

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Sri.K.J.Mathew, Chairman
Sri. P. Paramaswaran, Member
Sri. Mathew George, Member

May 28, 2012

Petition dated 4-8-2011

**In the matter of: Non- Compliance of the order of the Ombudsman
(Order dt.24.5.2010 on O.P. No.P/126/10)**

Petitioner(s): Petition dated 4-8-2011 from Sree Padmanabha Theatre, East Fort, TVM

Opposite Party (s) : Kerala State Electricity Board

- 1) Secretary, KSEB, Vidyuthi Bhavan, Pattom, TVM
- 2) Dy. Chief Engineer, Electrical Circle(Urban) TVM, KSEB
- 3) Executive Engineer, Electrical Diviasion (East), TVM, KSEB
- 4) Asst.Executive Engineer, Electrical Sub Division, Fort, TVM, KSEB

ORDER

Background

1. M/s Sreepadmanabha Theatre , East Fort, Thiruvananthapuram submitted a Petition to the Commission on 4.8.2011 complaining that an Order of the Ombudsman dated 24.5.2010 on Petition No P126/2010 was not complied with by the KSEB .It was alleged that in spite of favourable orders from the Ombudsman and even after remitting the amount of Rs 7,28,314/- along with interest as directed by the Ombudsman and by the officials of KSEB, the opposite party (KSEB) was shying away from performing their part as per the direction of the Ombudsman .Several requests as well as reminders were submitted by the petitioner which were not at all responded to by the opposite party who in turn issued several directions demanding fresh completion certificates , 'D' certificates etc . Those directions were also complied with by the Petitioner but the respondent has not implemented the orders of the Ombudsman. The Petitioner requested the Commission to take appropriate legal action in the matter.

2. The Ombudsman in the Petition No P126/2010 had ordered on 24.5.2010 as given below:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

- 1. The demand dated 22.6.2009 issued by the Assistant Engineer, Fort, Thiruvananthapuram for an amount of Rs 7,28,314/- towards arrears of Electricity Charges for the period from 9/2001 to 3/2004 at HT tariff is upheld but the claim for 'surcharge' is disallowed . The Appellant shall be liable to pay the interest as per rules from 22.7.2009 , that is , after one month from the date of raising the revised demand.*
- 2. The order of the CGRF South on OP 401/2008 dated 21.12.2009 to the extent it directs the petitioner to remit the amount of Rs 7,28,314/- is upheld.*
- 3. The Appellant shall be eligible for HT tariff in accordance with the BO (FB) No: 280/2003 (Plg.Co.3776/96) dated 07.03.2003 and BO (FM) No:588/2004 (Plg.Co.3776/96) dated 05.03.2004 if the arrears as noted above are remitted.*
- 4. No order on costs.*

The opposite party in the Petition before the Ombudsman was the KSE Board represented by the Assistant Executive Engineer, Electrical Sub Division, Fort, Thiruvananthapuram. A copy of the order was marked to the Secretary KSEB Thiruvananthapuram also. As per the order if the Petitioner remits the arrear of Rs 7,28,314/- with interest the KSEB has to allot HT tariff to him as per the relevant orders of the board. The petitioner remitted the amount as per the advice of the officials of KSEB on 30.6.2010 and became eligible for the appropriate HT Tariff.

3. The Commission called for the report of the Assistant Executive Engineer, Electrical Sub Division, Fort ,Thiruvananthapuram on 9.8.2011 and sought for the reasons for non compliance of the order of the Ombudsman. The Assistant Executive Engineer submitted a detailed report on 22.8.2011 attaching there to a large number of documents showing communications on the matter with various officers. The Assistant Executive Engineer reported that on receiving the order of the Ombudsman the consumer was requested on 1.6.2010 to remit the arrears . The consumer remitted the arrears on 30.6.2010. The consumer had furnished the Connected load statement and completion report along with the signed HT agreement as early as on 18.6.2004. However as per direction from KSEB officials the consumer submitted revised completion report and other documents on 20.9.2010 which was forwarded to higher officers by the Assistant Executive Engineer on 1.10.2010. The Assistant Executive Engineer reported that prompt action was taken by her office on all the communications received both from the Petitioner and the higher officers. The Assistant Executive Engineer also reported that the HT agreement authority was the Deputy Chief Engineer and that all the documents required were submitted to the Deputy Chief Engineer

in time. All the clarifications sought were given to higher officers in time to facilitate speedy execution of HT agreement so as to comply with the order of the Ombudsman. Copies of the related correspondences were also furnished by the Assistant Executive Engineer along with the report.

