

ACT 22 OF 1989

THE KERALA STATE ELECTRICITY SURCHARGE  
( LEVEY AND COLLECTION ) ACT, 1989

AN ACT

to provide for the levy and collection of surcharge on the High Tension and Extra High Tension supplies of energy by the Kerala State Electricity Board and for the validation of the levy and collection of surcharge made by the Board during the period from 1984 onwards.

*Preamble.*-WHEREAS it is expedient to provide for the levy and collection of surcharge on the High tension and extra High Tension supplies of energy by the Kerala State electricity Board and for the validation of the levy and collection of surcharge made by the Board during the period from 1984 onwards;

BE it enacted in the Fortieth year of the Republic of India as follows:-

1. *Short title, extent and commencement.*- (1) This Act may be called the Kerala Electricity Surcharge (Levy and Collection) Act, 1989.

(2) It extends to the whole of the State of Kerala

(3) It shall be deemed to have come into force on the 1<sup>st</sup> day of October, 1984.

2. *Definitions.*- In this Act, unless the context otherwise, requires-

(a) "Board" means the Kerala State electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (Central Act 55 of 1948)

(b) "bulk supply" means the supply of energy given to,-

(i) a licensee for the purpose of local distribution in its or in his area of supply

(ii) a consumer for industrial or for non-industrial purposes contracting with a licensee for loads exceeding 50 KVA of maximum demand; and

(iii) departments of the State or Central Government or undertakings or institutions owned or controlled by the State or the Central Government having a connected load of 50 KVA and above:

(c) "consumer" includes a local authority, company or other person to whom energy is supplied by a licensee on payment of charges or otherwise and a licensee or other person who consumes energy generated by himself, but does not include a licensee to whom energy is supplied by the Board for supply to others.

*Explanation.*- Where any licensee consumes energy generated by himself or supplied to him by the Board, he shall be deemed to be a consumer in respect of the energy so consumed except in respect of the energy consumed by him for

Purposes connected with the construction, maintenance and operation for his generating, transmitting and distributing systems;

(d) "energy" means electrical energy;

(e) "extra high tension supply" means supply of energy at a voltage exceeding 33,000 volts under normal conditions, subject, however, to the percentage variation indicated in the agreement between the consumer and the Board or allowed by the Indian Electricity Rules, 1956;

(f) "high tension supply" means supply of energy at a voltage of either 22,000 volts or 11,000 volts under normal conditions, subject, however, to the percentage variation indicated in the agreement between the consumer and the Board or allowed by the Indian Electricity Rules, 1956;

(g) "licensee" means-

(i) the Board;

(ii) any person licensed under Part II of the Indian Electricity Act, 1910 (Central Act 9 of 1910), to supply energy and includes any person who is deemed to have been so licensed and any other person who has obtained the sanction of the Government under section 28 of the said Act; and

(iii) the Government when it is engaged in the business of supplying energy;

(h) "notified order" means an order notified in the Gazette;

(i) "prescribed" means prescribed by rules made under this Act.

3. *Levy and collection of Surcharge.*- (1) Notwithstanding anything to the contrary contained in any agreement entered into with any consumer or the conditions of service agreed to by the Board, the Government may, by notified order provide for,-

(a) the levy and collection of a surcharge on all high tension and extra high tension supplies of energy made by the Board either directly or through other licensees at such rate not exceeding five paise per unit as may be specified therein;

(b) the levy and collection of surcharge on energy supplies to the States of Karnataka and Tamilnadu by the Board, at such rate not exceeding two paise per unit, as may be specified therein;

(c) the remittance to the Government, of the surcharge collected by the Board; either directly or through other licensees, and the amount which can be retained by the Board or such licensees; by way of collection charges;

(d) the period within which the surcharge collected by other licensees to be remitted to the Board and the rate of interest payable by such licensees for belated remittance, not exceeding twelve per cent per annum.

