

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Sri. T.M. Manoharan, Chairman
Sri. Mathew George, Member
Sri. K. Vikraman Nair, Member

Petition No. OP 22/2011

**In The Matter of Collection of Developmental Charges / Substation
Enhancement Expenditure in the Pretext of Expense Incurred
for Providing the Supply.**

Kerala State Small Industries Association,
Ernakulam District : Petitioner
Kerala State Electricity Board, Pattom,
Thiruvananthapuram : Respondent

Order Dated 22.01.2015

1. President, Kerala State Small Industries Association, Ernakulam District(KSSIA) has filed this petition OP No.22/2011, before the Commission in the matter of collection of developmental charges /substation enhancement expenditure in the pretext of expense incurred for providing the supply by Kerala State Electricity Board(KSEB).The cause of action of this petition is as follows.
2. In the petition No. OP 13/2009 dated 14-5-2009, KSERC had issued an order dated Nov. 16, 2010, rejecting the petition filed by KSEB praying for fixing the rate of development charges. KSEB was also directed not to collect development charges from LT, HT and EHT consumers. It is alleged in this petition that KSEB was continuing with the collection of developmental charge, violating the directives of KSERC. The list of affected consumers was appended as Exhibit 1 to the petition. This petition was filed against KSEB Ltd for its non-compliance of directives issued by the Commission.
3. Prayers of the petitioner are that Kerala State Electricity Regulatory Commission (KSERC) may direct KSEB:-
 - I. to refund the amount collected as development charge,
 - II. not to collect development charge or any other charge incurred for substation enhancement work from consumers of LT IV and HT I category
 - III. not to collect any charge other than what is specifically approved by KSERC.
4. It was further prayed to give an interim stay on the collection of development charges by KSEB and also to direct KSEB to give connection to the consumers

listed in Exhibit -1 (The list of consumers who had applied and were waiting for electric connection), by executing an indemnity bond as a commitment for complying with the order of KSERC, if the Commission passes an order directing the consumers to remit developmental charges and KSERC may arrange an urgent hearing, since the requirement of connection is urgent.

Hearing of the Matter

5. A preliminary hearing was conducted on 29-09-2011. Both the petitioner and the respondent attended the hearing. Petitioner in the petition No.OP13/2009 dated 14-5-2009, had stated that even though the KSERC proclaimed an order dated 16-11-2009 directing KSEB not to collect developmental charges from LT, EHT and HT consumers, KSEB is continuing with the collection of developmental charges. Many complaints already filed before the Compliance Examiner are to be looked in to. KSEB stated that instead of collecting the cost of transmission works from one applicant, they are dividing the cost on all prospective consumers by way of pro-rata KVA basis. KSEB has requested to give more time to furnish a written reply to the petition. M/S De Paul Education Trust, Angamaly has requested permission to join as a party to the petition and submitted the request in writing.
6. On examination of the submissions above by the KSSIA and hearing both the parties, the Commission viewed that *prima facie*, there was substance in the complaints against KSEB and the matter needs further enquiry and that the consumers should not be put to difficulty in the meanwhile. Hence an interim order was issued on 7thOctober 2011 with the following directions,-
 - i. *Kerala State Electricity Board is directed not to proceed with the pro-rata system devised arbitrarily till a decision is taken in OP 22/2011 filed by KSSIA (EKM).*
 - ii. *KSEB is further directed to give connection to the consumers listed in Exhibit -1 of the petition OP 22/2011 by executing an indemnity bond as commitment for making payments of additional charges if allowed in final orders of the Commission on the above petition.*
 - iii. *KSEB may proceed with collection of Transmission charges as per the order of the Commission dated 23-05-11 on TP 87/2011.*
 - iv. *KSEB is allowed one month time to furnish reply statement/ additional information.*
 - v. *M/S DePaul Education Trust Angamaly is permitted to join as party to the petition.*
 - vi. *The next hearing is posted to 23rd November 2011, 11 AM.*
7. The next hearing was conducted as scheduled on 23-11-2011. The Commission was assisted by the Compliance Examiner, Sri. Johnson Jacob. He presented the facts relating to the complaints received and enquiry conducted. The petitioner (KSSIA) was represented by Sri. Shaji Sebastian, who presented the

case and provided clarifications. M/s Solar Offset Printers Pvt. Ltd represented by Sri. Anandakuttan Nair was also heard. KSSIA filed petition for impleading M/s Watts Electronic Pvt. Ltd. and it was admitted. The respondent KSEB was represented by the Dy. Chief Engineer, Tariff Regulatory Affairs Cell (TRAC) and Sri. B.Pradeep, Executive Engineer, TRAC. The reply filed by KSEB was not made available to the petitioner. KSEB was directed to provide the same. KSEB also wanted details of the individual petitions filed. Both the parties were directed to provide the documents relevant to the case. The proceedings were posted for further hearing to 13-12-2011.

