

(2025) 07 KL CK 1212

In the High Court Of Kerala

Case No : Writ Petition (PIL) No. 79 Of 2025

Domestic On Grid Solar Power Prosumers Forum Kerala

APPELLANT

Vs

Kerala State Electricity Regulatory Commission

RESPONDENT

Date of Decision : 28-07-2025

Acts Referred:

Electricity Act, 2003 — Section 61, 62, 66, 82, 86, 86(1), 86(1)(a), 86(1)(b), 86(1)(e), 176(1), 176(2)(z), 177(3), 178(3), 181, 181(3)
Electricity (Procedure for Previous Publication) Rules, 2005 — Rule 3, 3(4)

Citation : (2025) 07 KL CK 1212

Hon'ble Judges : Nitin Jamdar, CJ;Basant Balaji, J

Bench : Division Bench

Advocate : Yeshwanth Shenoy, Aysha Abraham, Nandagopal S. Kurup, V. Tekchand

Final Decision : Disposed Of

Judgement

Nitin Jamdar, CJ

1. The subject matter of this Public Interest Litigation is the decision of the Kerala State Electricity Regulatory Commission to conduct only an online public hearing, and not a physical hearing, in connection with the draft regulations pertaining to renewable energy.

2. The Petitioner – Domestic On-Grid Solar Power Prosumers Forum is a registered association formed with the object of ensuring the welfare and protection of the rights of all solar energy users in Kerala, particularly domestic on-grid solar power prosumers. The Respondent – Kerala State Electricity Regulatory Commission, is a statutory body constituted under Section 82 of the Electricity Act, 2003.

3. The State Police Chief and Director General of Police, Police Headquarters, Thiruvananthapuram; and the City Police Commissioner, Office of the City Police Commissioner, Thiruvananthapuram, are impleaded as additional respondents.

4. The Electricity Act, 2003 (Act of 2003), under which the Respondent – Commission is constituted, is enacted to consolidate the laws relating to generation, transmission, distribution, trading, and use of electricity, and generally for taking measures conducive to the development of the electricity industry, protecting the interest of consumers and the supply of electricity to all areas, promoting efficient and environmentally benign policies, and establishing Regulatory Commissions, such as the Respondent. Part II of the Act of 2003 deals with the National Electricity Policy and Plan. Parts III to VI address the modalities, including generation, licensing, transmission, and distribution of electricity. In Part VII of the Act of 2003, tariffs are regulated under Section 61. Under Section 62, the procedure for tariff order is specified, and Section 66 deals with the development of the market, where the Appropriate Commission is enjoined to promote the development of a market in the manner specified in the National Electricity Policy. Part VIII deals with the works of licensees. Part IX deals with the constitution and functions of the Central Electricity Authority. Part X deals with the constitution, powers, and functions of the Regulatory Commissions.

5. Under Section 82 of Part X of the Act of 2003, the State Government is empowered to constitute a State Commission, known as the “State Electricity Regulatory Commission”, to discharge various functions as outlined in the scheme of Section 86. As per clause (a) of Section 86(1), the State Commission shall determine the tariff for generation, supply, transmission, and wheeling of electricity, whether wholesale, bulk, or retail. The State Commission, under clause (b) of Section 86(1), is empowered to regulate the electricity purchase and procurement process of distribution licensees and electricity traders, and under clause (e) of Section 86(1), the State Commission promotes cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid. Section 181 empowers the State Commissions to make regulations. Such regulations can be made in particular and without prejudice to the generality of the powers specified therein, including any other matter which is to be, or may be, specified under clause (zp). As per sub-section (3) of Section 181, all regulations made by the State Commission under the Act of 2003 shall be subject to the condition of previous publication.

6. On the aspect of previous publication referred to under Section 181(3), the Ministry of Power, Government of India, in exercise of the powers conferred under sub-section (1) and clause (z) of sub-section (2) of Section 176 of the Act of 2003, has framed the Electricity (Procedure for Previous Publication) Rules, 2005 (Rules of 2005). The procedure for previous publication is laid down in Rule 3 of the Rules of 2005, under which a draft of the regulations is to be published and any objections or suggestions are to be considered before finalising the draft regulations.

7. On 30 May 2025, as per Rule 3 of the Rules of 2005, the Respondent – Commission issued a notice publishing a draft of the proposed regulations –

Kerala State Electricity Regulatory Commission (Renewable Energy and Related Matters) Regulations, 2025 (Draft Regulations of 2025) for the information of the stakeholders and the persons likely to be affected thereby. It is stated in the notice that any objections or suggestions thereon may be forwarded to the Secretary. The notice also stated that a public hearing on the same will be conducted and that its date and venue shall be intimated separately.

