

KERALA STATE ELECTRICITY REGULATORY COMMISSION

Thiruvananthapuram

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

O.P.No. 7/2016

In the matter of proceedings under Section 142 of the Electricity Act, 2003 for the non-compliance of the provisions as per the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, relating to the qualifications of engineers, supervisors and technicians engaged in the operation and maintenance of electrical plants and installations.

Petitioner: Shri. Shibu K S, Kollara Veedu, Kanjani P.O., Thrissur -680 612

Respondents: 1. The Chairman and Managing Director, KSEB Ltd., Vydyuthi Bhavanam, Pattom, Trivandrum
2. Secretary (Administration), KSEB Ltd., Vydyuthi Bhavanam, Pattom, Trivandrum.
3. The Chief Engineer (HRM), KSEB Ltd., Vydyuhti Bhavanam, Pattom, Trivandrum.

Order dated 29.12.2016

Introduction

1. The petitioner, Sri K S Shibu had, filed a petition before the Commission on 12.2.2016 with the following prayers:
 - (i) *Issue notice to the respondents*
 - (ii) *Call for the documents if necessary*
 - (iii) *Take suitable action against the respondents as per Section 142 of the Electricity Act 2003;*

In view of the fact that K S E B Ltd. had not implemented the provisions of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, even after 5 years of coming into existence of the regulation
2. To substantiate his prayers, the petitioner had submitted that;
 - (1) KSEBL is a deemed licensee as per Section 14 of Electricity Act, 2003 and therefore it is bound to comply with the regulation framed by the

Central Electricity Authority under Section 53, Section 73 and Section 177 of the Electricity Act, 2003.

(2) KSEB Ltd has contravened Regulation 6 and 7 of the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010.

The petitioner requested the Commission to proceed against KSEBL under Section 142 of the Electricity Act, 2003 for the contravention of Regulation 6 and 7 of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010 (hereinafter referred to as the Safety Regulations).

3. The Commission admitted the petition and conducted public hearings on 22.03.2016, 12.04.2016 and 27.04.2016 in the Office of the Commission at Thiruvananthapuram. In the hearing the petitioner was represented by Adv. Shivan Madathil and KSEB Ltd was represented by Adv. B. Sakthidharan Nair. On behalf of the petitioners Adv. Shivan Madathil submitted the following, -
 - a) The petitioner is emphasizing mainly on the third prayer, for initiating action for the non-compliance of regulation 6 & 7 of Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010.
 - b) Central Electricity Authority has framed Safety Regulations in 2010 consistent with the Section 53, Section 73 and Section 177 of the Electricity Act, 2003. Hence the provisions contained in Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 is mandatory in nature. Regulation 2 of the said Regulations defines danger, designated person, installation, owner and supplier. As per these definitions Kerala State Electricity Board Ltd is the owner of the generation, transmission and distribution systems and supplier of electricity. As per Regulation 3 of the said regulation the supplier or owner shall designate the persons for the purposes of operating and carrying out the work on electric lines and apparatus. No person shall be designated for such works unless he possesses a certificate of competency or electrical work permit issued by the appropriate Government. So, as long as person has not been designated, he has no authority to carry out the work. Even if the person has more experience and training, he cannot be regarded as a person with prescribed educational / technical qualifications.
 - c) Adv. Shivan Madathil did also point out that, in the counter statement submitted by Kerala State Electricity Board Ltd, it was admitted that the ITI certificate holding Assistant Engineers are working in various wings of Kerala State Electricity Board Ltd. Hence it is admitted fact that they have appointed persons not having the required qualification as specified in Regulation 7 of Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010. He submitted that an unqualified person with sufficient experience and

training cannot be posted in places where persons with the required technical qualifications are necessary. The counsel for the petitioner maintained that the problems of man power management as explained by KSEB Ltd cannot be a reason for violating the regulations issued by the CEA.

- d) The counsel for the petitioner concluded stating that since Kerala State Electricity Board Ltd has violated Regulations 6 & 7 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, action under Section 142 may be taken against the respondents.
4. Director (HRM), Kerala State Electricity Board Ltd and Adv.B. Sakthidharan Nair, represented Kerala State Electricity Board Ltd and submitted that they have not violated Regulations 6 & 7 of Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 and that they have taken all possible steps to implement the said regulations. Advocate B. Sakthidharan Nair, Counsel for the respondents submitted that:
- (a) Section 142 of the Electricity Act can be invoked only when a non compliance is proved. Before imposing penalty, action under Section 128,129,130 & 131 of the Electricity Act, 2003 has to be complied with. Nothing has been done in this petition in consonance with the above provisions.
- (b) Method of recruitment and promotion in Kerala State Electricity Board Ltd are governed by Kerala Public Service Commission (Additional Functions) Act, 1963, Kerala State Sub ordinate Service Rules, Engineering Service Rules and other Special Rules framed by Kerala State Electricity Board Ltd. The real intention of the petitioner is to challenge the ratio promotion now prevailing in Kerala State Electricity Board Ltd.
- (c) After the enactment of the Act, 2003 the recruitment and promotion are also governed by Section 131 and 133 of the Act, 2003.
- (d) There exists some conflict between Regulations 6 & 7 of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010 and Section 133 of the Electricity Act, 2003. Section 133 of the Act says that employees and officers shall be transferred to the transferee subject to the terms and conditions framed by the State Government. This Section also says that the terms and conditions framed by the State Government shall not be less favorable to the existing terms and conditions of the officers and employees of the licensee. The explanation to Section 133 says that the crucial date of fixing the date of transfer of the existing employees shall be fixed by the State Government in transfer scheme. After framing the first transfer scheme, the State Government on 31.10.2011 notified the second transfer scheme for re-vesting the assets and personal of the company to the transferee. The terms and conditions of officers and

