

FORM 1
[See Regulation 24(5)]

**BEFORE THE KERALA STATE ELECTRICITY
REGULATORY COMMISSION**

Petition No.

IN THE MATTER OF:

The requirement of punishment as per Section 142 of the Electricity Act for non compliance of the direction of KSERC by Dy. Chief Engineer, KSEB, Palakkad Circle. Punishment for unauthorised disconnection and for direction, ‘not to disconnect the supply’, still hearing and disposal of the petition.

**NAMES AND FULL ADDRESSES
OF PETITIONERS/ APPLICANTS :**

1. M/s Pyarelal Foams (P) Ltd
Con. Code 26/4422
Koyyamarakkad
Kanjikode – 678621
Palakkad.
Ph: 0491- 2566989, 2568304

2. M/s Aditya Fabrics
Con. Code 8/4798
Koyyamarakkad
Kanjikode – 678621
Palakkad.
Ph: 0491- 2566989, 2568303

NAMES AND FULL ADDRESSES
OF RESPONDENTS

:

1. Assistant Engineer,
Electrical Section,
KSEB, Kanjikode.
Pin No. 678621.
2. Deputy Chief Engineer,
Electrical Circle,
KSEB, Palakkad.
Pin No. 678001.
3. Secretary, Kerala State
Electricity Board,
Vydhuty Bhavanam, Pattom,
Thiruvananthapuram.
Pin No. 695004.

Affidavit verifying the petition.

We Pyarelal Foams Pvt Ltd and Aditya Fabrics Palakkad do solemnly affirm and state as follows:

1. We are Petitioners in the above matter.
2. The statements made in the page of petition application here in now shown to me and marked with page no ...**1**... to ...**21**... are true to my knowledge and the statement made in ...**21**... nos. of pages are based on information received and I believe them to be true.

Solemnly affirmed at on this day of that the content of the above affidavit are true to our knowledge, no part of it is false and nothing material has been concealed there from.

Petitioner/ Applicant/ Respondent.

1. M/s Pyarelal Foams (P) Ltd
Con. Code 26/4422
Koyyamarkkad
Kanjikode – 678621
Palakkad.
Ph: 0491- 2566989, 2568304

Identified before me

2. M/s Aditya Fabrics
Con. Code 8/4798
Koyyamarkkad
Kanjikode – 678621
Palakkad.
Ph: 0491- 2566989, 2568303

Notary

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[See Regulation 24(5)]
General Heading for petitions

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PETITION NO:

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The requirement of punishment as per Section 142 of the Electricity Act for non compliance of the direction of KSERC by Dy. Chief Engineer, KSEB, Palakkad Circle. Punishment for unauthorised disconnection and for direction, ‘not to disconnect the supply’, still hearing and disposal of the petition.

Fees Rs. 10,000/- (Rupees Ten Thousand only) as per Annex II schedule of fees See Regulation 64(1) of Kerala State Electricity Regulatory Commission (Conduct of Business) Regulation 2003, is enclosed as DD drawn in favour of the Secretary, KSERC, payable at Trivandrum from Bank.

REFERENCE:

1. Electricity Act 2003.
2. Supply Code 2005.
3. CEA Measures Relating to Safety and Electricity Supply Regulations, 2010.
4. Kerala State Electricity Regulatory Commissions (Licensing) Regulation 2006.
5. Kerala State Electricity Regulatory Commission (Conditions of License for Existing Distribution Licensees) Regulations 2006.
6. The Kerala State Electricity Regulatory Commission (Conduct of Business) Regulation, 2003.

NAMES AND FULL ADDRESSES
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JURISDICTION/ MAINTAINABILITY

The Complainants 'Pyarelal Foams (P) Ltd and Aditya Fabrics' are consumers in the same premises of DIC land under KSEB Kanjikode Section, Palakkad Circle under Distribution North.

The petition is being filed complying with chapter (III) proceedings before the Commission, Clause 22, initiation of proceedings, sub clause (d) upon a petition filed by an 'affected party' as per Kerala State Electricity Regulatory Commission, (conduct of business) Regulation 2003.

The Electricity Act entrusts the Regulatory Commission with the responsibility of specifying the procedure, formalities and measures to prevent and control unauthorised use of electricity. The procedure and formalities for recovery of electricity charges, disconnection of supply of electricity for non payment, and disconnection of supply of electricity for unauthorised use, etc. The section 50 along with the Central Govt. Ministry of Power Order No. S.O. 790(E) dated 8/6/2005 entrusts the above responsibility.

Grave violation of the above proceedings is causing heavy damages to the consumers and for the irrevocable losses and damages and for continuing

wrongs, the consumer does not have any other forum other than Electricity Regulatory Commission.

