



**COMPETITION COMMISSION OF INDIA**

**Case No. 74 of 2017**

**In Re:**

**Shri C.P. Paul  
Paulson Park Hotel  
Carrier Station Road  
Kochi – 682016**

**Informant**

**And**

**1. Kerala State Electricity Board Limited  
Represented by its Chairman & Managing Director  
Vaidhuthi Bhavan  
Thiruvananthapuram-695004**

**Opposite Party No. 1**

**2. The Assistant Engineer  
KSEB Limited  
Electrical Section (College)  
Club Road, Ernakulam**

**Opposite Party No. 2**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

**Mr. S. L. Bunker  
Member**

**Mr. Sudhir Mital  
Member**

**Mr. U. C. Nahta  
Member**



### **Order under Section 26(2) of the Competition Act, 2002**

1. The present information has been filed under Section 19(1) (a) of the Competition Act, 2002 ('the Act') by Shri C.P. Paul ('the Informant') against Kerala State Electricity Board Limited ('OP-1'/ 'KSEBL') and its Assistant Engineer ('OP-2') alleging *inter alia* contravention of the provisions of Section 4 of the Act.
2. The Informant is proprietor of a hotel 'Paulson Park Hotel' at Ernakulam, Kerala. OP-1 *i.e.* KSEBL is a company registered under the Companies Act, 1956 which carries on the business of generation, transmission and distribution of electricity in the State of Kerala. OP-2 is the Assistant Engineer of KSEBL.
3. The Informant avers that under a Scheme of Government of Kerala evolved in 1988, KSEBL was directed to supply electrical energy at industrial tariff under the 'LT-IV' category to hotels which were granted star classification by the Tourism Department. The Informant's hotel was classified as a star hotel by the tourism department w.e.f. 01.08.1988 for a period of 3 years. On production of such certificate, the Informant's hotel was getting power supply which was being charged under 'LT-IV' category by KSEBL.
4. However, KSEBL issued a bill dated 09.03.1998 charging the Informant higher tariff under 'L-VII' category for the month of February, 1998. This bill was challenged by the Informant before the High Court of Kerala (First Petition) where KSEBL was directed not to disconnect the power supply till the disposal of this petition. It is stated in the information that during the pendency of the First Petition, the Informant had produced the required certificate by the Competent Authority certifying that the Informant's hotel was to receive power supply as per industrial tariff in



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February, 1998. However, at the final disposal of the First Petition on 18.03.2005, the High Court re-directed the Informant to produce eligibility certificate before KSEBL.

5. Aggrieved by the said order, the Informant filed an appeal before the High Court of Kerala. The High Court *vide* its judgement dated 16.01.2006 declared that the Informant was entitled to receive power supply at industrial tariff for February, 1998. However, while this appeal was pending, KSEBL issued another bill which was again challenged by the Informant by filing of a writ petition. Subsequently, KSEBL disconnected the power supply of the Informant's premise and later dismantled the connection on 16.05.2006 for non-payment of bill dated 18.06.2005.
6. Further, it is alleged that in violation of the order passed by the High Court on 16.01.2006, KSEBL again issued a bill dated 03.04.2007 for an amount of Rs. 1,60,15,422/- claiming arrears and surcharge for the period from August, 1996 to April, 2005. This was also challenged before the Consumer Grievance Redressal Forum where the Informant's complaint was dismissed. Thereafter, the Informant filed an appeal against the said order before the Electricity Ombudsman, whereupon the Ombudsman *vide* its order dated 07.11.2007 declared that the demand raised by KSEBL against the Informant of Rs. 1,60,15,422/- was unenforceable. On a writ petition filed against the said order by OP-1 before the High Court, the matter was remanded back to the Ombudsman with an opportunity to KSEBL to contest the matter on merits. It was also directed that the disputed amount shall not be realised during the pendency of the complaint. However, the Informant alleges that KSEBL did not take any step to get the matter decided afresh by the Ombudsman.
7. Lastly, it is pointed out that KSEBL in violation of the direction of High Court issued a letter dated 17.01.2017 to the Informant demanding Rs. 4,46,97,799/- towards arrears and to remit the amount within 30 days. The



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said amount was not paid by the Informant being *non est* in the eyes of law. The Informant thereafter *vide* letter dated 25.07.2017 requested OP-2 for reconnection of power supply in view of Section 56(2) of the Indian Electricity Act, 2003 which bars any recollection of amount after 2 years of accruing of arrears. However, such demands were refused by KSEBL. It is stated that such refusal on part of OP-1 clearly amounts to imposing unfair, discriminatory and illegal condition in the sale of services to the Informant.