employees are covered in Schedule B of the scheme. The scheme also insists a tripartite agreement about the terms and conditions to be framed as per the model incorporated in the Schedule C of the scheme. The scheme also made it clear that the tripartite agreement has to be read in conjunction with the scheme of the Act.

- (e) As per Schedule C (2)(a) there will be no retrenchment of the employees for any reason and their status/ services will be protected as on 31.10.2013. Schedule C (2) (c) states that the terms and conditions of service of the existing employees such as promotions, transfers, wages, compensations, leave, allowances etc upon transfer to KSEB Ltd., shall continue to be regulated by existing regulations/ service rules in vogue and is guaranteed to continue as indicated in the tripartite agreement. Schedule C (2) (t) states that all the appointments now being done through Kerala Public Service Commission in accordance of Kerala Public Service Commission (Additional Functions) Act, 1963 will continue as such and amendments in this respect if necessary will be notified by the Government. Since the above said provisions of the tripartite agreement executed under Section 133 of the Electricity Act, 2003 is in conflict with the provisions of Regulation 6 & 7 of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010, the same be ignored.
 - (f) As per Section 53 of the Electricity Act, 2003 the authority has to consult with the State Government before framing the safety regulations. In the safety regulations 2010 framed by Central Electricity Authority, there is nothing to substantiate that the State Government has been consulted before framing the regulation.
 - (g) As per Regulation 116 of the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010 the State Government can allow deviations in respect of matters referred in the said regulations expect regulation 30.
 - (h) As per as the appointment of Engineers, Supervisors and Technicians in KSEB Ltd., it is the domain of the State Government and the licensee. CEA can only prescribe the safety aspects.
 - (i) KSEB Ltd., vide its order dt. 17.03.2015 has accorded sanction for the organizational structure of safety wing for the implementation of safety procedures in KSEB Ltd.
 - (j) Proper training is given to all the officers and employees of KSEB Ltd., from 2000 onwards as detailed in the documents submitted.
 - (k) The petition is an outcome of misconception and hence the petition may be dismissed.
5. Sri. Shinu N, Saraswathy Bhavan, Kazhakkootam, Thiruvananthapuram submitted an impleading petition through Sri. P.R. Shinoy, Counsel. The Counsel for the impleading petitioner submitted that Kerala State Electricity

Board Ltd is engaging many unqualified hands for operation and maintenance of electrical lines and apparatus in violation of the Safety Regulations issued by Central Electricity Authority. The counsel for the impleading petitioner requested the Commission to issue necessary directions to KSEB Ltd for securing compliance of Safety Regulations, issued by the Central Electricity Authority under Section 129 and impose maximum punishment to respondents for the non compliance of the provisions of the Electricity Act 2003.

6. Representatives of several trade unions in KSEB Ltd had participated in the public hearing and expressed their concerns regarding implementation of regulation 6 and 7 of the Safety Regulations. The Assistant Secretary, Kerala Electricity Workers Association, the General Secretary, Electricity Employees Confederation and the Secretary, Kerala Electricity Executive Staff Organisation had submitted that the present employees working in KSEB Ltd are sufficiently qualified and experienced and that inadequacy if any in educational qualifications of the present employees would be more than compensated by the knowledge acquired by them through their long experience in KSEB Ltd. It was also submitted that KSEB Ltd has been operating and maintaining the generating stations, transmission system and distribution system without serious problems for last many years, utilizing the services of present employees.
7. The representative of Kerala Electricity Employees Confederation after submitting their opinion stated that;
 - (1)The terms and conditions of the officers and employees shall be continued as such, since the same was confirmed in tripartite agreement executed on 01.08.2014, complying with Section 131 and 133 of the Electricity Act, 2003. The representative of the Kerala State Electricity Board Worker's Association after submitting their opinion stated that the service conditions of the present employees had to be continued. The KSEB Ltd., can change its recruitment policy consistent with the provisions of the CEA Regulations, 2010, after taking the opinion of the State Government. An Expert Committee has to be formed as per the long term settlement. This Expert Committee can take up this issue.
 - (2)As per Regulation 3 of the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010 the Government has to notify the persons for the purpose to operate and carryout the work on electrical lines and apparatus. No such notification of the Government had come out till date.
8. Sri.Shaji Sebastian, representative of Small Scale Industries Consortium, Sri. Anandakuttan Nair, representing Consumers Welfare Association and one Sri.