(2) The Board or the other licensees receiving from the Board bulk supply of energy shall collect the price for the energy supplied by them inclusive of the surcharge leviable under the notified order.

4. *Books of account, etc.*- Every licensee shall keep books of account, in the prescribed form and submit to the Government or to the prescribed officer, returns in such form and at such times as may be prescribed showing the units of energy consumed by him or supplied by him to each consumer, as the case may be, and the amount of surcharge payable thereon and recovered or paid by him under this Act or showing such other particulars as may be prescribed

5. *Inspecting Officers.*- (1) The government may, by notification in the Gazette, appoint Inspecting Officers to inspect the books of account required to be kept by the licensees under section 4.

(2) The Inspecting Officers so appointed shall perform such duties and exercise such powers as may be prescribed, for the purpose of carrying into effect the provisions of this Act and the rules made thereunder.

(3) Every such officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

6. *Recoveries.*- Any sum due on account of surcharge, if not paid at the time and in the manner prescribed, shall be deemed to be in arrears, and thereupon such interest not exceeding twelve per cent per annum which the Government may by general or special order fix, shall be payable on such sum; and the sum, together with any interest thereon, shall be recoverable either a Civil Court or as an arrear of land revenue.

7. *Penalties.*- (1) If any licensee fails to keep books of account or to submit returns as required in section 4, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any licensee or other person intentionally obstructs and Inspecting Officer appointed under section 5 in the performance of his duties or in the exercise of his powers under this Act or in the rules made thereunder, he shall be punishable with fine which may extend to one thousand rupees:

Provided that nothing contained in this section shall render any person liable to be convicted of an offence in respect of anything done or omitted to be done by him before the date of publication of the Kerala Electricity Surcharge (Levy and Collection) Ordinance, 1989 (5 of 1989) in the Gazette.

8. *Offences by companies.*- (1) Where an offence under this Act, has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or, is attributable to any neglect on the part of any Director, Manager, Secretary or other Officer of the Company, such director, Manger, Secretary or other Officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*- For the purposes of this section.-

(a) 'company means a body corporate and includes a firm or other association of individuals; and

(b) 'director' in relation to a firm means a partner in the firm.

9. *Power to make rules.*- (1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the time and the manner of payment of surcharge under section 3;

(b) the form of the books of account required to be kept under section 4;

(c) the time at which, the form in which, and the officers to whom the returns required by section 4 shall be submitted;

(d) the duties and powers of the Inspecting Officers appointed under section 5.

(3) In making a rule under sub-section (1) or sub-section (2), the Government may provide that a breach thereof shall be punishable with fine not exceeding one thousand rupees.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly which is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. *Protection of action taken in good faith.*- No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rule made thereunder.

11. *Validation.*- (1) Notwithstanding anything to the contrary contained by any judgment, decree or order of any court, the levy and collection of surcharge by the Board or other licensees on or after the 1<sup>st</sup> day of October, 1984 and before the 1<sup>st</sup> day of August, 1988 under the Kerala State Electricity Supply (Kerala State Electricity Board and Licensees Area) Surcharge Order, 1984 shall be deemed to be, and deemed always to have been validly levied and collected as if the said order was a notified order under section 3 of this Act; and accordingly -

(a) all acts, proceedings or things done by the Board or other licensees in connection with such levy, collection and remittance of surcharge shall, for all purposes be deemed to be, and deemed always to have been, done or taken in accordance with this Act;

(b) no suit or other proceeding shall be maintained or continued in any court for the refund of any such surcharge; and

(c) no court shall enforce a decree or order directing the refund of any such surcharge.

(2) For the removal of doubts it is hereby declared that nothing in sub-section (1) shall be considered as preventing any person from claiming refund of any surcharge already paid in excess of the amount due from him under the order referred to in sub-section (1)

12. *Repeal and Saving.*- (1) The Kerala Electricity Surcharge (Levy and Collection) Ordinance, 1989 (5 of 1989), is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this act.