4. M/s Sreepadmanabha Theatre submitted another complaint before the Commission on 12.12.2011 informing that the Deputy Chief Engineer Thiruvananthapuram had convened a meeting in August 2011 in her office in which the Deputy Chief Engineer had categorically agreed that the order of the Ombudsman will be complied without further delay and also stated that they were waiting to get the HT tariff vetted .The Petitioner trusted the words and waited till date. But the order of the Ombudsman was not complied with and the Petitioner wanted the Commission to intervene.
5. Since it was established that the KSEB officials had not complied with the orders of the Ombudsman even after 19 months from the date of issue of the order, the Commission issued show cause notice to explain why action under Section 142 of the Electricity Act 2003 should not be initiated against them on 10.1.2012 to the following officials of KSEB :
 - i. Smt S. Roopakala Jagath , Secretary , KSEB, Thiruvananthapuram
 - ii. Smt K.K. Jayakumari , Deputy Chief Engineer , Thiruvananthapuram (Urban circle)
 - iii. Sri Ravi Varman , Executive Engineer , Electrical Division(East), Thiruvananthapuram
 - iv. Smt Jasmina Banu , Assistant Executive Engineer , Electrical Sub division , Fort, Thiruvananthapuram

The Commission directed the officers to show cause why action under Section 142 of the Electricity act 2003 should not be initiated against them individually and informed them that if reply was not received within 15 days from the date of receipt of the notice further action would be proceeded against them as if they had no explanation to offer in the matter. The reply filed by the Dy.Chief Engineer on 30-1-2012 did not contain proper reasons for non compliance of the order of the Ombudsman even after a lapse of 19 months.

6. On 19.12.2011 the Assistant Executive Engineer submitted a copy of the Review Petition submitted to the Ombudsman on the order dated 24.5.2010 on OP126/2010 based upon the sanction issued by the Board on 21.10.2011 for filing the same. The Ombudsman after due process passed orders on the Review Petition on 17.1.2012 as follows:

“The Licensee is bound to honour the verdict of a Forum established by Law or if they are aggrieved by the decision they have to approach superior courts of law and seek the remedy thereof. Here the Board has waited for months together to have ‘the Regulations for review of

the orders of Ombudsman' to be issued by the Hon:KSERC and then to prefer a Review Petition. Further in the review petition filed before me I do not find any merit in the averments of the Licensee KSEB .In the light of the decision made vide order dated 24.5.2010 of this forum in the Petition No P126/2010 filed by the consumer it is found that nothing more survives for fresh consideration or there is any sufficient ground for reviewing the order dated 24.5.2010 based on this review petition. For the aforesaid reasons the Review Petition filed by the Assistant Executive Engineer Fort KSEB Thiruvananthapuram stands dismissed. The Forum expresses its great concern and displeasure over the inordinate delay in implementing its order and therefore directs the Licensee to comply with this Forums order dated 24.5.2010 forthwith"

7. On 30.1.2012 the Deputy Chief Engineer submitted a statement before the Commission for and on behalf of the officials to whom the Commission had issued notice under Section 142 on 10.1.2012. In the statement the Deputy Chief Engineer informed that the Ombudsman had dismissed the Review Petition filed by the KSEB and for taking 'action pursuant to the said order the licensee require time in view of the material position of the cause of action involved'. Hence the licensee has caused to file a petition under Regulation 27(5) of the KSERC (CGRF and Electricity Ombudsman) Regulations 2005 before Ombudsman for a period of 3 months. Now the matter being under consideration before Ombudsman the Dy Chief Engineer requested the Hon'ble Forum to defer further action till the matter is decided by the Ombudsman. The Ombudsman dismissed the request dated 24.1.2012 by a communication dated 2.2.2012 as it did not deserve any merit and Ombudsman felt it would tantamount to denial of justice.
8. The KSEB officials had refused to implement the order of the Ombudsman dated 25.5.2010 even after 19 months and were struggling hard to avoid the compliance of the order with total disregard to the section 27(4) of the KSERC (CGRF&Ombudsman) Regulations by moving Review Petitions after 19 months from the date of the order, again seeking '3 months time' for taking up the matter with the Board etc. The Commission having been convinced that a deliberate attempt was made to deny legitimate justice to a consumer by the officials of KSEB at various levels, right up to the Secretary of the Board, could not watch such a situation as a silent spectator. The Commission was satisfied that there is violation of the provisions contained in Regulation 27(4) of the KSERC (CGRF&Ombudsman) Regulations 2005 which specifically states that '*the distribution Licensee shall comply with the orders of Ombudsman*'. The Commission was also distressed to note that none of the officials, to whom the Commission had issued show cause notice under Section 142 on 10.1.2012, furnished proper explanation for the refusal to implement the order of the Ombudsman. Nor did they cite any reason for the inordinate delay. The Commission felt that action under Section 142 of the Electricity Act 2003 was therefore called for against the concerned officials of the Board.