8. Thereafter, a press note came to be issued on 19 June 2025 (incorrectly mentioned as 19 June 2022), regarding the public hearing on the Draft Regulations of 2025, scheduled to be held from 8 to 11 July 2025. It referred to the publication of the draft regulations on the website on 30 May 2025, and stated that the Commission had received a substantial number of representations, with a prominent concern raised by the stakeholders pertaining to the continuation of net metering for existing prosumers. Certain clarifications were provided in the press note, and the Commission scheduled an online public hearing to be conducted over four dates: 8, 9, 10, and 11 July 2025. This was stated to facilitate wider participation across the State. The note also stated that interested individuals and entities intending to participate in the virtual hearing were called upon to register themselves on the website.

9. The Petitioner – Forum filed this petition on 8 July 2025, praying that the Respondent – Commission be directed to conduct the public hearing in hybrid mode, both physical and virtual, and that physical hearings should be held at multiple centres across Kerala, as was done by the Commission in the past.

10. We have heard Mr. Yeshwanth Shenoy, learned counsel for the Petitioner, Mr. Nandagopal S. Kurup, learned standing counsel for the Respondent – Commission, and Mr. V. Tekchand, learned Senior Government Pleader for the additional Respondents.

11. The Kerala State Electricity Regulatory Commission (Renewable Energy and Net Metering) Regulations, 2020 (Regulations of 2020), dated 7 February 2020, were published on 5 June 2020. The proposed Draft Regulations of 2025 are to be applicable to all existing and new grid-interactive renewable energy systems; consumers and prosumers; captive consumers and captive generating plants; generating companies and distribution licensees; and other entities. These Draft Regulations will govern various aspects of renewable energy systems, such as tariff, storage plants, purchase obligation and its compliance; metering and billing, technical feasibility, registration, connectivity, metering, energy accounting and billing of prosumers, storage, banking and open access, inter-licensee transfer of renewable energy, etc. The Draft Regulations propose that the existing prosumers billed under net metering in the State as on the date of coming into effect of these regulations shall be under the net metering system as specified in these regulations until the occurrence of the conditions specified therein, including enhancement of capacity of the existing plants, expiry of the useful life of the existing plant, etc.

12. It is the case of the Petitioner that electricity generation in Kerala has traditionally been based on hydroelectric power; however, due to various factors, hydroelectric generation has declined and is insufficient to meet the power requirements of the State, because of which solar energy has emerged as the primary alternative. It is stated that Kerala has become predominantly dependent on rooftop solar energy systems installed by domestic consumers, commercial establishments, and industries, and that a substantial percentage of the country's solar capacity, comprising rooftop installations, is located in Kerala. According to the Petitioner, through net metering arrangements there has been substantial growth, which has allowed prosumers to offset their electricity consumption with solar generation and receive credits for surplus energy fed into the grid. The Petitioner – Forum has stated that the draft regulations now proposed will bring significant changes to the existing net metering framework and will significantly affect the continued use of solar energy in the State. It is also stated that the Evaluation Committee for the preparation of the Discussion Paper on the Draft Regulations of 2025, constituted by the Commission, did not have any representation from prosumer organisations, consumer associations, environmental groups, or representatives of the solar industry. Therefore, it is stated that there are several lacunae in the draft regulations, and that in order to sustain the achievement of the State being a front-runner in solar energy, it is necessary that the regulations are carefully drafted and implemented, if at all, and that without inputs from various quarters, the regulatory exercise would not be complete. The Petitioner contends that, therefore, a public hearing is of utmost necessity in this case and cannot possibly be dispensed with. As regards the mode of public hearing, the Petitioner submitted that the Respondent – Commission has consistently conducted public hearings, either through the physical mode or hybrid mode, in various locations, such as District Centres in Thiruvananthapuram, Ernakulam, Kozhikode, and Kannur, where thousands of stakeholders have physically participated in the consultation process. It is stated that, for the first time, the Commission has decided to conduct a public hearing for these crucial regulations solely online, and the Forum alleges that this is a deliberate attempt to discourage stakeholder participation and limit meaningful consultation. The Petitioner contends that the fact that several persons have registered for the online hearing demonstrates the widespread interest among the prosumer community to put forth their points. The Petitioner emphasises the importance of public hearings and states that they should not be made a formality or treated as an impediment by the Commission. Therefore, the Petitioner seeks a direction to conduct the public hearing on the draft regulations in physical mode.