For punishment as per Section 142 and 146 for non compliance of directions, a consumer can only approach KSERC.

Complying with the proceedings before commission, the Electricity Act Section 50, Order No. S.O. 790(E) of 2005 of Power Ministry, and Section 142 and 146 of the Electricity Act, we humbly request that the Hon. Commission may accept the petition in file and numbered.

INTRODUCTION

M/s Pyarelal Foams (P) Ltd. (Con No. 26/4422) and M/s Aditya Fabrics (Con No. 8/4798) are factories located in the same premises with a single precinct. The Directors of both the factories are one and the same. Since owner is same, cases are connected and only one site Mahazer is there, the joint petition is being filed. For distinguishing of the different products (Fabrics and Foams) and ease of operation, two different names have been given for the factories under same management.

As far as the Electrical connections to the factories are concerned, the tariff is same, ie., HT1 Industrial and both the connection is from same KSEB feeder. The total burden on KSEB feeder is the sum of loads of both the factories.

Although the connected load of Pyarelal is 309 kW, they were provided with 400 kVA. Ie, 91 kVA in excess for use in future by adding additional load.

The application for additional load by Aditya Fabrics on 19/5/2011, got delayed due to the procedure formalities and negligence from the part of KSEB. When there was undue delay, taking into consideration the direction of KSEB, complying with clause 31 and 43 of CEA Regulation, and after getting approval of Electrical Inspectorate, the consumer energised the additional load.

The APTS wing of KSEB conducted an inspection in the common single premises of Aditya and Pyarelal on 15/6/2012 and prepared a so called site Mahazer combining together the proceedings and pretended as if they were identifying the energisation of the load during the inspection only.

Hon. Commission after examining and evaluating all the evidence and circumstances has released an order as OP 35 with a clear direction to the Dy. Chief Engineer, Electrical Circle, Palakkad to issue formal power allocation/cost estimate to the petitioner based upon application dated 15/5/2011. The order was also very specific in directing KSEB to treat the contract demand as 400 kVA from 19/6/2011 and to withdraw the penal charges demanded from the consumer thereafter on this account.

KSEB Ombudsman also released a favourable order on Petition No. P 291/2012 directing the Assessing Officer to work out the penal charges only on industrial tariff and not on temporary extension tariff. There was also clear observation that *'had KSEB sanctioned the additional load requested by the consumer in time, the KSEB could charge the consumer under HT tariff only'*. The Ombudsman clearly stated that the findings are intended only for applying mind to look fresh into the case on the matter of applicable tariff. This clearly shows that the Assessing Officer even as per Ombudsman is not applying his mind.

If industrial tariff is applied, withdrawing the allegation of temporary extension, and taking into consideration the findings of Hon. KSERC and Ombudsman, and since the consumer has already paid the industrial tariff, the Assessing Officer can easily relieve the consumer from the penalties and burden.

When the circumstances and situations were remaining as explained above, the Assessing Officer provided the consumer with a **revised Provisional Assessment under Section 126 of the Electricity Act** for which there is no provision in the Act itself. Along with the above so called provisional bill, the Assessing Officer arranged for a personal hearing as per Section 126 (3). When the consumer along with his authorised representative appeared before the assessing officer for recording the statement, it was brutally denied by the Asst. Engineer and without considering the pleadings of the consumer, he passed a final order with the intention and ulterior motive of harassing the consumer. Violating all legal procedures and proceedings, and without even serving a proper bill or notice, the service to the consumer was disconnected on 14/6/2013 morning.

Subsequent to the disconnection, and after reconnection a disconnection notice was given by the AE instead of giving the reconnection notice on 17/6/2013 evening and reconnected the supply based on the proceedings of Dy. Chief Engineer. The DCE instead of punishing his subordinate officer for severe injustice, and compensating the consumer suitably, have only given the connection back after protecting the Asst. Engineer.

Disconnection of Electric supply without notice and assigning proper reason is denial of 'Right to Livelihood' of a person.

The entire actions, proceedings and procedures of KSEB is only aimed at harassing the consumer and since the consumer is not having a proper forum other than Hon. Commission for the punishment of KSEB, at this critical stage, the consumer has approached this forum with his grievance for a suitable solution and extending the punishment as per Section 142 and 146.