8. The proceedings adjourned from 23-11-2011 were continued on 13-12-2011. Sri. Shaji Sebastian, representing the petitioners and Sri. Jayathilakan, on behalf of the HT &EHT Association had presented their arguments against the collection of developmental charges/ prorata charges by KSEB. Sri. Pradeep, Executive Engineer on behalf of KSEB presented his counter arguments, justifying the impugned collections. He also wanted time to raise additional arguments in view of the petition filed by HT & EHT Association and the arguments of Sri. Shaji Sebastian. 15 days time was given to file his additional arguments with copy to the opposite party. No further hearing was insisted by either party. The written comments of KSEB were subsequently filed vide letter dated 5.1.2012. The arguments and comments made by the petitioners and the respondent in the hearings and that filed by submissions are summarised below.

Summary of averments made by the petitioner.

9. As per Section 46 of Elec. Act 03, *“The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”* Hence, the consumer need only to pay the expense incurred for providing that particular supply.
10. As per Section 61 of the Elec. Act 03 *“The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff,”* Hence, KSEB can collect from consumers only the rate approved by the Regulatory Commission.
11. As per the rate published by KSERC, KSEB is already collecting the expense incurred for providing the supply to a particular consumer. They cannot have a proportionate collection of charges from the consumer.
12. The substations of 33 KV and above are coming under transmission wing and the 22 KV, 11 KV and 415 Volt feeders are coming under distribution wing. If a specific work is done for extension of 11 KV line or 22 KV line, it can be borne by the respective consumer and he cannot be burdened with the enhancement work done at substation level at 33 KV, 66KV, 110 KV, 220 KV, 400 KV etc.

13. Without taking the above in to consideration, KSEB had collected development charge and they are demanding the same in Angamaly and Perumbavur area. This is a clear violation of the provisions of Electricity Act, 2003. The list of affected consumers was furnished as the Exhibit -1. The amount of development charge demanded by KSEB from the affected consumers were as follows.

- i. Sri. Varkey Peter, Mothers Agro foods Pvt. Ltd Rs. 1,700,000/-
- ii. Sri. K.T Paul, Paven Quarry & Aggregate Pvt. Ltd. Rs. 504,000/-
- iii. Sri. Varghese Alex, Sitco Industrial Park Rs. 683,000/- ,
- iv. Sri. Regi Kuriakose , Southern Automotives & Engineering works Rs. 6,000,000/-
- v. Sri. Siddique, Kunnathu Chits Board Pvt. Ltd Rs. 1,100,000/-
- vi. Sri. N.P. Antony, Kalady Rice Millers Consortium Ltd. Rs. 781,945/-
- vii. M/s Vajra Plastics Industry Rs.174,000/-

The amounts requested in the first five cases were not remitted by the parties concerned since they were requested by the officers of KSEB only verbally. Consumers at vi and vii remitted the amount as per the demand notice received from KSEB.

14. In the Petition No OP 13 dated 14/5/2009 filed by KSEB, Commission has issued an order dated 16.11.2009. From the said order of the Commission, it is very clear that KSEB cannot collect developmental charge or any other charge which is not approved by KSERC. The law is not permitting the collection of proportionate charge for any particular connection.

15. In the petition No.TP 87/2011 filed by KSEB in the matter of approval of cost data for transmission works, they requested to sanction cost estimate for consumers having large power requirement. In the order dated 23.05.2011 KSERC have given clear procedure and principle for working out the estimated cost of providing HT/EHT connections. KSEB, in the affected cases have not prepared estimates or handed over copy of the estimate to the party. KSEB is collecting proportionate cost of the work done at substations from consumers having non redundant connection.

Averments of De Paul Education Trust.

16. M/s DePaul Education Trust Angamaly was permitted to join as a party to the petition in addition to the 7 industrial consumers listed by KSSIA.Fr. Alex Chalangadi V.C, Secretary of DePaul Education Trust has presented the difficulties faced by them towards the remittance of Developmental Charge/ Transmission cost/prorata amount. They remitted Rs. 643,000/- towards the pro rata amount intimated by the Transmission wing and Rs. 785,884/- towards distribution charge. The amount was remitted since KSEB had given only 15 days time for remitting the amount and they were not accepting the distribution cost without remitting the transmission charge. It was intimated that after 15

days, the application would be treated as cancelled and the priority along with advance amount of Rs.10000/- remitted would be forfeited.