Gokul did also present their views regarding the issues presented in the petition.

Sri Shaji Sebastian suggested that the CEA Safety Regulation is to be strictly followed by KSEB Ltd. Sri. Anandakuttan Nair stated that while implementing the CEA Regulation, the terms of long term settlement between the trade unions and the second transfer scheme of KSEB Ltd are to be honoured. Sri. Gokul submitted as follows:

(i) The orders issued on recruitment policies during four or five decades back, should have amended by the Board to suit with the present day condition. After issue of the safety regulation by CEA, it was the duty of the Board to suitably modify the qualification and update the recruitment policy.

(ii) The existing unqualified employees may be given proper training to make them qualified to operate the electrical system as per CEA safety regulation.

(iii) KSEB Ltd is not authorised to give its own training and certification; but competent authorities such as technical education department, AICTE etc. to certify the qualification

(iv) A test report prepared by a competent contractor is to be verified by unqualified overseers is an anomaly and not a good practice.

(v) There is no logic to recruiting unqualified person and give training, instead of recruiting qualified person especially in view of the sufficient availability of qualified person in the state.

9. The Chief Electrical Inspector, Government of Kerala, submitted that the qualifications for the new recruitment may be stipulated as specified in the Safety Regulations and in the case of existing employees, an enlargement of time for imparting training as stipulated in the regulation may be obtained from the State Government as per Regulation 116 of the Safety Regulations.
10. The Chief Electrical Inspector to Government had submitted a statement in the capacities of the fourth additional respondent in this petition vide No. B2- 10015/2016/CEI dated 20.04.2016. In this statement the CEI has emphatically stated that KSEB Ltd., in the capacity as a licensee shall comply with the provisions of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010. It is also stated that only the State Government can, as per regulation 116 of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010, make deviations, if any, from the provisions in the regulations except regulation 30.
11. Concluding his arguments, the counsel for the petitioner Adv. Sivan Madathil had submitted that;
 - (1) By virtue of Section 177 of the Electricity Act, 2003 the CEA has been authorized to frame safety regulations complying with Section 53 of

the Electricity Act, 2003 and hence the provisions of CEA Safety Regulations, 2010 is mandatory.

- (2) In the affidavit filed by the respondents, the Board has no case that the regulations are framed not in consultation with the Government. If such inconsistency is seen, the licensee can very well challenge before the Honorable High Court of Kerala. As far as there exists no such case before the High Court of Kerala the provisions of the regulations are mandatory. The regulation is protected by Section 173, 174 and 175 of the Electricity Act, 2003.
- (3) This petition is not for invalidation of any service conditions of officers and employees of KSEB Ltd.
- (4) In the tripartite agreement under the Second Transfer Scheme, executed on 01.08.2014, by the Government, KSEB Ltd and the trade unions, there is no saving clause to the effect that the employees and officers in the company will retain the status which was conferred by their appointment, in violation of the Safety Regulations, 2010 issued by the CEA.
- (5) When totality of Regulation 3 of the Safety Regulations, 2010 is viewed, it can be seen that no notification is required by the State Government. Only a register showing the designated persons for carrying out the works on electric lines and apparatus is mandatory.
- (6) As per the recommendation of the Distribution Advisory Committee of KSEB Ltd., there are 10 reasons for the occurrence of electrical accidents. Out of this, a major reason for occurrence of such accidents is the unqualified persons deputed for carrying out electrical works.
- (7) From the documents submitted before the Commission it is evident that the regulation 6 & 7 of the CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010 has been violated by KSEB Ltd., even though it is fully aware of the statutes. Any statutory organization has the obligation to comply the statutes for the public interest. Once the regulations are violated then naturally penal consequences are there.

12. Considering the arguments of the petitioners and the respondents, as presented by their counsels and considering the views expressed by the representatives of the trade unions and by other persons who participated in the public hearing, the Commission had, in its order dated 26.08.2016, arrived at the following findings and issued the following orders,-

“Regulation 6 & 7 of the CEA (Measures Relating to Safety and Electric Supply) Regulation, 2010 reads as follows;

“6. Safety measures for operation and maintenance of electric plants: (1) Engineers and supervisors appointed to operate or

undertake maintenance of any part or whole of a thermal power generating station and a hydro power plant together with the associated sub-station shall hold diploma in Engineering from a recognized institute, or a degree from a university.

(2) The Technicians to assist engineers or supervisors shall possess a certificate in appropriate trade, preferably with a two years course from a Industrial Training Institute recognized by the Central Government or the State Government.

(3) Engineers, supervisors and Technicians engaged for operation and maintenance of electric plants should have successfully undergone the type of training as specified in Schedule-I.

Provided that the existing employees shall have to undergo the training mentioned in the sub-regulation (3) within three years from the date of coming into force of these regulations.