13. When the petition came up on board, on 15 July 2025, the learned standing counsel for the Respondent – Commission submitted that there is no legal mandate for public hearings per se, and that when physical public hearing was conducted in the past, there were law and order issues. At that time, on the aspect of the law and order issue, the learned standing counsel for the

Commission submitted that he would place a note on how to prevent the perceived disruptions. Accordingly, a memo and a statement have been filed. The stand taken by the Commission in the statement and argued before us is that the Petitioner and stakeholders have no legal right to demand a physical hearing, and reference is made to the physical hearing conducted in the Commission's Court Hall at Thiruvananthapuram in the year 2024. It is stated that on this occasion, several individuals entered the hall and disrupted the proceedings of the Commission, as a result of which many stakeholders were unable to provide their comments and suggestions. Therefore, the Commission has now decided to conduct the hearing exclusively online. It is stated that since the Petitioner – Forum has already submitted written comments, it is not necessary to hold a public hearing. It is also stated that the online hearing will have a wider reach, which will be convenient for participants and will also address health and other relevant considerations. Additionally, the sessions will be live-streamed to ensure complete transparency.

14. We have considered the rival contentions.

15. Under Section 181(3) of the Act of 2003, all the regulations made by the State Commission under the Act shall be subject to the condition of previous publication. As referred to earlier, the procedure of the previous publication is dealt with under the Rules of 2005. In this context, Rule 3 reads as follows:

"3. Procedure of Previous Publication – For the purpose of previous publication of regulations under sub-section (3) of section 177, sub-section (3) of section 178 and the sub-section (3) of section 181 of the Act, the following procedure shall apply:

- (1) the Authority or the Appropriate Commission shall, before making regulations, publish a draft of the regulations for the information of persons likely to be affected thereby;
- (2) the publication shall be made in such manner as the Authority or the Appropriate Commission deems to be sufficient;
- (3) there shall be published with the draft regulations a notice specifying a date on or after which the draft regulations will be taken into consideration;
- (4) the Authority or the Appropriate Commission having powers to make regulations shall consider any objection or suggestion which may be received by the Authority or the Appropriate Commission from any person with respect to the draft before the date so specified."

Thus, while framing the regulations, the draft has to be published in a manner deemed fit by the Authority, and the Commission has to consider any objections or suggestions received. Based on Rule 3(4), the Respondent – Commission contends that it is for the Commission to decide how the objections are to be

considered, and stakeholders have no legal right in this regard.

16. Rule 3(4) of the Rules of 2005 does not specifically state that suggestions and objections can be received in whatever manner the Commission deems fit. Also, there cannot be absolute discretion vested in the Commission in this regard. Assuming these Rules confer discretion on the Commission to decide the manner in which objections are to be received, in the past, the Commission has conducted public hearings in a physical or hybrid mode, which has evolved into a practice adopted by the Commission in implementing the Rules of 2005. To cite this established practice, the Petitioner has also placed on record the notice issued on 28 February 2024 by the Respondent – Commission in respect of the Draft Kerala Electricity (Fifth Amendment) Code, 2024, wherein notice was given for a public hearing through hybrid mode on the Draft Kerala Electricity Supply (Fifth Amendment) Code, 2024. Another instance cited by the Petitioner is the note dated 7 September 2024, submitted to the Chief Engineer of the Kerala State Electricity Board, in relation to the tariff revision by the Commission. It is stated therein that the hearings were conducted at four locations – Kozhikode, Palakkad, and Ernakulam, and that the final hearing was proposed to be held at Thiruvananthapuram, at the Kerala Panchayat Association Hall. There is no denial of the assertion made by the Petitioner.

17. The Petitioner has also placed on record the notice dated 30 May 2025 issued by the Respondent – Commission when the present draft regulations were published. The notice reads as under:

"KERALA STATE ELECTRICITY REGULATORY COMMISSION,
THIRUVANANTHAPURAM.