17. He submitted that Commission may issue direction to adjust the amount collected from them towards pro rata amount intimated by the transmission wing for transmission cost in their future current bills. CD etc. Since they have remitted Rs. 7, 85,884/- towards distribution charge also, direction may be issued to expedite their service connection procedure.

Averments of Solar Offset Printers Pvt. Ltd.

18. The request of Solar Offset Printers Private Limited was for a 490 KVA additional load. Dy. Chief Engineer, Transmission Circle Trivandrum has demanded to remit Rs. 10.45 lakhs on 30-12-2010 as pro-rata amount. He stated that there was unauthorised collection in many ways by KSEB. Another Rs. 2.05 lakhs was also paid as prorata amount. Thus a total to Rs.12. 5 lakhs as pro rata amount was paid.

Averments of HT/EHT Industrial Electricity Consumers Association.

19. HT/EHT Industrial Electricity Consumers Association (hereinafter referred to as HT/EHT Association) has submitted a list of 8 consumers in Ernakulam, Tripunithura, Chottanikkara and Thrikkakara area from whom KSEB demanded and collected various unauthorised charges. The demand was either on account of cost of capacity enhancement work/ pro-rata amount for system up gradation/ work deposit charge/ cost of transmission part and distribution part or on account of proportionate work deposit charges etc.
20. HT / EHT Association has submitted that it is the responsibility of the licensee under Section 43 (2) of Act, to provide electric plant and extend the electricity line and poles to the premises of the consumer at licensees own cost to give electricity to the consumer who has applied for connection by realizing only the expense reasonably incurred and used for the purpose of giving that supply as per section 46 (power to recover expenditure.) Section 45 (5) says that the charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.
21. HT / EHT Association has further submitted that the charges demanded and collected from the 8 consumers shown in the list below were not approved by the Commission and are therefore, unauthorised collection.
 - i. BPCL Kochi Refinery , Capacity Enhancement & Load Rearrangement
Rs. 202500 @ Rs. 1350/ kVA
 - ii. Abad Builders- Pro-rata amount for system up-gradation – Rs 8070000 @ 2690/kVA
 - iii. Skyline Builders, Kakkanad – Work deposit charge- 1165000 @ Rs.2330/ kVA

- iv. Heera Construction Co. Pro-rata rates for 66 KV s/s – Rs.1486800 @ Rs.2360/- kVA
- v. Kalpaka Blue Diamond apartment- transmission part – Rs. 743400/- plus distribution part Rs. 233145/-
- vi. AC Centaurus- transmission part Rs. 268336, & distribution part Rs. 279365/-
- vii. Noel Villas, work deposit for 66 MVA transformer Rs. 5000800 @ 2660/KVA
- viii. Jewel Homes – Transmission part – Rs. 944000/- Rs. 2360/- kVA

As per provisions in the Electricity Act 03, Kerala Electricity Supply Code 2005 and orders of the Commission, the charges collected by KSEB were unauthorized and illegal. Commission in its order dt 16-11-2009, in the matter of service connection charges ordered that cost of equipment requirement of development of the system is to be borne by the licensee.

22. Prayer of the HT/EHT Association is to issue orders that collection of such charges as cost of capacity enhancement work, and subsequent load arrangement, pro-rata amount for the system up gradation, work deposit charge, pro-rata rate for enhancement of 66 KV S/S is unauthorised and illegal and to direct KSEB to refund all such unauthorized charges collected with interest to all the consumers from whom such charges have been collected.

Summary of averments of Kerala State Electricity Board.

23. KSEB, in their letters dated 22.11.2011 and 05.01.2012 addressed to the Secretary to the Commission and during the hearing, stated that the petition is the result of certain misunderstanding of the petitioner regarding the procedures followed in KSEB and also due to an inadvertent misnomer of charges intended to recover the cost of installation of plants specifically required for the purpose of providing supply to the applicant on a group sharing basis. The usage of the term “development charge by some officers of KSEB was an inadvertent error as explained by them to the Compliance Examiner of the Commission.
24. The contention of the petitioner that KSEB is continuing with collection of Development charges sought by KSEB in the petition No. OP 13/2009 is denied. The prayer of KSEB in that petition was to allow recovery of a part of the advance investment made by KSEB for providing supply on demand from all prospective consumers LT, HT and EHT. The demand of the charges, challenged by the petitioner in the present petition is not related to recovery of such advance investments made by KSEB.
25. The charges claimed are against expenses to be incurred by KSEB for release of new service connection / enhancing contract demand. The demand is related