(4) The owner of every thermal power generating station and hydro power plant together with their associated sub-station shall arrange for training of personnel engaged in the operation and maintenance of his generating station along with associated sub-station in his own institute or any other institute recognized by the Central Government or the State Government.

Provided that separate training shall be given to the persons engaged in operation and maintenance of thermal hydro power stations including associated sub-stations.

7. Safety measures for operation and maintenance of transmission, distribution systems: (1) Engineers or supervisors engaged in operation and maintenance of transmission and distribution systems shall hold diploma in electrical, mechanical, electronics and instrumentation engineering from a recognized institute or university.

(2) The Technicians to assist engineers or supervisors shall possess a certificate in appropriate trade, preferably with a two years course from a Industrial Training Institute recognized by the Central Government or State Government.

(3) Engineers, supervisors and technicians engaged for operation and maintenance of transmission and distribution systems electric plants should have successfully undergone the type of training as specified in Schedule -II.

Provided that the existing employees shall have to undergo the training mentioned in sub-regulation (3) within three years from the date of coming into force of these regulations.

(4) Owner of every transmission or distribution system shall arrange for training of their personal engaged in the operation and maintenance of transmission and distribution system in his own institute or any other institute recognized by the Central Government or State Government”.

As per the above regulations the operation and maintenance of electrical plant, transmission and distribution system can be carried out only by Engineers or Supervisors holding diploma or degree in electrical, mechanical, electronics and instrumentation engineering from a recognized institute or university. The technicians to assist the engineers and supervisors shall possess a certificate in appropriate trade recognized by Central Government or State Government.

From a plain reading of the above it can be deciphered beyond any doubt that only employees holding the above required qualification can be appointed as supervisors and engineers in generating stations and associated sub-stations and in operation and maintenance of transmission and distribution system of a licensee.

As per sub-regulation (4) of regulations 6 and 7 it is the duty of the owner of the generating stations / transmission or distribution system to arrange training of personnel engaged in the operation and maintenance of his generating stations and transmission and distribution system in his own institute or any other institute recognized by the Central Government or State Government. Further as per the proviso to the above regulations the existing employees shall have to undergo the training in the respective area within 3 years from the date of coming into force of this regulations. But it is not an alternative to the mandatory provisions as envisaged in regulations 6 and 7 of the CEA.

Regarding the contentions raised by the respondents KSEB Ltd against the applicability of Section 142 of the Electricity Act, 2003, the petition is well within the ambit of Section 142 and the Commission has a statutory duty to ensure the compliance of rules and regulations made under the Electricity Act, 2003. In order to initiate the action under Section 142 of the Act proceedings under Sections 128, 129, 130 and 131 of the Act is

not relevant and hence the contentions raised by the respondent KSEB Ltd is not sustainable.

Regarding the arguments raised by the respondent KSEB Ltd with respect to the conflict between regulations 6 and 7 of the CEA(Measures Relating to Safety and Electric Supply) Regulation, 2010 and Section 133 of the Electricity Act, 2003, both are different issues and the compliance of regulation under the above CEA regulation will not affect the provisions of the Transfer Scheme as per the Section 133 of the Act. Section 133 of the Electricity Act, 2003 is as follows;

***Provisions relating to officers and employees:-** (1) The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under Section 131.*

(2) Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer Scheme:

Provided further that the transfer can be provisional for a stipulated period.

The terms and conditions under the above scheme are applicable only to the service conditions of the employees whereas the regulations 6 and 7 of the CEA Regulations, 2010, is with respect to the safety aspects to be maintained by all licensees.

Kerala State Electricity Board Ltd reported that they have requested the Government of Kerala to relax the applicability of the regulations 6 and 7 of the CEA Regulations, 2010 invoking regulation 116 of the above regulations, but has not reported any Government decision in this regard.

The Central Electricity Authority has been authorized under Section 177 of Electricity Act, 2003, to frame safety regulations in compliance of Section 53 of the Electricity Act, 2003. Hence the provisions of CEA Regulation, 2010 has statutory backing and thus mandatory to all licensees including KSEB Ltd. Hence the

contention of the respondent that the regulations issued is only directive in nature is not sustainable.

Order of the Commission

In view of the facts, circumstances and regulations pertaining to the issue under consideration, it has been found that Kerala State Electricity Board Ltd has not fully complied with the statutory provisions of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010, with special reference to regulations 6 and 7 therein. Hence the Commission decides to initiate proceedings under Section 142 of the Electricity Act 2003, against Kerala State Electricity Board Ltd, for non-compliance of the above statutory provisions. Separate proceeding will be initiated against Kerala State Electricity Board Ltd. The petition is disposed of accordingly.”