GROUND OF APPEAL

Illegal penalisation violating statutes and KSERC order

1. The main reason for the penalization by KSEB was that the consumer extended the power supply from Pyarelal Foams to the Unit 2, new plant of Aditya Fabrics. The Management of both the production units are one and the same and it was admitted by KSEB in their reply to KSERC in OP. 35. Clause 3 (Encl...1...). They have also confirmed the same in the site Mahazer dated 15/6/2012 by stating that both the units are in the same compound. They have also re-confirmed the same by asking the petitioner to prove the same with the production of certificate from DIC in their reply to Electricity Ombudsman Petition P 291/12, Para 15, Page 9, (Encl...2...) *'If the petitioners want to prove that there is only one premise and not four premises, they have to produce a certificate from the DIC to this effect.'* Considering the request of KSEB, consumer has produced the certificate from DIC (Encl...3...). This clearly shows that there is no unauthorised extension as alleged. KSEB can very well accept the certificate produced as per their direction and relieve the consumer from punishment.
2. The consumer has proceeded with the construction of Plant 2 with a heavy investment of Rs. Two Crore, only after complying with full procedures and formalities of all statutory departments including KSEB. The order of Hon. Commission in No. OP 35/2012 (Encl...4...) ordered that, *'The contract demand of 2nd Petitioner Aditya Fabrics shall be deemed to be raised to 400 kVA with effect from 19/6/2011, one month after the application for power requirement is submitted to KSEB and penal charges if any demanded from the consumer thereafter on this account shall be withdrawn.'*, clearly shows that the consumer is eligible for 400 kVA contract demand from 19/6/2011. After having a huge

investment with heavy liabilities to financial institutions, nobody can expect an entrepreneur to keep the infrastructure idle, leading towards sickness of the industry and final closure. The scrupulous behaviour of the employees of KSEB leading to the closure of industries is a curse to our Nation especially Kerala. The consumer has constructed the Unit 2 and installed all machineries with a **Legitimate Expectation of getting Electrical Supply on time as per statutes**. Since additional load was sanctioned earlier by KSEB to the consumer, and believing the words of the employees, and after taking approval from Electrical Inspectorate, there is no illegality in energising the Unit 2 of Aditya. If KSEB themselves are saying that, the energisation is wrong, and trying to penalise the consumer for the same, the blame is upon KSEB only and may be upon their employees also because the consumer is eligible for 400 kVA and direction is there for withdrawing penal charges.

3. When there was delay in official sanctioning of the additional load by KSEB (which was sanctioned by KSERC as per order OP 35/2012 with retrospective effect) as explained by KSEB itself, in Para 5 of the reply filed by KSEB in OP 35/2012 (Encl...1...), the consumer can use the additional 91 kVA given in excess of 309 kW as 400 kVA to M/s Pyarelal. KSEB has also accepted the reply of the petitioner that *'the balance load will be installed shortly'*. KSEB also permits the installation of the balance load in different phases. In reply filed by KSEB on Ombudsman petition No. P 291/12 (Encl...2...), Para 19, Page 11, *'Since the application was totally in order and does not have any deficiencies, KSEB have not responded in writing, instead as envisaged in the agreement of Pyarelal and their electricity bill, employees of KSEB requested Aditya to draw up to 90.84 kVA from Pyarelal till separate allotment is given to Aditya'* is totally denied by KSEB, but was considered by Electricity Ombudsman in petition 291/2012 (Encl...7...) and specifically blamed KSEB as *'Finally, here the 2nd appellant has wired his premises for receiving supply under HT industrial tariff. Had the KSEB sanctioned the additional load requested by the consumer in time, the KSEB could charge the consumer under HT Tariff only.'* The ombudsman has also directed and remanded the case back to the Assessing Officer to review the same applying the mind. If the mind is applied and direction is followed to have industrial tariff, there will not be any liability for the consumer and if any liability is fixed, it will only be upon KSEB and their employees for denial of power, dereliction of duty, and for ignorance. The consumer can in no way take the responsibility of the 'wrongs' of KSEB and their employees.

4. The Clause 43(4) and 31(1) of CEA, Measures relating to Safety and Electric Supply Regulations, 2010, is very clear in defining the procedure for addition or alteration to the installation by the 'owner' of any installation. The Clause 43(4) *'The owner of any installation of voltage exceeding 650V who makes any addition or alteration to his installation shall not connect to the supply his apparatus or electric supply lines, comprising the said alterations or additions unless and until such alteration or addition has been approved in writing by the Electrical Inspector.'* This clearly shows that the statutory requirement for energising LT additions is only the approval from Electrical Inspectorate. KSEB is not having any tariff loss because the tariff is two part, and their fixed charge is based on kVA maximum demand. In the order DP 84/2010 of KSERC (Encl...5...), the Para 3.13, Page 5, it is stated that *'When an LT Industrial consumer opts for Maximum Demand based tariff and executes agreement for Contract Demand, Board is responsible for meeting only the contracted demand of the consumer and not his connected load. Hence no case is made out against the principle of linkage of 'Contract demand' to 'Connected Load' of LT Industrial Consumers opting for Optional Demand Based Tariff and should be treated on the same lines as of HT and EHT consumers.'* This clearly shows that no case can be made out against the principle of linkage of 'Contract Demand' to 'Connected Load'. Similarly, the clause 31(1) of CEA Regulation *'Upon receipt of an application for a new or additional supply of electricity and before connecting the supply or reconnecting the same after a period of six months, the supplier shall either test the installation himself or accept the test results submitted by the consumer when the same has been duly signed by the licensed Electrical Contractor.'* The consumer has given the application, KSEB did not bother to conduct the inspection and hence we can only assume that it is sanctioned by KSEB. Taking into consideration all above facts, KSERC has released the order OP 35/2012 (Encl...4...). Hence, the energisation of additional load is legal and as per statutes.