- to expense towards installation of electrical plants in the transmission system without which the additional demand could not be catered to.
26. The practice of collecting pro-rata expenditure followed is in good faith with the intention of releasing supply to all such bulk consumers at a lesser cost to the individual applicants with least possible delay. If this procedure is not followed, the cost of all modification works/developmental works required in a substation will have to be recovered from the person coming for the connection. The procedure followed for recovery of cost as specified in the regulations, was followed on a group sharing basis among the entire applicants for bulk power in a particular area. There is no violation of rules or regulations or Commission's orders in this arrangement and fair play has been ensured to all the beneficiaries.
 27. Electricity Act -03 and Clause 7 (1) of the Supply Code, 2005 empowers KSEB to recover from the applicant any expense reasonably incurred for providing any electric line or electrical plant required specifically for giving that supply. Clause 8 (3) of the Supply Code, 2005 mentions "Supply where new substation is to be commissioned" Hence, Clause 8 (3) of the Supply Code, 2005 specifically authorises to collect expense towards development of transmission system if the same is required for release of a new connection or allocation of additional load.
 28. The capacity of a substation will depend on the capacity of the transformers installed in them. It is not possible to overload any transformer beyond the permissible limits. If a bulk consumer applies for energy, when the transformers in the nearby substation are critically loaded, the option available is either to wait for the development of transmission facilities in that particular substation in due course under investment plan approved by the Commission or to pay the expenses as provided in the sub rule (3) of rule 8 of Supply Code 2005.
 29. The enhancement of transformer capacity in substations can be done on standard scales only and this involves huge investments. Usually spare capacity will be available, after meeting the requirements of the first beneficiary. Hence the recovery of cost could also be on proportionate basis. The unrecovered portion of the expenditure incurred by the Board for the additional installation can be recovered from the prospective consumers proportionate to their requirement subsequently. Once a consumer remits the entire cost of a substation or transformer station, on work deposit basis due to his urgency to commence his operations, there would be spare capacity which could be availed by subsequent applicants without incurring expenditure to the cost of the substation. With all equity and fairness, Board thought of realizing only proportionate cost as pro-rata charges for providing electricity as quickly as possible to the consumers.
 30. KSEB has already undertaken the enhancement of the capacity of the substation from where supply is to be provided to consumers enlisted in the petition based on the pro rata charges remitted by the initial set of consumers. Allowing the petition will result in under recovery of cost incurred by KSEB

against works undertaken to ensure timely release of supply to the enlisted applicants also. Hence, KSEB submitted the petition may be dismissed.

Additional submissions of the petitioner.

31. Sri. Shaji Sebastian on 12-12-2011 in reply to KSEB 's counter submitted for KSSIA as rejoinder. According to him, the development charge, transmission charge, substation enhancement expenditure etc are indicating a portion of capital investment already incurred for transmission utility and its collection is illegal and there is inadvertent misnomer of collection of charge intended to recover the cost of installation of plants specifically required for the purpose of providing supply to the applicant.
32. He further submitted that sharing the cost of a 10 MVA transformer by a small consumer whose requirement is not more than 800 KVA, is not envisaged anywhere. A small consumer is not having a fully redundant supply line. He is enjoying a small portion of the 3000 KVA common supply line. KSEB is collecting the same charge for different services, violating the economic principle envisaged in the policy and Act.
33. It was further submitted that there was no practice of collection of substation expenditure in earlier days, except in case of separate redundant feeder to a particular consumer. If KSEB collects any payment without the approval of KSERC, it is non-compliance of the directive. The collection of payment on pro rata base or as proportionate charge is not permitted and is punishable under Section 142 of the Act.
34. The letter given by the officers show that KSEB has collected payment from consumers for the developmental work already done at the substation The collection is not as per the approval of the commission. Clause 8 (3) of Supply Code, 2005 does not allow collection of expenditure already incurred on pro-rata basis.
35. Remittance of entire cost of capacity enhancement in substation by bulk consumers is the procedure approved by regulations and followed by KSEB. After keeping a minimum capacity for catering to small consumers, Board can always go for expansion.
36. Interim order is not fully implemented. Loading transmission cost on distribution is not allowed. Below 66 KV is treated as distribution. Below 66 KV implies a 10 MVA transformer. A 500 KVA user never has to pay the cost of 10 MVA transformer.