Issuance of show-cause notice by the Commission

13. Accordingly the Commission had issued show-cause notice No. 255/Com. Ex/KSERC/2016 dated 29.09.2016 directing KSEB Ltd to explain within 30 days from the date of receipt of the said notice, as to why action should not be initiated against it under Section 142 of the Electricity Act, 2003, for the non-compliance of regulation 6 and 7 of the Safety Regulations issued by the CEA. It is also intimated therein that if no explanation is received within the stipulated date, it will be presumed that KSEB Ltd has no explanation to offer and action will be proceeded with and finalized accordingly.

Explanation submitted by KSEB Ltd

14. In response to the said show-cause notice KSEB Ltd submitted the following facts,-

It is submitted that, as rightly observed by this Hon'ble' Commission, the respondents had not fully complied with the Regulations 6 and 7 of the Central Electricity Authority Regulations-2010 (herein after referred to as the Regulations 2010). But, it is evident that these respondents had taken earnest efforts to comply with the Regulations to a great extent and as such the respondents had engaged diploma holders as operators in 33 KV Substations. The respondents had also produced the details of qualification of Assistant Engineers working at Generation Circle, Moolamattam, Moozhiyar, Chithirapuram and Kozhikode Diesel Power Plant and also that of the Assistant Engineers working in Transmission Circle, Kalamassery and Poovanthuruthu, which make it clear that

these respondents had taken sincere efforts to deploy enough Engineering Degree and diploma holders and qualified Technicians as contemplated under Regulations 6 and 7 of Central Electricity Authority Regulation 2010. Thus, in Kerala State Electricity Board Limited, majority of Engineers/Supervisors Posted for O & M of Generating Station/Transmission/ Distribution wing are either Engineering Degree holders or Diploma holders.

It is respectfully submitted that, in the matter of Safety, the respondents had also initiated positive steps by designating safety liaison officers, Safety Co-ordinators and safety officers who are responsible for carrying out effective steps to monitor safety aspects in the Kerala State Electricity Board Limited to avoid electrical accidents.

It is also submitted that Kerala State Electricity Board Limited is imparting quality and need based training to all categories of its employees through PETARC, Moolamattom and the Regional Power Training Institutes Kozhikode, Thrissur, Kottayam and Thiruvananthapuram.

It is further submitted that all appointments/promotions in the Kerala State Electricity Board Limited is carried out under the Kerala Public Service Commission (Additional Functions) Act, 1963. All the Long Term Settlements executed between the recognized Trade Unions and Kerala State Electricity Board Limited is in the strict ambit of Section 2 (p) of the Industrial Disputes, Act, 1947. At present Long Term Settlement with effect from 01.08.2013 has been executed between the recognized Trade Unions and Kerala State Electricity Board Limited without any change of ratio promotion to the workmen category. A settlement of this nature has all the trappings of an award and is binding on all the parties thereto until the same is modified by a fresh settlement or award after the expiry of the period of settlement.

As is evident from the forgoing paras, this Hon'ble' Commission may be pleased to appreciate the fact that the respondents had taken sincere and earnest efforts to comply with the Regulations-2010 substantially. However, it is submitted that in view of the prevailing recruitment and promotion policy of the Kerala State Electricity Board Limited, strict compliance to Regulations 6 and 7 of the Regulations-2010

within a short period of time involves several implications. The mode of recruitment, qualification for the posts and promotion etc are fixed with the concurrence of Kerala Public Service Commission based on Long Term Settlements entered into between Kerala State Electricity Board Limited and recognized trade unions. Hence it is imperative that such unions and associations have to be taken into confidence before proceeding further in compliance of the Regulations-2010.

Further, while OP No. 7/2016 was pending before this Hon'ble Commission, the Kerala State Electricity Board Limited had requested the Government to take steps to relax the application of Regulations 6 and 7 of the Regulations 2010 (deviation) by virtue of Regulation 116 of the Regulation 2010. Simultaneously, this Hon'ble Commission was also requested to grant extension of time to comply with the Regulation 2010 till Government take a decision in the matter. The Government as per GO (Rt) 206/2016/PD/Dated, Thiruvananthapuram, 26.10.2016 was pleased to allow time for a further period of six months, to Kerala State Electricity Board Limited for implementing the provisions of Rules 6 & 7 of the Regulations 2010 and have directed Kerala State Electricity Board Limited to submit a time bound action plan to fulfil the requirements as per Regulation 6 & 7 of the Regulation 2010 within the extended period. A copy of the said Government order is appended as Annexure - A.

It is submitted that the Kerala State Electricity Board Limited in its endeavour to comply with the Regulations 2010 in its letter and spirit, has decided to constitute a committee with its Full Time Directors, the Legal Advisor and Disciplinary Enquiry Officer, the Chief Engineer (HRM) and the Chief Personnel Officer as members and the Deputy Chief Engineer HRM I as the convener, to chalk out a time lined schedule of activities such as training, change in recruitment rules etc. As such, the Board also issued an order, BO (FTD) No.2981/2016 (LD.I/1836/2016) dated TVPM 18.10.2016 to the above effect. A copy of the said Board order is also appended as Annexure - B.