The scrupulous action of the Assessing Officer

5. The Asst. Engineer as an Assessing Officer is not a quasi judicial post but an administrative post controlled by senior officials of KSEB, with quasi judicial responsibility under overall control and supervision of Regulatory Commission. Here, the Assessing Officer is injudicious, pervasive and frustrated. The Assessing Officer, having extended quasi judicial responsibility (because of Section 126 of the Act, quasi criminal in nature), to be executed as an administrative responsibility under control

of senior officials of KSEB as per specification, procedure and formalities laid down in Sec. 50 and Central Govt. Order Ministry of Power S.O. 790(E) dt. 8/16/2005 specifically '*entry of distribution licensee or any person acting on his behalf for disconnecting supply, disconnection of supply of electricity in case of unauthorised use of electricity and measures to prevent unauthorised use of electricity*'. Nowhere in the Supply Code or Terms and Conditions of Supply it is mentioned that the supply can be disconnected on completion of seven days after issuing of final bill for unauthorised use as per Sec. 126. The provision available for the consumer is only an appeal before the Appellate Authority. But in the Act, it is very clear about the negligence of the consumer to pay any charge for the Electricity or any sum other than a charge for Electricity due with direction to the Licensee for giving '*not less than fifteen clear days notice in writing*'. Since the provision of appeal is available, the Assessing Officer or AE should give 15 days clear notice in writing before disconnecting the supply. Please note that clear notice is highlighting the omission of Sundays and national holidays in between.

6. The Assessing Officer along with Mr. Satish Kumar Asst. Ex. Engineer of APTS and Mr. P Vinod, Asst. Engineer of HTMT unit have done the first inspection in both the premises of Pyarelal and Aditya together on 15/6/2012 and prepared a site Mahazer. (Encl...6...) If we closely examine the chronology and the content of the site Mahazer, it is clear that the AE Mr. Suprabhath K was very well aware about the energisation of unit 2 of Aditya for which entire formalities have been complied with KSEB including completion report. He has stated that the inspection is conducted together in Pyarelal and Aditya, in the first paragraph itself and mentioned about the products together in second paragraph, both the companies are in the same compound, the description of meters, downloading of data, etc., together, and subsequently, the allegations combining together both the industries.
7. Subsequent to the above inspection, he has given a provisional invoice for Rs. 1,40,52,500/- on 30/6/2012 and then, a final invoice for the same amount without having proper hearing or complying with the procedure and formalities. The Hon. Ombudsman as per Order P 291/2012 (Encl...7...) have directed the AE to re examine the same, applying proper mind. This clearly shows that there are severe lapses from the part of AE and his knowledge and awareness about the procedure and formalities, including the applicable tariff is very limited and will not suit his post as an Assessing Officer. This is clearly confirmed by issuing a revised Provisional Assessment under Sec. 126 of the Electricity Act,

2003 for Rs. 52,76,640/- which is only about 1/3rd of the original Assessment. It is pertinent to note that both the Assessments were made for same violation upon same site Mahazer when facts, circumstances and legal position remains the same except the Ombudsman Order. The procedure and proceedings as per Section 126 is quasi criminal in nature, and hence, the Assessing Officer can have calculations and penalisation upon same cause of action in different ways even if higher authorities directs and hence, the impugned site Mahazer becomes void and null. Even as per KSEB, the above mentioned higher authority, that is, Ombudsman, does not have any control over the Assessing Officer who is the legal authority for institution of Section 126 of the Electricity Act. This again shows the incompetence of the Officer and requirement of higher authorities to guide him properly. Since all calculations are based on meter readings, scientific parameters and numeric values, the calculations should be same if it is done based on same parameters and formulae. The calculation will not defer from person to person for the same incident and cause of action.