Additional submissions of Kerala State Electricity Board.

37. In the hearing on 13-12-2012, KSEB stated that no circular was issued by Board or no approval from Board was given to the officers since their action is justifiable under section clause 8 (3) of Supply Code, 2005.
38. As directed in the hearing, KSEB further submitted on 5-1-2012 that, KSEB is realizing charges as prescribed by the Commission as per section 46 of the Act.

In reply to the submission filed by petitioner Sri. Shaji Sebastian that KSEB has not complied with the Interim order of the Commission, KSEB stated that the argument of the petitioner that KSEB has not complied with interim order is denied. Further they have submitted the current status of the application for power connection of the impleaded petitioners with copy marked to KSSIA and HT/EHT Association.

KSEB also submitted that as per Section 43 (2) "It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission ."

39. KSEB stated that Section 43 (2) does not envisage providing Electrical Plant and Equipment at licensee's cost. The consumer cannot even demand for supply unless he agrees to pay the charges determined by the Commission.

Section 43 (2) should be read with Section 46 of the Act which provides recovery of cost *"The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply"*.

Report of the Compliance Examiner.

40. The Compliance Examiner has presented the findings of the enquiry conducted by him. Though the Commission has disallowed development charges vide order dated 16.11.2009 (in the matter of proposal to introduce development charges for new investments from 2008-09 in the petition OP 13 /09 dated 14-05-2009 by KSEB). Dy. Chief Engineer, Transmission Circle Kalamassery gave instruction to collect development charges on 9-7-2010. This is seen wrong prima facie. No substation enhancement expenditure has to be effected to the consumers, except in specific cases. The direction by the Dy. Chief Engineer is for all prospective consumers without reference to whether the additional investment is required or not. Different amounts are seen collected as development charge or pro-rata development charge at Ernakulam and Trichur area. The Commission has approved the cost data for Transmission works in 23.05.2011, but it is seen that no estimates were given to the consumers. Explanation of the Dy. Chief Engineer was called for, but the reply was not satisfactory. Further enquiry was conducted and two specific cases investigated. Enquiry report was submitted to the Commission on 18.05.2011.

Litigation before the Hon'ble High Court of Kerala.

41. The Commission had issued an interim order on 07.10.2011 in this petition. In the said interim order, the following directions were given.

- (i) *The Kerala State Electricity Board is directed not to proceed with the pro-rata system devised arbitrarily till a decision is taken on the OP 22/2011 filed by KSSIA (Ernakulam).*
- (ii) *KSEB is further directed to give connection to the consumers listed in Exhibit -1 of the petition OP 22/2011 by executing an indemnity bond as commitment for making payments of additional charges if allowed in final orders of the Commission on the above petition.*
- (iii) *KSEB may proceed with collection of transmission charges as per the order of the Commission dated 23.05.2011 on TP 87/2011.*
- (iv) *KSEB is allowed one month time to furnish reply statement / additional information.*
- (v) *M/s De Paul Educational Trust, Angamaly is permitted to join as party to the petition.*
- (vi) *The next hearing is posted to 23.11.2011, 11 AM.*

42. In view of the directions issued by the Commission on 07.10.2011 various consumers filed Writ Petitions before the Hon'ble High Court challenging the levy of transmission side development charges on per kVA basis by KSEB. There were 17 Writ Petitions with common issue for consideration by the Hon'ble High Court. The 17 Writ Petitions are WP (C) 18726/2011, 20515/2011, 21491/2011, 22098/2011 22781/2011, 26697/2011, 27480/2011, 27511/2011, 27518/2011, 27543/2011, 27549/2011, 27550/2011, 27586/2011, 28504/2011, 30911/2011, 33942/2011 and 33945/2011. The single bench of the Hon'ble High Court in its common judgment dated 22.11.2012 in WP (C) No.18726/2011 and connected cases, held that the levy of transmission side development charges and the demand for non-refundable advance impugned in the Writ Petitions, was illegal and on that basis the learned single Judge had ordered that the amounts realized from the Writ Petitioners should be refunded to them with simple interest at the rate of 6% per annum. KSEB filed Writ Appeals Nos.900/2013, 909/2013, 910/2013, 951/2013, 972/2013, 990/2013, 991/2013, 997/2013, 999/2013, 1006/2013, 1035/2013, 1040/2013, 1042/2013, 1044/2013, 1068/2013, 1082/2013 and 1138/2013 challenging the said common judgment of the single bench. These Writ Appeals were heard by the Division Bench of the Hon'ble High Court and passed judgment on 30.06.2014. The Division Bench of the Hon'ble High Court in its judgment dated 30.06.2014, disposed of the above Writ Appeals, setting aside the judgment of the learned single Judge to the extent levy and collection of transmission side development charges are held illegal. It has also be ordered by the Division Bench of the Hon'ble High Court that those among the appellants, who have not so far payed

the amounts demanded by the Board, are allowed two months time from the date of receipt of a copy of the judgment, to pay the amounts due from them.