As submitted in the foregoing paras, the Kerala State Electricity Board Limited has already complied with the Regulations substantially and as such no willful delay, negligence or laches have occurred on its part. Further, a high

level committee has also been constituted to chalk out a time lined action to comply with the Regulations. The Government also allowed a further period of six months for implementing the provisions of Rules 6 & 7 of the Regulations 2010.

15. KSEB Ltd has also submitted copy of the Board Order BO(FTD) No.2981/2016(LD1/1836/2016) dated 18.10.2016 by which it has constituted a high level committee to work out a strategy and time bound activities to tide over the situation. Relevant portion of the said Board Order is extracted below;

“The Board having examined the issue in detail has found that, in view of the prevailing recruitment and promotion policy of the Kerala State Electricity Board Limited, strict compliance to Regulation 6 & 7 of the Central Electricity Authority Regulations 2010 involves several implications. Since the mode of recruitment, qualification and promotion etc are being made based on Long Term Settlements between Kerala State Electricity Board Limited and recognized Trade Unions, such unions and associations have to be taken into confidence before proceeding further in compliance of Regulations 6 and 7 of Central Electricity Authority Regulation 2010. Therefore, co-ordination of different wings of the Kerala State Electricity Board Limited is also required to chalk out a time lined schedule of activities such as training, change in recruitment rules etc.

In view of the above, the Board has decided to constitute a committee with the Full Time Directors, the Legal Adviser & Disciplinary Enquiry Officer, the Chief Engineer (HRM) and the Chief Personnel Officer as Members and the Deputy Chief Engineer (HRM) as convener to chalk out a time lined Schedule of activities such as training, change in recruitment rules etc.”

16. KSEB Ltd has also moved Government of Kerala for granting further time for the implementation of regulation 6 and 7 of the Safety Regulations. Government of Kerala, in exercise of the powers conferred under regulation 116 of the Safety Regulations, issued GO (Rt) No.206/2016/PD dated 26.10.2016, has granted a period of six months to KSEB for implementing the provisions of the said regulations. The relevant portions of the said GO are quoted hereunder, -

2) As per the letter read above, the Kerala State Electricity Board Ltd, after inviting the attention of the Government to the staff pattern followed by it during the past, the comparatively lower

percentage of personnel not having the mandatory qualification, the professional expertise acquired by its officials during their long stint in the organisation, the steps taken and followed by it in imparting training to its officials , its proposed action in redeploying persons not having mandatory technical qualification to its Revenue Wing etc has requested the Government to relax the application of Rules 6 & 7 of the said Regulations.

3) Government after having examined the matter in detail and in exercise of powers conferred by Rule 116 of the said regulations, is pleased to allow time for a further period of six months to Kerala State Electricity Board Ltd for implementing the provisions of Rule 6&7 of the said Regulations but without prejudice to life and property.

4) The Kerala State Electricity Board Ltd shall submit a time bound action plan to fulfil the requirements as per Regulation 6 & 7 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 within the said extended period.

Analysis and Decision

17. The Commission has examined the documents and submissions placed before it by the petitioners, the authorities of KSEB Ltd, the representatives of trade unions, the Chief Electrical Inspector and by others who participated in the hearing. The Commission appreciates that the authorities of KSEB Ltd are in a predicament created by various factors such as the statutory provisions in Section 131 and Section 133 of the Electricity Act, 2003, the Second Transfer Scheme issued by Government as per GO (P) 46/2013/PD dated 31.10.2013 published as SRO No. 871/2013 and the consequent tripartite agreement entered into by the Government, KSEB Ltd and the trade unions of KSEB Ltd; the provisions in the Safety Regulations issued by the CEA; the directions issued by this Commission; the terms and conditions of long term agreement entered into by the management and trade unions of KSEB Ltd; the existing rules and standing orders governing the service conditions of the employees; the dicta of the Hon'ble High Court and the Hon'ble Supreme Court in various judgments and the competing claims of various segments of employees based on the above factors.

Sections 131 to 134 of the Act deals with re-organisation of the erstwhile State Electricity Boards. Section 131 of the Act provides for vesting of the properties of the erstwhile State Electricity Boards in respective State Governments by means of a transfer scheme and for re-vesting such properties in a Government Company or in a Company or Companies. Section 131 of the Act is quoted hereunder, -

- 131. (1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government (hereafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.*
- (2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme, on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or*

generating company or transmission licensee or distribution licensee, as the case may be :

Provided that the transfer value of any assets transferred hereunder shall be determined, as far as may be, based on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.

(3) Notwithstanding anything contained in this section, where,-

(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;

(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.

(4) The State Government may, after consulting the Government company or company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, referred to in sub-section (2) (hereinafter referred to as the transferor), require such transferor to draw up a transfer scheme to vest in a transferee being any other generating company or transmission licensee or distribution licensee, the property, interest in property, rights and liabilities which have been vested in the transferor under this section, and publish such scheme as statutory transfer scheme under this Act.