8. Even after the issue of the provisional invoice, and filing of petition by the consumer before CGRF, and its intimation to the AE, instead of consulting and taking advice of higher authorities, the AE has been denying the request of the consumer to keep the proceedings in abeyance till hearing and disposal of CGRF petition stating that *'the reason that you have filed a complaint before the CGRF is not maintainable in law and therefore denied'* (Encl...8...). This again shows that the Assessing Officer is not executing his responsibilities and duties properly, and not willing to be under the control of superiors or to accept the directions, or else he would have contacted CGRF or even the engineers above his rank before denying the request of the consumer at point blank. He also behaves as if he is the final authority and his higher officials includes CGRF is immaterial for him.

9. After denial of the consumer's request, he proceeded with the proceedings as per Sec. 126 and directed the consumer to appear before him for personal hearing as per Sec. 126 of the Act. As per amendment of Sec. 126(3) of the Act, w.e.f 15/6/2007, 'the reasonable opportunity of hearing' was made mandatory. Earlier, it was *'the assessing officer, who may after affording reasonable opportunity of hearing to such person'*, but at present, it is *'the assessing officer, who shall after affording reasonable opportunity of hearing to such person'*. When the opportunity of personal hearing is mandatory, it is the bound duty of the Assessing Officer to provide with the same to the consumer. Instead of acknowledging and accepting the consumer, and creating a sound cordial

environment, the Assistant Engineer Shri. Suprabhath K became furious and tried to mock and tease Shri. M B Chandrashekar, the manager of the consumer, along with Shri. Shaji Sebastian, the authorised representative of the consumer by saying that, **‘earlier Shaji was having good contact and influence over the Commission, and at present the people in the Commission are ours, and we are very close with them.’** With this, he denied the recording of statements and told that we should sign the attendance register and need only to answer his questions which will be recorded as per his will and wish. Since he was not cooperating, and abusing the consumer and his representative, they left the place after giving a letter dated 3/6/2013 (Encl...9...) with copy marked to Asst. Ex. Engineer, EE , DCE, CE, and Compliance Examiner of KSERC which were subsequently sent by post. As usual, the concerned Asst. Engineer did not receive the letter with acknowledgement or permitted his subordinates to receive the same. They also have given two copies of the letter to the Asst. Engineer which he told that he will be returning it with acknowledgement. Till date, the letter was not returned or given back even though the consumer requested for the same several times.

10. Instead of giving an opportunity of hearing and recording the statement with a copy to the consumer, the AE has been denying the basic right of the consumer to adduce the evidence properly during the first opportunity before the appropriate forum. **Without recording the statement, and examining the witnesses, the Assessing Officer can never issue an order giving reasons and with discussion of the evidence on record. The Assessing Officer should deliberate about merit and adjudge it before confirming, enhancing, reducing, or setting aside the penalty. Then only, the order of the Assessing Officer can be treated as ‘a speaking order’.** The **‘reasonable opportunity of hearing’** is the personal hearing and first opportunity of the consumer for supplementing the detailed evidence. The consumer should get an opportunity for proper recording of the statements, cross-examination of witness pointing out demeanour of those witnesses with personal appeal to the Assessing Officer, to appreciate the merit and weakness of the opposite party. The consumer will not get this opportunity before the Appellate Authority because at that stage, the Authority is merely to take his decision from the record before him. The personal hearing is intended to be a necessary requirement for the concept of reasonable opportunity to show cause only at the stage when evidence is to be led, cross- examination of the witness is to be done, and the demeanour of the witness is to be watched, ie., before Assessing Officer and not upon the appeal with Appellate Authority. Here, the Assessing Officer has proceeded without recording the witness statement and

without giving an opportunity of witness examination. Both these actions of the Assessing Officer shows that he is incompetent and got some deficiencies.

11. After the above incident, and receiving the letter (Encl...9...) as mentioned above, without giving an opportunity of hearing, AE proceeded in his own way by issuing a so called final order and a piece of paper with meagre information as final bill along with a covering letter devoid of any clarity and merit (Encl...10...). The impugned order of the AE is without recording of the statement of the consumer and examination of witness. Nothing is mentioned about the letter given by the consumer on the day fixed for hearing requesting the recording of the statement. The calculation of the AE given is not as per DP 75, 2009 of KSERC which is to be followed in case of unauthorised load/ extension. The calculation is as per the whims and fancy of the AE and without analysing and study of legal positions and directions of Regulatory Commission. The bills even if it is penal bill, is generally given by SOR, Trivandrum because they are the billing authority for HT consumers who know the proceedings and procedure of billing. Here, the so called bill does not contain any information envisaged in Supply Code like the final due date, the interest applicable after the final due date, the date of disconnection if payment is not made, etc. The covering letter is also a misleading one compelling to make the full payment '*before the stipulated time*' which is not specified for disconnection of supply. But, the provision of appeal before Appellate Authority within 30 days as per Sec. 127 is granted to the consumer. This shows that AE is atleast aware about the 30 days time for preferring an appeal before an Appellate Authority or to any other legal forums. After knowing that the applicable period is available, the disconnection of the supply by AE clearly shows that he is acting with vested interest for harassing and harming the consumer. He is also showing his vengeance and hatred because the consumer has obtained favourable orders from Ombudsman and Hon. Commission.
12. After granting 30 days time for filing the appeal, the AE along with other personnel went to the consumer's premises, and without recording of the energy meter readings, with acknowledgement of the consumer, without giving disconnection notice, have disconnected the supply on 14/6/2013 at 11 AM in the morning. The AE who had granted 30 days time for preferring an appeal, complying with Sec. 127 of the Act, himself has disconnected the supply without complying with the procedure and formalities for disconnection like disconnection notice, serving of the disconnection notice with the consumer and in case of non acceptance of