43. In view of the pendency of the above cases before the Hon'ble High Court, the Commission had, in due respect and deference to the Hon'ble High Court, kept in abeyance further proceedings in this case. After the finalization of the issue by the Hon'ble High Court, the OP No.22/2011 before the Commission has been finally heard on 14.01.2015.

Submissions of the petitioner in the final hearing on 14.01.2015.

44. The main submissions of the petitioner in the final hearing was that the Commission has issued Supply Code, 2014 after following the due process of previous publication and public hearing. The Supply Code, 2014 has come into force with effect from 01.04.2014. The Commission had issued Supply Code, 2014 only after considering the entire legal as well as technical aspects, protecting the interest of consumers in general and the weaker section in particular, duly considering the reasonable demands of KSEB Limited. It was contended that the judgment of the Hon'ble High Court dated 30.06.2014 in Writ Appeal No.900/2013 and connected cases was applicable only to the consumers who were party to the petition and therefore collection of pro-rata transmission development charges or any other development charges with retrospective effect even from the consumers who were not parties to the cases before the Hon'ble High Court would be unfair and unjust. It was further contended that the specific order issued by the Hon'ble High Court cannot be generalized by KSEB Limited. It was also submitted that the Writ Petitioners have already approached the Hon'ble Supreme Court. Quoting para 21 of the judgment of the Division Bench, it has been stated by the petitioner that the intention of the Hon'ble High Court was to protect the interest of the consumer. It was also pointed out that the provisions in Supply Code, 2014 are also intended to achieve the same objective. The petitioner finally submitted as follows.
45. Taking into consideration our contentions in original petition and also the difficult and pathetic situation of small industrial consumers heaving load below one MW and other weaker section of the consumers the Hon'ble Commission may.
- (i) Order not to have developmental charges made applicable to all existing as well as future consumers below 1 MW in line with the Supply Code, 2014.
 - (ii) Clarify that all directions in the new Supply Code pertaining to the developmental charges will be applicable to the existing and new consumers taking into consideration the fact that entire contentions in OP 22/2011 and the defense of KSEBL was fully addressed in Supply Code, 2014.

- (iii) Direct KSEB Limited to abstain from the collection of developmental charges other than what is permitted in Supply Code, 2014 from the existing as well as future consumers.

Submissions of the KSEB Limited in the final hearing on 14.01.2015.

46. In the final hearing on 14.01.2015 M/s KSEB Limited submitted that it was entitled to realise the transmission side developmental charges in accordance with the judgment dated 30.06.2014 of the Hon'ble High Court in Writ Appeal No.900/2013 and connected cases. Accordingly, they have issued B.O (DF) No.2444/2014(LA III. 8347/2011) dated 17.09.2014 for realization of the development charges. KSEB has also submitted that the Hon'ble High Court had already considered the cases of consumers falling below one MW load in WP (C) No.17110/2014 filed by M/s Travancore Builders Private Limited, Kochi and issued judgment on 26.10.2014 directing the petitioner to remit transmission side development charges as per the judgment of the Hon'ble High Court dated 30.06.2014. According to KSEB Limited, the petition No.22/2011 before the Commission has become infructuous in view of the said judgment of the Hon'ble High Court and therefore it was prayed to dismiss OP No.22/2011 now under the consideration of the Commission.

Analysis and Decision of the Commission.

47. The scheme of law as existed at the time of filing this petition before the Commission as well as filing Writ Petitions before the Hon'ble High Court has to be examined for proper appreciation of the issues. The Electricity Act, 2003, was enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity, and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas. The Act is also intended to rationalize electricity tariff, ensuring transparent policies regarding subsidies and promotion of efficient and environmentally benign policies. The Commission had issued Kerala Electricity Supply Code, 2005 under section 50 of the Act to provide for recovery of electricity charges, disconnection of supply of electricity, restoration of supply of electricity, measures for preventing tampering, entry of distribution licensee of any person acting on his behalf for disconnecting supply and removing the meter, altering or maintain electric lines or electrical plants and such other matters relating to supply of electricity to the consumer.
48. The Act envisages at four major activities in power sector namely, generation, transmission, distribution and trading. Section 10 (1) of the Act stipulates the duties of generating company as follows "*subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines*

connected therewith in accordance with the provisions of this Act or the rules or regulations made there under". The investment for tie lines, substations and dedicated transmission lines of the generating company will pass through tariff of the generator.