NOTICE

No. 3228/Con.Engg/2023/KSERC

Dated: 30.05.2025

In exercise of the powers conferred by sub-section (1) of Section 181 of the Electricity Act, 2003 (Central Act 36 of 2003) read with Sections 61, 62, 66 and clause (a), (b) and (e) of sub-section (1) of Section 86 thereof, and all other powers enabling it in this behalf, the Kerala State Electricity Regulatory Commission hereby publishes the draft of the proposed Regulations, namely, 'Kerala State Electricity Regulatory Commission (Renewable Energy and Related Matters) Regulations, 2025', for the information of the stakeholders and the persons likely to be affected thereby. Any objections or suggestions thereon may be forwarded to the Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10, within one month from the date of publication of this notice. Objections, comments and suggestions received on or before the said date shall be considered by the Commission before finalisation of these draft regulations. A public hearing on the same will be conducted and its date and venue shall be intimated separately.

Sd/-

Secretary”

*** (emphasis supplied)

This notice is issued under Rule 3 of the Rules of 2005. In this notice itself, it was also stated that the date and venue of the public hearing would be intimated. The phrase "venue" assumes importance, as the Petitioner has asserted that, based on past practice, people were led to believe that a physical hearing would be conducted at a venue, which would be notified separately.

18. The Commission has to approach the issue of public hearings keeping in mind the underlying concept behind it. Public hearings are an important part of the democratic process where stakeholders are given the opportunity to participate. Public hearing is a well-established and vital component of the regulatory process in our country. Holding public hearings has evolved into an institutional practice across several domains, including electricity regulation. It provides stakeholders with an opportunity to express their perspectives and participate in the decision-making process, and the outcome, if adverse, is more likely to be accepted because of the opportunity for participation in the process.

19. The Commission has taken a stand that it has not discontinued public hearings, but has chosen to discontinue physical/hybrid hearings and is conducting only online hearings which may have wider reach. The Petitioner does not oppose online hearing but states that physical hearing is different and important. There is merit in the contention of the Petitioner. Online hearing can be suitable for certain type of hearings, such as adversarial hearings in the Court, Tribunal, etc. Public hearing to understand the view of laypersons for a proposed regulations, is different. It may not always possible for every person to participate in a virtual hearing for various reasons. The existence of the digital divide across various cultural and socioeconomic segments in the country is now well recognised. Also not all stakeholders may be familiar or comfortable with the online hearings. As the Commission has done in the past, the hybrid mode of public hearing enables both those who are comfortable with technology and those who wish to present their views in person to have the opportunity to do so. The Petitioner also points out that attending a public hearing involves a commitment as it requires the person to travel to the venue and spend a considerable portion of the day, and unless one has a genuine interest in the subject, such an effort would not be undertaken, and therefore, those who wish to attend a physical hearing can reasonably be presumed to have a bona fide interest in giving the suggestions.

20. The right of the stakeholders to insist on a physical public hearing and the action of the Respondent – Commission, a public authority, to step back from its practice of holding a physical hearing are two different things. Assuming that the stakeholders have no such statutory right under the Rules, the action of the Respondent – Commission in discontinuing the practice of physical hearings can

be challenged and tested under judicial review if it is arbitrary, irrational, or disproportionate.

21. The Respondent – Commission, under the Rules of 2005, has put in place hybrid/physical public hearing as a matter of participatory democratic process. This is how the Commission has chosen to implement the Rules of 2005. This mode of public hearing under the Rules of 2005 by the Commission is now well entrenched in the State. In this context, the principle of non-regression can be noted, which is generally referred to in respect of environmental matters. Thus, having modulated the Rules of 2005 to provide physical public hearing in furtherance of strengthening the participatory democratic process, the Commission should not roll back or dilute this process unless there are valid reasons. Validity of the reasons can be questioned by the Petitioner, if the action is arbitrary.

22. As regards the ground of arbitrariness in the action of the Respondent – Commission in discontinuing the physical public hearing is concerned, it can be examined under the doctrine of proportionality. Proportionality is a well established ground for judicial review of administrative actions. The principle of proportionality requires that any action taken by an authority has to be proportionate to the objective sought to be achieved. Where the action involves prohibiting an activity, such as a public hearing, the measure must be appropriate and necessary in order to achieve the objective which is to be legitimately pursued. If the action is disproportionate and defeats the larger purpose, it becomes irrational and arbitrary. When there is a choice between several suitable measures, recourse must be had to the one that advances, rather than thwarts, the principles of participatory democracy. It is possible that, in a given case, certain vested interests may attempt to disrupt the public hearing with the intent of discontinuing the concept of public hearing in future. If the response to such disruptions is to discontinue public hearings altogether, it would, in effect, reward those who disrupt and detrimental to the genuine stakeholders. Thus, a valid and proportionate response to the situation presented before the Commission would be to take effective action against those who attempt to disrupt the hearing by involving the law enforcement agencies, and not to dispense with physical hearings in future altogether, as the Commission has proposed to do.