the notice by the consumer, pasting of the same before outside the consumer premises in a visible locality with photographs taken, etc. This kind of disconnection of the supply clearly shows that the AE is totally ignorant or he pretends as if he is ignorant. This leads to the conclusion that the AE is perverse, and incompetent to apply his mind judicially due to the lack of knowledge or any other reason.

13. When the AE came for disconnecting the supply, the representative of the consumer, Shri. Shaji Sebastian tried to contact the higher authorities like the concerned Asst. Ex. Engineer, Mr. Sriram, the EE in charge of the Dy. Chief Engineer, Shri. Swaminathan, but it was in vain because they were engaged at Hon. High Court of Kerala with official duties. Meanwhile, he contacted higher authorities at Trivandrum and as per their direction, requested AE to confirm with higher authorities before proceeding with disconnection. The AE Mr. Suprabhath K as usual neglected the pleading and request of the consumer and told that the consumer can do anything what they want, and whatever it is, he will be disconnecting the supply because he is the prime authority to take decision, and he is also not bothered about the higher officials, whoever it may be. The authorised representative, Shri. Shaji Sebastian contacted Smt. Geetha, the Executive Engineer in the office of DCE, Palakkad. She directed him to mail and fax the details and have given the mail ID and fax number. The mail given by Shaji is enclosed as (Encl...**11**...). After sending the mail, there was no response from KSEB and hence, Shri. Shaji Sebastian prepared a letter to the Asst. Engineer and handed over the same through a messenger to the Asst. Engineer on 15/6/3013, Saturday morning. As usual, the Asst. Engineer did not acknowledge the same and gave the receipt for the same. But the letter clearly fixed the responsibility and liability of losses of the consumer specifically upon the Asst. Engineer and KSEB. The same letter was also forwarded to the chairman, KSERC and KSEB by Mail and Courier. The copy is enclosed as (Encl...**12**...).
14. On receiving the letter fixing the personal liability of the losses upon the AE and KSEB, the Ex. Engineer in charge of DCE on Saturday, 15/6/2013 afternoon, contacted the consumer and also the authorised representative Shri. Shaji Sebastian and told the consumer that against a request letter from the consumer, the connection can be reconnected. Since the consumer was badly in need of the connection, and since there was no other way, the consumer has given a letter to the Ex. Engineer, requesting the reconnection. The consumer was also summoned before the Ex. Engineer to sign the minute book, after giving the letter of requisition for reconnection. Subsequent to the letter on Monday

afternoon, i.e., on 17/6/2013, the Asst. Engineer Mr. Suprabhath came to the site and **reconnected the supply after serving the disconnection notice**. This action of the Asst. Engineer is really ridiculous because the disconnection notice is generally given at the time of disconnection and reconnection notice is given at the time of reconnection of the supply. Here there was no disconnection notice as elaborated earlier. KSEB in their reply to the Commission in OP 35/12 (Encl...1...) para 9, page 4 have written that *'The petitioners know very well that Electricity connections cannot be treated at par with family business.'* Here, we suspect whether it is the family business of the Asst. Engineer Shri. Suprabhath, to disconnect and reconnect the Electric Supply according to his 'whims and fancies' and 'will and wish'.