49. The provisions relating to transmission of electricity are given in sections 25 to 41 in chapter – V of the Act. Section 40 of the Act stipulates the duties of transmission licensees as follows

"It shall be the duty of a transmission licensee -

- (a) to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;*
- (b) to comply with directions of Regional Load Despatch Centre and State Load Despatch Centre as the case may be.*
- (c) to provide non-discriminatory open access to its transmission system for use by-*
 - (i) any licensee or generating company on payment of the transmission charges; or*
 - (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission."*

50. The investment of the transmission licensee has to be done in accordance with the ARR of the transmission licensee as part of its infrastructure development. The return on investment of the transmission utility has to be recovered through the transmission charges to be determined by the Commission in accordance with the provisions of section 62 of the Electricity Act, 2003 and the provisions of the Tariff Regulations issued by the Commission under section 61 of the Act.
51. Provisions relating to distribution of electricity are given in sections 42 to 60 of the Act in its chapter –VI. Section 42 of the Act stipulates the duties of the distribution licensee and open access as given hereunder.

"42.Duties of distribution Licensee and open access.- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall

have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access .

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.

52. Section 43 of the Act stipulates the duty of the distribution licensee to supply electricity on request which is quoted hereunder.

“43. Duty to supply on request.- (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

53. Section 45 of the Act deals with power of the distribution licensee to recover electricity charges. The said section is quoted hereunder.

“45. Power to recover charges.- (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include -

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.”

54. Section 46 of the Act deals with the power of the distribution licensee to recover expenditure incurred by the licensee for giving electric connection to the consumer. Section 46 of the Electricity Act 2003, stipulates as follows :

“The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

55. Electric line has been defined as a line which is used for carrying electricity for any purpose and includes any support for such line, that is to say any structure, tower, pole or other thing in, on, by or from which such line is, or may be, supported, carried or suspended and any apparatus connected to such line for the purpose of carrying electricity. The electrical plant has been defined in the Electricity Act, 2003 as follows:

"electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include-

(a) an electric line; or

(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(c) an electrical equipment, apparatus or appliance under the control of a consumer;

56. Regulations 7 and 8 of the Kerala Electricity Supply Code, 2005, authorise the distribution licensee to recover the expenditure as per Section 46 of the Electricity Act, 2003. Sub-regulation (1) of regulation 7 is quoted hereunder,-

“7. Power to recover expenditure.-(1) Subject to the conditions under clause 8, the Commission authorizes the Licensee under Section 46 of the Act, to recover from the owner or occupier of any premises requiring supply the expenses reasonably incurred by the Licensee for providing

any electric line or electrical plant required specifically for the purpose of giving such supply:

Provided that the Licensee shall not be entitled to recover such expenditure if such expenditure is under the scheme approved by the Commission or otherwise charged in the Annual Revenue Requirements of the Licensee.”

57. Regulation 8 of the Supply Code, 2005 stipulate the time frames for providing supply. Sub-regulation (1) deals with supply where no extension of distributing main is required. Sub-regulation (2) deals with supply where distributing main requires extension. Sub-regulation (3) deals with supply where new sub-station is to be commissioned. Sub-regulation (4) deals with supply where new substation has to be commissioned along with extension of electric line. Sub-regulation (5) deals with electric connection to multi-storied (high rise) building. Sub-regulation (6) deals with installment facility. Sub-regulation (7) deals with supply in localities where no provision for supply exists. Sub-regulation (8) deals with supply for street lights and Sub-regulation (9) deals with supply where electric line / substation is provided by the applicant.
58. Clauses (a) and (b) of sub-regulation (2) of regulation 8 are quoted hereunder:-

“(a) After the receipt of application as provided under clause 5, if the Licensee finds that supply of electricity to premises applied requires commissioning of a new substation which is not covered as part of the investment plan approved by the Commission, the Licensee shall inspect the premises of the applicant and prepare the cost estimate for the works and intimate the applicant within one month of receipt of application

(b) The Licensee may require the applicant to pay the cost estimate worked out under sub-clause 3(a) within a period of one month or such extended period as the Licensee may allow at the request of the applicant.”

