Thus the tariffs for the supply of power for different purposes are different. In such cases if the consumption exceeds the sanctioned load, it would definitely change the purpose of supply and would fall under explanation (b)(iv) to Section 126 of the Electricity Act, 2003. Therefore the findings of the Hon'ble Supreme Court in Seetharam Mills Case has application only in similar cases and it depends up on the Regulations and the terms and conditions of agreement which existed at that time in Orissa. A careful study of the judgment of the Hon'ble Supreme Court in Seetharam Mill Case will make it clear in unequivocal terms that,-

- (i) Electricity is a regulated commodity which can be sold to consumers only by a licensee.
- (ii) The licensees do also have statutory duties and functions.
- (iii) The licensees and consumers are bound by the provisions of the Electricity Act, 2003, the rules issued by the Government and the regulations issued by the Commission under the provisions of the Act.
- (iv) The licensees and the consumers are also bound by the conditions of supply as approved by the Commission and the conditions of agreement between them.

18. As per explanation (b) (ii) to Section 126 of the Act 2003, usage of electricity by a means not authorized by the concerned person or authority or licensee will amount to unauthorized use of electricity. The cardinal issue involved in this explanation clause is whether or not the excess consumption is unauthorized and who is competent to prohibit such unauthorized use. As per the above explanation the licensee or the authority or a concerned person is competent to issue such prohibitive orders. Here the license is Kerala State Electricity Board Ltd, the Authority is CEA and the concerned person is an officer empowered to do so as per relevant statute or rules and regulations made there under. If excess consumption will change the purpose or tariff applicable, such consumption will definitely fall under explanation (b) (iv) to

Section 126. If excess consumption is unauthorized that will also amount to unauthorized use under explanation (b)(ii) to Section 126. This is the legal position even according to the judgment in Seetharam Mills case.

19. The state Electricity Regulatory Commission is the only competent authority to make regulations as a subordinate legislative authority and the regulations so framed are binding on all the licensees in the State until it is quashed by the Hon'ble Supreme Court or the Hon'ble High Court. In the judgment, the Hon'ble Supreme Court had also held that the regulations framed in exercise of powers of subordinate legislation or the terms and conditions imposed in furtherance of statutory provisions have been held to be valid and enforceable. More over the Commission has issued the regulation after considering the suggestions and objections of all stakeholders including the licensees. Further the licensees in the State are following the regulations as such from 01.04.2014 onwards. It is also pertinent to note that, as per clause 10 of the agreement for supply of energy (LT) (Annexure 12 to Supply Code) and Clause 20 of the agreement for supply of energy (HT& EHT), it is mutually agreed between the consumer and the licensee, that the Kerala Electricity Supply Code, 2014 is binding on them. Thus, if only a consumer consumes excess energy contrary to the provisions in the Supply Code, it can be termed as unauthorized use of electricity. In view of the facts and circumstances and the settled legal positions as explained above, only when the consumer commits breach of the terms and conditions of the agreement, the regulations and of the statutory provisions by consuming electricity in excess of the sanctioned load, such consumer is liable to be proceeded under Section 126 of the Act 2003. In the decision reported in Seetharam Mills case, it can be seen beyond any doubt that consumer had violated the terms and conditions of the agreement and relevant provisions of the conditions of Orissa Regulations by consuming excess load over the sanctioned load, which would also fall under explanation (b)(iv) to Section 126 of the Act 2003. Here in the case at hand, the petitioner has not violated any provisions of the Supply Code, 2014 and hence he is not liable to be proceeded under Section 126 of the Electricity Act, 2003.

20. In this regard it is also pertinent to note that the sub-regulation (15) of regulation 153 of the Kerala Electricity Supply Code, 2014, issued by the Commission, is not in violation to the decision of the Hon'ble Supreme Court in Seetharam Mills case.
21. The assessing officer or the Appellate Authority cannot sit in judgement on the validity of the regulations issued by the Commission. The regulation issued by the Commission is a subordinate legislation. The Hon'ble Supreme Court of India in Uttar Pradesh Power Corporation Ltd Vs NTPC (2009(6) SCC 235) held that validly made subordinate legislation becomes part of the main Act and should be read as such.
22. Section 50 of the Electricity Act empowers the State Commission to specify an Electricity Supply Code, describing measures for preventing temporary distress or damage to electrical plant or electrical line or meter and such other matters. Hence the Commission has the power to issue regulations elucidating the scope of the term unauthorized use of energy under Section 126 of the Act, taking into consideration the system of distribution and sale of electricity in the State.
23. Sub regulation 15 of Regulation 153 of the Kerala Electricity Supply Code, 2014 provides as follows;  

*“Unauthorized additional load in the same premises and under same tariff shall not be reckoned as unauthorized use of electricity”.*

It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the regulations framed and the provisions of the 2003 Act. The mahazar admits the fact that the unauthorized load was used by the consumer under the very same premises under the very same tariff for which supply was sanctioned to the consumer. Therefore in view of the sub-regulation 15 of regulation 153 of the Supply Code, 2014 the impugned use of electricity by the petitioner in the very same premises for the purpose as authorized by the licensee without involving any tariff change and loss of revenue does not amount to unauthorized use of



electricity and hence no penalty can be imposed on the consumer in the present case.

24. Since the action under Section 126 of the Act was initiated against the Petitioner consumer, at the time where Regulation 153(15) of the Kerala Electricity Supply Code, 2014 was in force without any alteration or amendment, the penal bill amounting to Rs. 63,324/- issued by the respondent to the petitioner on 18.12.2015 is not sustainable in law. The Assistant Engineer, KSEB Ltd, Electrical Section, Pathanamthitta is the respondent in this case. The petitioner has requested to proceed against the respondent under Section 142 of the Act for the violation of the provisions of the Kerala Electricity Supply Code, 2014. The respondent is seen to have relied upon the decision of the Kerala State Electricity Appellate Authority dated 09.07.2015 in Appeal No. 24/2014. The said decision is an order under Section 127 of the Act. The order of the Appellate Authority under Section 127 of the Act has no legal force as in the case of the judgment of the Hon'ble High Court or of the Hon'ble Supreme Court. The Appellate Authority has no power of judicial review over the regulations issued by the Commission. As already explained the regulations issued by the Commission will become a part of the main legislation namely, the Electricity Act, 2003. The Appellate Authority cannot over rule or invalidate the Regulations issued by the Commission. The respondent might have decided to follow the order of the Appellate Authority presumably by an oversight of the above legal provisions. Therefore the Commission does not at present, propose to initiate action against the respondent under Section 142 of the Act. The respondent is directed to take appropriate corrective action in view of the decision of the Commission within a period of one month. If the respondent fails to implement this direction within the period of one month as stipulated above, the petitioner can move the Commission for initiating action against the respondent under Section 142 of the Act.

Sd/-  
**S. Venugopal**  
Member

Sd/-  
**K. Vikraman Nair**  
Member

Sd/-  
**T.M. Manoharan**  
Chairman

Approved for issue,

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Santhosh Kumar.K.B  
Secretary