9. Notice was issued to all the four officials of the Board on 29.2.2012 intimating them that the Commission intends to proceed further with the action contemplated under Section 142 of the Act 2003 and they were given an opportunity for being heard at 11 AM on 3.4.2012 as contemplated under Section 142 of the Electricity Act 2003. They were instructed to appear in person if they wish to give reasons, if any, for not taking such action and for not imposing the penalty as prescribed under Section 142 of the Electricity Act 2003.
10. The Assistant Executive Engineer submitted a letter on 21.3.2012 reiterating the details given in the earlier letter dated 22.8.2011 and adding that HT agreement was 'finally' executed on 5.3.2012 by the Deputy Chief Engineer, who was the authority to execute HT agreements as per Clause 19(8) of the KSEB Terms & Conditions of Supply 2005. By implication HT tariff was also applied to the consumer consequently. The Assistant Executive Engineer also reported that :
- She was not directly involved in executing the HT agreement with the petitioner
 - Being the respondent in the Petition before the Ombudsman she had taken urgent necessary steps for implementing the order of the Ombudsman
 - Clarification regarding the need for filing review petition after a period of one and half year was also sought by her to higher officers vide letter dated 2.11.2011
 - She failed to file reply to the show cause notice 'on the basis of direction' from the KSEB Secretariat.

Hearing of the Matter

11. On 3.4.2012 on the date of hearing none of the officers proceeded against appeared in person. But one Adv. Sakthidharan Nair appeared with vakalathnama of all the four officials. The Learned Counsel also presented joint submissions by the 4 officials requesting permission to engage the Advocate to defend the proceedings. The Commission by an interim order dated 3.4.2012 decided to accept the prayer to engage the Advocate to defend the case and posted the case to 26.4.2012. On 26.4.2012 also the officers were absent but the Learned Counsel presented the joint objection statement by the 4 defendants and made oral defence also. The objections raised jointly by the 4 officials, as presented by the Advocate, are noted below:
- a) The Notice dated 29.2.2012 has become in fructuous since the order dated 24.5.2010 in P 126/10 of the Ombudsman has been merged in

the order dated 17.1.2012 in Review Petition by applying the well accepted doctrine of merger.

- b) Ombudsman as per order dated 17.1.2012 has granted opportunity to the KSEB to comply with the order, by ordering that 'directs the Licensee to comply the order dated 24.5.2010 forthwith' but no time limit has been given. Hence regulation 27(5) of the KSERC (CGRF&Ombudsman) Regulations comes into play. KSEB complied with the order of Ombudsman dated 17.1.2012 on 5.3.2012. Thus the order dated 24.5.2010 merged with the order dated 17.1.2012 has been complied with.
- c) The procedure contemplated under Section 142 and 143 of the Electricity Act 2003 read with the rule 3 of Kerala Electricity (Manner of Enquiry by Adjudicating Officer) Rules 2005 have not been complied with. Hence the Notice dated 29.2.2012 directing the officers named in the notice to appear in person and give reasons for not imposing penalty under Section 142 is illegal, ultra vires, void and colourful exercise of jurisdiction.
- d) The statement dated 30.1.2012 jointly submitted by the officers to the Commission is to be treated as a reply to the show cause notice dated 10.1.2012. Hence the allegation that no reply was submitted to the Show cause notice was not correct.

Analysis and Decision of the Commission

12. The Commission examined the arguments raised by the Learned Counsel for the officers carefully. The main contention of the officers is that notice dated 29/2/2012 has become infructuous since the order dated 24/5/2010 in P/126/10 of the Ombudsman which is alleged to be not complied with, has been merged in the order dated 17/1/2012. They have also produced a copy of the judgment of the Hon. Supreme Court (1975) 1 SCC 774. The Commission wish to analyse this argument in detail.