Objections against the order of EE in charge of DCE on 15/6/2013

15. On receipt of the letter from Shaji Sebastian, authorised representative by Mail and Fax (Encl...11...) and also the letter given to AE claiming compensation (Encl...12...), the EE in charge of Dy. Chief Engineer contacted the consumer and also Shri. Shaji Sebastian, and told that the connection can be reconnected against a request letter from the consumer. Taking into consideration his request, the consumer has given a letter requesting to reconnect the supply on 15th evening, i.e., on the next day of disconnection. When the consumer reached EE's office, the AE along with Asst. Ex. Engineer were present and the consumer was asked to sign a minute book. Subsequently, on Monday, 24th evening, AE came to the site and served him with the order of EE and a 'disconnection notice' seems to be prepared as per the direction in the order.
16. Entire proceedings of the EE Shri. Swaminathan is only to cover up the illegal disconnection of an industrial supply by the Assessing Officer and legally responsible officer of a Section of KSEB, i.e., AE. He simply approved the final bill of the AE and also the order of the AE (Encl...13...). The severe illegality in procedure and proceedings of the AE in preparing the order and the final bill was pointed out to the EE, but he refused to interfere even after the illegal disconnection of the supply by the AE. At this stage, he could have given a direction to the AE at least to have a proper hearing of the consumer by recording the statements. Instead, he simply quoted the words in the order and approved all wrong doings of the AE. The statement of the EE 'Above consumer did not file any written objection or raise any contention challenging the provisional assessment and did not sign the minute book' is totally wrong and false. He has written these without taking into consideration the pleading of the

consumer that he did not get an opportunity of recording the statements and also the fact that the AE was very rude with the consumer and representative.

17. It is true that Shri. Shaji Sebastian has sent Mail and Fax protesting the disconnection of the supply and when he sent the second letter fixing the liability upon KSEB and the AE, immediately the EE in charge of DCE 'woke up' and started with the action and the supply was reconnected. The interpretation of the EE that '*As per Electricity Act, Section 126 the time frame that is to be given for disconnection of service is a grey area*' is totally wrong and false. The EE is very well aware that there is 30 days time for filing appeal and the proceedings and procedure for disconnection is well elaborated in Sec. 56 of the Act as well as in Supply Code. He is also very well aware that the disconnection procedure can be initiated only when '*any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee after giving not less than 15 clear days*'. Here, there is no negligence from the part of the consumer for making payment. The consumer is not a wilful defaulter or there is no 'conscious, deliberate disregard towards legal obligations' from the part of the consumer. The consumer has paid all his regular bills promptly and there is no arrears as such.
18. The impugned order of the AE and so called final bill (Encl...**10**...) will become due only after 30 days from the date of receipt of the bill by the consumer. After 30 days only, it will become an arrear. The consumer will become a defaulter only after 30th day of the receipt of the bill. If the bill and order is objected in a suitable legal forum, it will be a bona fide dispute and the consumer will not be liable to make the payment till the decision of the forum. It is the bound duty of the AE to give notice in writing and to inform the consumer properly, 'the intimation of disconnection' after 30 days from submission of the impugned bill. The consumer should also be provided with 15 days clear time before disconnection for necessary action/ making payments. These 15 days should not include 'Sundays, National holidays and Terminal days', i.e., the date of service of 'intimation of disconnection, holidays in between and date by which the consumer is to pay the arrear' should not be included in counting of days.

Objections against inspection of DCE as per Sec. 126

19. The Dy. Chief Engineer Shri. Kumaran has done an inspection as per Sec. 126 of the Act and compelled AE to issue a Provisional Bill to M/s

Aditya Fabrics. It is pertinent to note that the Dy. Chief Engineer is very well aware that he is the Appellate Authority who is the officer in charge of the appeals being filed as per Sec. 127 and who should detect and find out the deficiencies in the order of Assessing Officer. The site Mahazer, (Encl...14...) dated 1/11/2012 clearly shows that the then DCE Shri. Kumaran was having only the intention to harass the poor consumer.

20. After conducting the inspection, as elaborated above, the Asst. Engineer prepared a bill designated as a provisional bill on 30/11/2012 and served to the consumer Aditya. The bill was huge, Rs. 26,53,825/- (Encl...15...). The Assessing Officer (AE) and the Appellate Authority (DCE) were very well aware that the petition OP 35/2012 is pending before Hon. Commission when they were conducting the total illegal inspection and submission of the bill with the consumer. The consumer was able to survive from the severe punishment and harassment only because of the timely intervention of the Hon. Commission. Subsequently, with the order of Hon. Commission on Petition No. OP 35/2012 on 13/12/2012, all proceedings of the Assessing Officer and Appellate Authority became invalid and the impugned site mahazer and bill became void and null.

The poor faith of a consumer before KSEB because of the harassment in the pretext of Sec. 126 of the Electricity Act 2003

21. A poor consumer sitting in front of KSEB is like a rat sitting in front of an elephant. The elephant can crush the rat at any time with a single footstep. The Assessing Officer along with the Appellate Authority feels that they are the 'supreme officers' and 'final authority' who can do anything as per their will and wish including illegal inspections, submission of bills and even disconnection of supply as per their 'will and wish' and 'whims and fancies'. Recently, KSEB is also harassing consumers by not reinstalling the supply whenever there is a power failure and dragging the energisation, etc.
22. The Board is also spending crores and crores of rupees for maintaining an in-house legal department. They are also having an army of very senior advocates appointed from high court to all nooks and corners of Kerala as Standing Councils in the pretext to protect the interest of KSEB but to harass the poor consumers because they are not properly oriented by KSEB and assigned with the duties and tasks in relation to collection of arrears, establishing the right of way and to solve the legal problem in relation to the establishment of generating stations, transmission lines, distribution lines and other establishments. There are several cases in

which the advocates are forced to file appeals and petitions even for meagre amounts when they were sure that they will only fail. A lot of projects and proposals including generating stations, transmission lines and distribution lines are held up due to unwanted litigations and KSEB is not taking any interest in conducting the cases or settling the issues. Their interest is mainly focussed on harassment of poor consumers.