(5) A transfer scheme under this section may-

(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, encourage competition and protect consumer interests;

(b) define the property, interest in property, rights and liabilities to be allocated -

(i) by specifying or describing the property, rights and liabilities in question; or

(ii) by referring to all the property, interest in property, rights and liabilities comprised in a described part of the transferor's undertaking; or

(iii) partly in one way and partly in the other;

(c) provide that any rights or liabilities stipulated or described in the scheme shall be enforceable by or against the transferor or the transferee;

(d) impose on the transferor an obligation to enter into such written agreements with or execute such other instruments in favour of any other subsequent transferee as may be stipulated in the scheme;

(e) mention the functions and duties of the transferee;

(f) make such supplemental, incidental and consequential provisions as the transferor considers appropriate including provision stipulating the order as taking effect; and

(g) provide that the transfer shall be provisional for a stipulated period.

(6) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by the Board, with the Board or for the Board, or the State Transmission Utility or generating company or transmission licensee or distribution licensee, before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the Board, with the Board or for the State Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State Government or concerned transferee, as the case may be.

(7) The Board shall cease to be charged with and shall not perform the functions and duties with regard to transfers made on and after the effective date.

Explanation.- For the purpose of this Part, -

(a) "Government company" means a Government Company formed and registered under the Companies Act, 1956.

(b) "company" means a company to be formed and registered under the Companies Act, 1956 to undertake generation or transmission or distribution in accordance with the scheme under this Part.

18. As per Section 133 of the Act which has been quoted earlier, it can be seen that the terms and conditions on transfer of the employees shall not be less favourable than those which would have been applicable to them, if there had been no such transfer under the transfer scheme.
19. In accordance with Section 131 of the Act, the Government of Kerala has notified the Second Transfer Scheme as per GO (P) 46/2013/PD dated 31.10.2013 published as SRO No. 871/2013. Clause (6) of Second Transfer Scheme deals with the transfer of personnel by the State Government to KSEB Ltd. Sub-clause (i) of clause (6) states that transfer of personnel shall

be subject to terms and conditions contained in Sections 133 and 134 of the Act. The said transfer scheme does also guarantee protection of service conditions to the employees who were in the service of the erstwhile KSEB on or before 31.10.2013. The Second Transfer Scheme also provides that the re-vesting of personnel shall be subject to the conditions specified in Schedule -B to the said transfer scheme. Schedule -C stipulates the format for tripartite agreement among Government of Kerala, KSEB Ltd and the trade unions of the employees of KSEB Ltd. Both Schedule -B and Schedule -C do also contain conditions to protect the service benefits of the employees who were in the service of KSEB on or before 31.10.2013.

20. Regulations 6 and 7 of the Safety Regulations issued by CEA specify that technically qualified personnel shall only be engaged for the operation and maintenance of the electric plants and other electrical systems associated with the generation, transmission and distribution of electricity. The petitioners are insisting on implementation of the said regulations issued by the CEA. Their claims in this regard cannot be declined or over looked.
21. The representatives of trade unions have expressed their serious concerns over the problems which may arise if regulations 6 and 7 of the Safety Regulations are implemented indiscriminately, adversely affecting the service conditions of the employees, especially with regard to the lower level employees of KSEB Ltd. Their concerns in brief are as indicated below. The officers of and above the rank of Assistant Executive Engineer are either diploma holders or graduates in Electrical Engineering or equivalent disciplines. Therefore the implementation of the Safety Regulations has no consequence on the officers of and above the rank of Assistant Executive Engineer. The employees in the grade of the Assistant Engineer, Sub-Engineer, Overseer and Lineman may also consist of graduates or diploma holders or ITI or equivalent certificate holders. There are a large number of employees at present in KSEB Ltd who were recruited in the grade of electricity worker. As per the present recruitment rules, the qualification for appointment to the grade of electricity worker is only a pass in standard IV, but should not have passed standard X, with knowledge of cycling. A pass in ITI in electrician or wiremen trades is not a prescribed qualification for the electricity workers. At present, the promotion posts for the electricity worker are the lineman and the overseer. The overseers with ITI or equivalent qualification can get promotion to the grades of sub-engineer and assistant engineer subject to the quota fixed for them. With a view to securing promotion to the grades of sub-engineer and assistant engineer, many linemen and overseers have subsequently acquired ITI or equivalent qualification. As per the Board Order No. AR III.36591/78 dated 23.01.1981 the qualifications prescribed for promotion to the grade of sub-engineer are:

- (1) Certificate in Electrical Engineering obtained after passing an examination conducted by the competent authority after having undergone a course of study of not less than 2 years from Technical School or a Technical Training Centre or an institution recognised for the purpose by Government and with not less than 5 years of service as lineman / second grade overseer (electrical) under the Board.
- (2) Certificate obtained after having passed an examination conducted by the competent authority in the trade of lineman / wiremen / electrician after 18 months course in the ITI and 6 months in plant training and with not less than 5 years of service as lineman / second grade overseer (electrical) under the Board.
- (3) MGTE / KGTE Group Certificate in Electrical Engineering covering from subjects (a) electric light and power (Higher) (b) applied mechanics (L) (c) heat engines (L) (d) Machine drawing (L) and not less than 5 years of service as lineman / second grade overseer (electrical) under the Board.