23. It could be argued that more the impact of the proposed regulations on the general public, more emotive an angle to the hearing there could be. But that cannot be a reason not to hold physical public hearing at all. Ultimately, maintaining law and order is the responsibility of the State, which it has to perform. Deployment of police at public events where there is apprehension of a breach of peace is a routine task for the police force, and disruptive elements are dealt with accordingly. Nothing stopped the Commission from approaching the State Government, whose primary duty is to maintain law and order, if it apprehended any disorderly behaviour. The Commission could also prescribe

rules governing the conduct of public hearings and clearly stipulated the consequences for any acts of indiscipline. The Respondent – Commission neither contacted the law enforcement authorities, nor cited any grave breach of public peace, nor developed any Standard Operating Procedure (till it was called upon to do so), and instead directly chose to discontinue the physical public hearing itself. There can always be better logistical arrangements, effective crowd management, clear rules of conduct notified in advance, and appropriate security measures to ensure that public hearings are conducted in a peaceful and productive manner. Therefore, the action of the Commission in discontinuing the physical public hearing itself, instead of attempting to ensure discipline, is entirely disproportionate to the situation in the present case. On this ground also, the action taken by the Respondent – Commission is questionable in law.

24. The learned standing counsel for the Respondent – Commission then contended that if a physical hearing is to be directed, the same can be conducted at the office premises of the Commission in Thiruvananthapuram, and has suggested some regulatory measures by placing a draft Standard Operating Procedure (SOP). Some of them are as follows. The Commission will issue an advance public notice, informing the public of the date and time for the public hearing on its official website. Advance registration for participating in the physical hearing will be available through the Commission's online portal on a first-come, first-served basis. Physical hearing will be provided only for those stakeholders – persons, organisations, or associations who could not participate in the online hearings so far conducted by the Commission. Persons who have registered to participate in the public hearing will have access to the Court Hall only by producing their official identification cards. On failure to provide the identity card of the participant, his/her entry to the Court Hall will be denied, and several other such conditions. Having perused the proposed SOP, we find that most of its clauses are reasonable. However, some of the clauses are unduly stringent and give the impression that the SOP is more directed at imposing restrictions than receiving feedback. Though we leave it to the Commission to regulate the physical hearing, the Commission will ensure that the SOP itself does not become an impediment to or stifle free expression by the stakeholders.

25. The learned counsel for the Petitioner contends that physical hearings were previously conducted at four prominent locations across the State, and now to restrict them only to one place at the premises of the Commission in Thiruvananthapuram, which may not have sufficient capacity, is arbitrary. The Commission has, in the past, conducted physical public hearings at four locations across the State, including one outside its office. The learned standing counsel for the Respondent – Commission contended that in the past, physical hearings were held at these places because tariff proposals were under consideration, not draft regulations, and that people had diverse points of view to express. However, by the Commission's own input, there is a large response from the stakeholders who wish to put forth their suggestions to the present draft regulations as well. According to the Petitioner, the proposals contained in the

draft regulations are likely to affect a large number of persons who are anxious to present their views. Therefore, we find no justifiable reason for the Commission to deviate from this past practice for the present public hearing. As to the exact modalities, such as time and venue (hall, etc.) at these four locations, it is left to the Commission to decide as they involve logistical considerations.

26. In the result, we direct that the Respondent – Commission, in furtherance of the notice dated 30 May 2025 issued under the Rules of 2005, will notify the venue of physical public hearings at four locations, that is, Kozhikode, Palakkad, Ernakulam, and Thiruvananthapuram, as was done during earlier hearings in respect of previous draft regulations and tariff proposals. As regards the selection of the venue and timing at these locations, we leave it to the Commission to decide. The Commission will endeavour to finalise the venue and time, keeping in mind the aspects of accessibility, sufficiency, convenience, and safety of the participants. As regards the regulation of the conduct of the public hearing, it is for the Commission to formulate a procedure to be notified in advance, however, taking into account the observations made in this judgment.

27. It is open to the Commission to request the additional Respondents, namely, the State Police Chief and the City Police Commissioner, to deploy sufficient police personnel to assist the Commission for an orderly physical public hearing at the afore-mentioned locations. Upon such request being received, the additional Respondents will provide necessary assistance to the Commission.

28. The Writ Petition is disposed of in the above terms.