23. The Act 2003 came into force when the performance of the state electricity boards deteriorated on various factors including cross subsidy. The Act never aims the harassment of the consumer in the pretext of any Sections like 126, 127, or even 135. It is true that Section 126 and 127 are designated as 'Code in itself' but it doesn't mean that KSEB officials can be let loose in the pretext of Section 126 and 127 and they can do anything whatever they want. The intention of the legislation should be properly evaluated, examined and implemented so that the poor consumer will get sufficient protection. Earlier, Electrical Inspectorate was having sufficient authority and power. More than that, they were from a totally different Govt. Department having technical knowledge of the Electrical Engineering. Since their words were final for connection and disconnection of the supply, they were feeling that they are superior to KSE Board and their employees. A poor consumer was having an immediate access in every district to the Electrical Inspector and hence, the unauthorised disconnections, the illegal bills and other harassments from the part of KSEB was very minimal. KSEB employees were having a feeling that the Electrical Inspectors were above them and if they did not abide by the directions and orders of the Electrical Inspector, it may even harm their very job.

Conclusion

The consumer Pyarelal and Aditya is getting subjected to severe harassment and punishments because KSEB is not complying with the Regulation and Orders of Hon. Commission. The Order on Petition No. OP 35/2012 is not yet complied by KSEB or they have not obtained any injunction or stay from any court till date. The consumer also has informed the same through the authorised representative, Shri. Shaji Sebastian by letter (Encl..16...). In these circumstances, it is high time that Hon. Commission may proceed against the concerned Dy. Chief Engineer who has not complied with the order as per Section 142 and 146 of the Electricity Act.

Hon. Commission may also take into consideration the atrocities being done by the officials of KSEB like illegal penalisation, unauthorised disconnection and non attendance of the system failures and breakdown of selected consumers to harass them, etc. In the case of Pyarelal and Aditya, the Commission may please note that they are getting subjected to severe harassments for the past one year especially because the concerned Assistant Engineer is one and the same who has not complied with the Supply Code and direction of the Hon. Commission by way of not giving the Electricity Connection and harassing the consumer by way of penal bills, disconnection, etc. occurred due to the non availability of electric supply as per legitimate expectation to the consumer and caused only because of the scrupulous behaviour of the Asst. Engineer, Shri. Suprabhath and Dy. Chief Engineer Shri Kumaran. KSEB and consumer should be equal before law and all occurrences and damages because of the non compliance by KSEB employees (especially denial of service connection) should be upon KSEB employees only. Here, no financial loss or any other damage has been occurred to KSEB and they are harassing the poor consumer only because he has pointed out the severe illegality.

Taking into consideration all above facts, the Hon. Commission may:-

Relief sought

1. The Hon. Commission may suitably punish the Dy. Chief Engineer Shri. Kumaran and Asst. Engineer Shri. Suprabhath along with KSEB for non compliance of the directions as per Section 142 and 146 of the Indian Electricity Act 2003.
2. Hon. Commission may declare all penal bills including the present impugned bill void and null.
3. Hon. Commission may declare the disconnection of the electric supply by the Asst. Engineer Shri. Suprabhath as unauthorised disconnection and illegal.
4. The Hon. Commission may arrange for an urgent hearing so that the consumer will be relieved from the mental agony and financial loss occurred due to the unauthorised disconnection of the supply and illegal penal bills.
5. The Hon. Commission may evaluate the losses occurred to the consumer due to the illegal disconnection of supply and direct KSEB to compensate the same along with interest at the earliest.

6. Since Civil Court as per Section 145 has no jurisdiction over the proceedings as per Section 126 and 127, and if the Hon. Commission does not have the authority for deciding the compensation, the Hon. Commission may help the consumer with any other suitable solution.

Interim prayer

Since the consumer is always getting subjected to the threat of disconnection, and a letter in the pretext of disconnection notice has been given by the Asst. Engineer with the probable disconnection date as 6/7/2013, the Hon. Commission may give an interim direction to KSEB not to disconnect the supply till hearing and disposal of the petition.