As per the documents produced before the Commission, various other qualifications such as the ITC and NCVT certificates have also been declared equivalent to ITI certificate. Based on the order of the Government in Industries Department equating the qualifications such as ITC / NCVT with ITI certificate, KSEB Ltd had promoted the overseers with the equivalent qualification also to the grade of sub-engineer and above. There are several writ petitions and writ appeals before the Hon'ble High Court of Kerala challenging such promotions and the Hon'ble High Court has issued appropriate directions to KSEB Ltd. The KSEB Ltd has to implement the judgments of the Hon'ble High Court in this regard. The representatives of the trade unions have expressed their anxieties and concerns about the fate of the officers who have already been promoted to the grades of overseers and sub-engineers and who are waiting for promotion to such grades. The Commission is of the view that the pay and allowances, pay scales, promotion etc are matters to be dealt with in accordance with the terms and conditions of the rules and Board Orders relating to service matters, the provisions in Section 131 and Section 133 of the Act read with the Second Transfer Scheme, the Tripartite Agreement and the Long Term Agreements with trade unions. It is true that, as per Section 133 of the Act, the pay and allowances, pay scale, promotion etc of the employees of KSEB as on 31.10.2013 cannot be inferior to those which were available to them while they were in the service of the erstwhile KSEB. The terms and conditions relating to recruitment of employees of KSEB Ltd are governed by the rules and orders issued in consultation with the trade unions in terms of long term

agreement and with the approval of Kerala Public Service Commission which is the authority to recruit employees to KSEB / KSEB Ltd. Such rules and orders relating to recruitment can be changed only after consultation with the trade unions of employees and with the concurrence of Government and the Public Service Commission. The Hon'ble High Court and the Hon'ble Supreme Court have decided in various cases that the authority with powers to make rules or regulations relating to service conditions have the power to amend or alter such rules. It is further held that such action of the authorities shall be subject to the well-recognized principle that the benefit acquired by the employees under the existing rules cannot be taken away by way of an amendment to the rules and that it should not adversely affect the vested rights of the employees. All such issues relating to promotions and service conditions are under the consideration of the Hon'ble High Court of Kerala in the writ petitions and writ appeals before it and therefore such issues can be settled only in accordance with the judgement of the Hon'ble High Court.

22. The regulation 6 and 7 of the CEA deal only with the assignment of duties relating to operation and maintenance of electrical plants and other electrical systems associated with generation, transmission and distribution of electricity. It is for the authorities of KSEB Ltd to deploy qualified employees for the above works in accordance with the Safety Regulations. The authorities of KSEB Ltd can also give sufficient in-service courses or trainings to the employees to make them qualified as prescribed in the Safety Regulations. The Commission makes it clear that by issuance of show-cause notice, the Commission does not mean that KSEB Ltd should demote any employee without considering various factors mentioned above and the judgments of the Hon'ble High Court. KSEB Ltd will have to take further course of action only in accordance with the final judgments of the Hon'ble High Court in the cases relating to service conditions, qualification for promotion and related matters.

Order of the Commission

23. Considering the facts and circumstances of the case, the Commission orders as follows;
 1. In order to implement the Safety Regulations, the authorities of KSEB Ltd may have to adopt strategies to ensure that,-
 - (1) From among the existing employees, only those with the specified qualifications as per the Safety Regulations, are deployed for

operation and maintenance of electrical plants and electrical systems.

- (2) Necessary and sufficient in-service trainings / courses may be imparted to the willing existing employees in the grades of lineman, overseer and sub-engineer to make them eligible for deployment of duties in accordance with the Safety Regulations.
 - (3) Future recruitments of employees are in tune with the Safety Regulations.
2. The KSEB Ltd has, as per B.O (FTD) No. 2981/2016 (LD.1/1836/2016) dated 18.10.2016, constituted a Committee to examine all the above aspects and to submit recommendations for implementation of the provisions of Safety Regulations. Government has, in exercise of the powers under Regulation 116 of the Safety Regulations, issued GO (Rt) No. 206/2016/PD dated 26.10.2016, granting a period of six months to implement the Regulations. In view of the above facts the Commission is of the view that there is no reason at present to impose on KSEB Ltd, a penalty under Section 142 of the Act. The KSEB Ltd is directed to submit a copy of the report of the Committee and an action taken report on the recommendation of the Committee. The copy of the report of the Committee shall be submitted on or before 31.3.2017 and the action taken report on the recommendation of the Committee shall be submitted on or before 30.4.2017.

Sd/-

K. Vikraman Nair
Member

Sd/-

S. Venugopal
Member

Sd/-

T.M.Manoharan
Chairman

Approved for issue

Santhosh Kumar.K.B
Secretary