The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the Petition before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed - it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. In *State of Madras Vs. Madurai Mills Co.Ltd.* AIR 1967 SC 681 the Hon: Supreme Court held that the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior authority and the other by a superior authority, passed in an appeal or revision there is a fusion or merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. The application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.

In *M/s Gojer Brothers Pvt.Ltd. Vs. Shri Ratanlal* AIR 1974 SC 1380 the Hon: Supreme Court made it clear that so far as merger is concerned, on principle there is no distinction between an order of reversal or modification or an order of confirmation passed by the appellate authority; in all the three cases the order passed by the lower authority shall merge in the order passed by the appellate authority whatsoever be its decision whether of reversal or modification or only confirmation. A judgment pronounced by a High Court in exercise of its appellate or revisional jurisdiction *after issue of a notice and a full hearing in the presence of both the parties* would replace the judgment of the lower court, thus constituting the judgment of the High Court the only final judgment to be executed in accordance with law by the courts below.

To merge means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See *Corpus Juris Secundum*, Vol. LVII, pp. 1067-1068).

To sum up, where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system.

The APTEL in their order on I A No. 138 of 2007 dated 25th day of February, 2008 also had discussed the doctrine of merger:

The appellant claims that there was a merger of the order dated 16.07.04 in the subsequent order passed in the application for modification which was passed on 24.02.05. The order dated 24.02.05 was passed in an application seeking modification of Commission's order. The application, therefore, was in the nature of a review petition. The appellant has not clarified on what basis he claims that this order dated 22.02.05 got merged in the order of 16.07.04. We had an earlier occasion of examining the question of merger when a review petition is filed and disposed of. In the case of 21st Century Infrastructure (India) Pvt. Ltd. Vs. Central Electricity .Regulatory Commission we decided an application for condonation of delay. Having carefully gone through the judgment of Supreme Court in the case of Sushil Kumar Sen Vs. State of Bihar (1975) 1 SCC 774 and the judgment in the case of Kunhayammed & Others Vs. State of Kerala & Another (2000) 6 SCC 359 we found that the order passed in the review petition merges in the original order only when the review was allowed.

The Supreme Court in the case of Kunhayammed & Others Vs. State of Kerala & Another (supra) reiterated its earlier view as under:

"Entertaining an application for review does not vacate the decree sought to be reviewed. It is only when the application for review has been allowed that a decree under review is vacated. Thereafter the matter is heard afresh and a decree passed therein, whatever be the nature of new decree, would be a decree superseding the earlier one".

Only when the previous order is set aside and a new order is passed in review petition can the theory of merger be invoked. In the present case the application for modification of the order dated 16.07.04 is not allowed. The review petition is dismissed by reiterating an earlier order. Accordingly, the theory of merger cannot be invoked for counting the number of days of delay.

(I A No. 138 of 2007 dated 25.2.2008)

13. It is clear that there is no merger of the original order with the order dated 17/1/2012 as argued by the officers even as per the dictum of merger mentioned in order of the Hon: Supreme Court produced by the defendants. On examination of the review order of the Ombudsman dated 17/1/2012, it could be seen that no new order reviewing the earlier order has been issued. It may also be seen from the review order that the review petition was not admitted. It was *dismissed* at the admission stage itself as provided in sub

clause (3) of Regulation 27 A of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation. A review is admissible under regulation 27 A of the Regulation only on two grounds, namely (i) on the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him and (ii) mistake or error apparent on the face of the record. After stating the contentions of the Board, the order states that “All the above facts were clearly discussed in the said order dated 24.05.2010 of this Forum”. This clearly shows that the Ombudsman had decided that the review petition itself was not admissible and had *dismissed* it unequivocally. Also no notice was issued to the opposite party in the case before the review dismissal order dated 17.1.2012. A review order on merits can be passed only after giving opportunity to all parties to the original order as per sub clause (4) of Regulation 27 A of the Regulation. Even as per the Supreme Court judgment produced by the officers, only if the application for review of a decree is allowed, then only the original decree is vacated. The relevant portion of the Supreme Court judgment is as follows:-
“The effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one.”

Here the review application itself was dismissed without admission. The Commission reiterates that in the instant case the revision petition was filed before the Ombudsman, but the Ombudsman refused to interfere with the decree or order earlier made and *dismissed* the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the original decree or order. In such a situation there is no question of any merger of the two orders.