8. Based on the above averments and allegations, the present information has been filed by the Informant against the Opposite Parties alleging contravention of the provisions of Section 4 of the Act.
9. The Commission has perused the information and the documents filed therewith.
10. The Informant who is a proprietor of a Hotel claims that as per the prevailing industrial policy of the Government of Kerala, his Hotel was entitled to receive power supply from KSEBL at industrial tariff rates under LT-IV category as his hotel had been classified as a star hotel by the Tourism Department w.e.f 01.08.1988 for a period of 3 years. It is alleged that while the Informant's application for renewal of star classification was pending, KSEBL raised a bill dated 09.03.1998 charging the Informant's hotel at a higher tariff under LT-VII category instead of the applicable LT-IV category, for the month of February, 1998. It has, however, been pointed out that w.e.f. May, 1999 the Government of Kerala changed its Policy and tariffs under LT-VII category and was made applicable for all hotels. Subsequently, it seems that KSEBL disconnected the power supply of the Informant's premises on 25.07.2005 and later dismantled the power connection itself on 16.05.2006 for non-payment of the arrears and surcharge - which have been disputed by the Informant.



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11. A bare reading of the information reveals that the Informant has taken out various proceedings before various fora impugning the demand raised by KSEBL. To recapitulate such proceedings, it may be pointed out that the bill dated 09.03.1998 was challenged by the Informant before the Hon'ble High Court of Kerala. The same was disposed of with a direction to the Informant to produce eligibility certificate before KSEBL for the month in question. Aggrieved thereby and dissatisfied therewith, the Informant filed a writ appeal before the High Court of Kerala. It is stated in the information that the Hon'ble High Court of Kerala *vide* its judgement dated 16.01.2006 modified the judgement of the learned single judge and declared that the Informant was entitled to receive power supply at industrial tariff rate for February, 1998. It is further pointed out in the information that while this appeal was pending, KSEBL issued bill dated 18.06.2005 demanding arrears and surcharge to the tune of Rs. 1,15,86,310/- for the period starting from August, 1991 to April, 2005. Thereupon, the Informant filed another writ petition before the High court challenging the said demand. It is averred in the information that KSEBL, after entering appearance in this writ petition as well as in the earlier mentioned writ appeal, disconnected the power supply of the Informant's premises on 25.07.2005 and later dismantled the connection on 16.05.2006 for non-payment of bill dated 18.06.2005.
  
12. Further, it is alleged in the information that in violation of the order passed by the High Court on 16.01.2006, KSEBL again issued a bill dated 03.04.2007 for an amount of Rs. 1,60,15,422/- claiming arrears and surcharge for the period from August, 1996 to April, 2005. The Informant, once again challenged the said demand before the Consumer Grievance Redressal Forum constituted under the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsmen) Regulations, 2005. As this Forum declined to entertain the Informant's complaint, the Informant filed an appeal against the said order before the Electricity Ombudsman, whereupon the Ombudsman *vide* its



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order dated 07.11.2007 declared that the demand raised by KSEBL against the Informant for Rs. 1,60,15,422/- was unenforceable. On a writ petition filed against the said order by KSEBL before the High Court, the matter was remanded back to the Ombudsman with an opportunity to KSEBL to contest the matter on merits. It was also directed that the disputed amount shall not be realised during the pendency of the complaint.

13. The Informant is, thus, aggrieved of the fact that despite the direction issued by the Hon'ble High Court, KSEBL did not take any step to get the matter decided afresh by the Ombudsman. It was pointed out that KSEBL was well aware that the alleged arrears were barred under Section 56(2) of the Indian Electricity Act, 2003. Further, KSEBL in violation of the direction of High Court issued a letter dated 17.01.2017 to the Informant demanding Rs. 4,46,97,799/- towards arrears and to remit the amount within 30 days. The said amount was not paid by the Informant being *non est* in the eyes of law.
14. In the aforesaid backdrop of the factual matrix giving rise to the filing of the instant information before the Commission, it is evident that the Informant essentially seeks to impugn the demands raised by KSEBL which have been not only disputed by the Informant but the same have also been challenged by the Informant before various fora, as adumbrated *supra*. The dispute essentially is centred around the applicable rates for supply of electricity to the Informant's hotel.
15. Having considered the allegations made in the information, the Commission is of the considered opinion that no competition issue whatsoever is involved in the matter or is otherwise made out in the present case which can be said to be abusive in terms of the provisions of Section 4 of the Act. The original demand was raised by KSEBL on 09.03.1998 and looking at the background of the litigation between the



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parties, it is a clear case of forum shopping and hunting by the Informant to rake up the stale disputes under the garb of competition law.

16. In view of the above, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the Opposite Party and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
17. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

New Delhi  
Date: 29/12/2017