14. The procedure followed by the Commission under section 142 of the Act is in accordance with the law. Section 143 or the Kerala Electricity (Manner of Enquiry by Adjudicating Officer) Rule 2005 has no applicability in the matter of

action taken under section 142 of the Act. Section 143 (1) and (2) of the Act relate to the penalty for violation of section 29, 33 and 43 of the Act. Sub section (2) of section 143 makes this fact clear, wherein the imposition of penalty is clearly related to section 29,33 or 43 .More over APTEL in the Order dated 19.4.2011 on Appeal no:183/2010 has discussed in detail , the procedure to be followed in the case of action under Section 142 of the Electricity Act 2003.

Nowhere in the above direction and order, the Appellate Tribunal mentions that the procedure in Section 143 is applicable to proceedings under Section 142 . Hence the objection of officials can not be accepted in this regard.

15. Show cause notice was issued to the officers individually. Even though the charges against all of them are non-compliance of the order of the Ombudsman, Commission understands that each one's responsibility in the issue may be different according to the hierarchy and delegation of powers among them. In the case now in question, the Deputy Chief Engineer has not filed any power of attorney or any other document authorising him to file the reply on behalf of others. So without such authority, the joint statement filed by Dy.Chief Engineer is not legally acceptable. However, in the interest of justice the Commission has considered all the objections filed by their Advocate.
16. On an overview of the whole episode, it can be seen that the compliance of the Order of the Ombudsman dated 24.5.2010 was delayed by the officials of KSEB without any valid reasons. In none of the communications placed before the Commission, the officials have explained the reasons for non compliance of an order of a statutory authority, appointed as per an Act of Parliament for mitigating the grievances of consumers. The officials did not care to furnish an explanation for the delay in compliance. Ultimately they approached the Ombudsman for a review of the order in January 2012, after around 19 months, based upon an amendment of the Regulations issued by the Commission on 7.2.2011. The provision for review itself came in to existence about 9 months after the order was passed. The officials of KSEB complied with the order after the Review petition and subsequent request for extension of time was rejected by the Ombudsman.

On a perusal of the order dated 24.5.2010 it can be seen that the consumer had applied for getting HT tariff allotted as early as on 2.12.2003 and the

Deputy Chief Engineer had approved the proposal to install TOD meter and CT on the LT side of the connection and to execute HT agreement on 30.3.2004 (Page 4 of the order). But the HT tariff was not allotted citing various reasons. Ombudsman's order quoted:

'Finally on 13.9.2004 the Executive Engineer asked him to clear an arrear of around Rs 26.6 Lakhs as a precondition for executing the agreement for HT tariff. On verification of the various documents presented before me it can be seen that the conversion of the consumer to HT tariff had been blocked by this demand for clearing arrears. The Respondent has admitted that the request for conversion to HT was not processed since the consumer had not cleared the arrears. They claim that the applicant was addressed on 3 occasions to clear the arrears. But as explained earlier it was subsequently proved and agreed by the Respondent that majority of the arrear claims, around 70% of the claims, were erroneous or bogus. On judicial review, two major claims were practically withdrawn. The remaining claim for the period upto 3/2004 was seen based on wrong application of LT VII tariff earlier. The Respondent had not cared to apply correct tariff, namely HT, for the period ending 3/2004. As pointed out by the CGRF 'all these shows the callous indifference and culpable lapses on the part of the officials of the Board in raising a correct demand for the electricity supplied to a consumer'. Even after obtaining directives from a judicial body like Lok Ayuktha the officials did not care to reassess the arrears.'

The Ombudsman pointed out the following lapses on the part of KSEB officials:

- '1. Fastened a wrong and bogus liability of Rs 26,67,776/- on the Appellant and refused/ blocked the processing of the application for converting to HT tariff.*
- 2. Failed in reassessing the actual dues from the consumer, sleeping on the issue for more than 3 years, with utter disregard to the orders of Lok Ayuktha dated 31.5.2006.*
- 3. Failed in realizing an amount of Rs 7,28,314/- from the consumer between 9/2001 to 3/2004 by wrongly applying LT tariff to the consumer contrary to the Orders of the KSEB. It is the management of the Licensee KSEB to decide how the above lapses are to be treated. Any way the Appellant consumer had suffered irreparable losses by way of denial of an opportunity to convert to HT tariff some time in 2004'.*

As pointed out by the CGRF as well as Ombudsman the genuine claim of the consumer for conversion to HT tariff, in accordance with the directives of the Board, was delayed or blocked by the officials of KSEB from 2004 to 2012 by raising bogus arrear claims, irrelevant technical queries etc until the Ombudsman issued the final order. The officials struggled hard by various means to avoid compliance of the order.

As pointed out earlier the Commission cannot be a silent spectator in such situations. The Commission is satisfied that the order of the Ombudsman was not complied with for more than 20 months without any valid reasons or explanations. The Commission had issued show cause notice to all the concerned officials to explain why action under Section 142 should not be initiated against them, for which the officials had not submitted even satisfactory response. An opportunity was given to them to be heard in

person before finalising the matter. They refused to attend the hearing in person but were represented by an advocate.

The objections filed by the Learned Counsel were carefully examined by the Commission as stated above and Commission found no reason why the action should be dropped. Under the above circumstances the Commission decides to impose penalty on the responsible officials of the Board under section 142 of the Electricity Act 2003 for delay and non – compliance of the Ombudsman's order. The fact that the agreement has been executed in March 2012 does not alter the case substantially and the contravention under Section 142 is established.

17. However the Commission is inclined to fix the penalty in proportion to the responsibility of each officer in the hierarchy of the Boards organisation structure in the matter of non compliance. The Assistant Executive Engineer, Fort, Thiruvananthapuram ,even though she was the respondent officer in the proceedings before the Ombudsman, had submitted detailed reports to the Commission on 22.8.2011, 19.12.2011and 21.3.2012 citing there on, the various steps initiated by her for timely compliance of the order. She also pointed out that the agreement authority for HT consumers was the Deputy Chief Engineer and in the scheme of things related to HT connections, the AEE had little to do , other than to act upon the directions of senior officers. The role of the Executive Engineer is also similar and nothing has come out which establishes the role of Executive Engineer in delaying the compliance. Hence the Commission decides to spare these two officials namely Assistant Executive Engineer and Executive Engineer from penalty.

As per the clause 19(8) of the Terms & Conditions of Supply 2005 of KSEB the authority to execute HT agreement and by implication, to decide tariff of such consumers, is the Deputy Chief Engineer (Distribution). On perusal of the various communications and records made available to the Commission it is seen that the Deputy Chief Engineer had evaded this responsibility of executing HT agreement and allotting HT tariff continuously from 24.5.2010 , the date of order of the Ombudsman. Instead of complying with the order of the Ombudsman she took up the matter with the Board on 30.12.2010 , that is after 7 months from the order of the Ombudsman ,and got orders for filing review petition on 21.10.2011, directed the AEE for urgent compliance of the Board order on review petition on 5.11.2011. The Deputy Chief Engineer never cared to explain to the Commission, why the order of Ombudsman could not be complied. The Deputy Chief Engineer never reported to the Commission the difficulties if any in implementing the order of the Ombudsman. The Commission cannot let off such disregard to statutory institutions.

The Ombudsman had marked a copy of the order dated 24.5.2010 to the Secretary of the Board. The Secretary, supported with a full fledged legal wing should not be ignorant to the Regulation 27(4) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations that, once an order is issued by the Ombudsman 'the distribution Licensee shall comply with the orders of the Ombudsman'. Unfortunately the Board Secretariat had colluded with the Deputy Chief Engineer for evading the compliance, by various actions and inactions. In fact, the Commission is surprised to see the enthusiasm of the Board in defending its erring officers instead of taking disciplinary action for the inaction of officers in this case since 2004. The order of the Ombudsman draws attention to the callousness with which this matter was handled. Apparently the Board has seen it to fit to connive at it. The Commission decides that the Secretary of the Board should also be penalised under Section 142 of the Act 2003.

Orders of the Commission

18. Accordingly, in exercise of the powers conferred as per Section 142 of the Electricity Act 2003, the Commission orders that :

- i. Smt K.K. Jayakumari , Deputy Chief Engineer , Thiruvananthapuram (Urban circle) shall pay a penalty Rs.20000/- (Rupees twenty thousand only)
- ii. Smt S. Roopakala Jagath , Secretary , KSEB, Thiruvananthapuram shall pay a penalty of Rs. 20000/- (Rupees twenty thousand only)

The officials shall remit the penalty in the office of the Commission within 30 days from the date of receipt of this order.

Sd/-
P.Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
K.J.Mathew
Chairman

Approved for Issue

Sd/-
Secretary