59. Clause 8(4) also provide for similar situations where extension of line is also involved.
60. The power to recover expenditure under Section 46 of the Act has to be viewed based on the above legal provisions and the roles of generators, transmission utility and the distribution licensee. The role and duties of the generator, transmission utility and distribution licensee cannot be mixed up, super imposed or combined for convenience without boundaries. It may be seen that only the distribution licensee has the responsibility to supply electricity to the consumer. The generating company or transmission licensee is not expected to give connectivity to the consumer. Therefore the reasonable expenditure can be recovered from the consumer only by a distribution licensee and the transmission utility has no power to recover expenditure directly from the consumer. It is clear from the provisions of Electricity Act, 2003 and the

provisions in the Supply Code, 2005, that only the distribution licensee is authorized to recover from any applicant the expenditure for the works to be executed for giving that supply. The legal provisions in the Electricity Act, 2003 or in the Supply Code, 2005 do not distinguish between the small and large consumers or between LT or HT or EHT consumers.

61. Section 61 of the Act deals with tariff regulations and it states as follows.

“61. Tariff regulations.- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) The principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*
- (b) The generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
- (c) The factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
- (d) Safeguarding the consumers’ interest and at the same time, recovery of the cost of electricity in a reasonable manner;*
- (e) The principles rewarding efficiency in performance;*
- (f) Mutli-year tariff principles;*
- (g) That the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission;*
- (h) The promotion of co-generation and generation of electricity from renewable sources of energy;*
- (i) The National Electricity Policy and tariff policy:
Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948 (54 of 1948), the Electricity Regulatory Commissions Act, 1998 (14 of 1998) and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.”*

62. Section 62 of the Electricity Act, 2003 deals with determination of tariff and it states as follows.-

*“62.Determination of tariff.- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for.-
(a) supply of electricity by a generating company to a distribution licensee:*

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity.

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumers' load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenue from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”

63. Certain basic facts relating to the technical aspects and practices in the field should also be examined for proper appreciation of the issues raised by the petitioner. The standard voltage levels for supply of electricity has been stipulated in sub-regulation (2) of regulation 4 of the Supply Code, 2005 as follows,-

- “(a) Low Tension (LT) Supply*
- (i) Single phase 240 Volts between each phase and neutral*
 - (ii) Three phase 415 Volts between phases.*
- (b) High Tension (HT) Supply*
- (i) Three phase 11000 Volts (11 kV) between phases*
 - (ii) Three phase 22000 Volts (22 kV) between phases*
 - (iii) Three phase 33000 Volts (33 kV) between phases*
- (c) Extra High Tension (EHT) Supply*
- (i) Three phase 66000 Volts (66 kV) between phases*
 - (ii) Three phase 110000 Volts (110 kV) between phases*
 - (iii) Three phase 220000 Volts (220 kV) between phases*
 - (iv) Three phase 400000 Volts (400 kV) between phases”*

The electric lines transmitting electricity at EHT levels of 66kV, 110kV, 220 kV and 400kV are called transmission lines. The substations transform the electrical energy at HT and EHT levels to the voltage levels as required for transmission or distribution utilizing step-down transformers and other electrical equipment ancillary thereto. The sub-stations associated with generating station step-up the voltage of electricity generated in such stations from 11kV to the required voltage level for transmission, utilizing step-up transformers and other electrical equipment ancillary thereto. In the strict technical sense, the distribution transformer on 11kV feeder is also a sub-station. The transmission lines and sub-stations can be owned by generating company or by a transmission licensee or by a distribution licensee or by a consumer. The transmission lines and substations, required for transmitting energy from a generating station to the nearest delivery point in the power grid of the transmission licensee or of the distribution licensee are generally owned by the generating company and their cost forms part of the cost of the respective generating unit. The cost of such transmission lines and substations has to be recovered through tariff for the power supplied from that generating station as determined by the Commission in accordance with the regulations issued under section 61 of the Act and under clause (a) of sub-section (1) of section 62 of the Act. The State Transmission Utility or Transmission Licensee has to develop and maintain intra-state transmission system consisting of transmission lines and sub-stations owned and operated by them. The expenditure on development of transmission lines and substations by the State Transmission Utility or by a transmission licensee has to be incurred in accordance with the ARR and the Annual Investment Plan approved by the Commission. The cost of transmission lines and substations owned and operated by the State Transmission Utility or any transmission licensee has to be recovered by the State Transmission Utility or the transmission licensee through the transmission charges applicable to them as determined by the Commission in accordance with the regulations issued under section 61 of the Act and under clause (b) of sub-section (1) of

section 62 of the Act. All the expenditure incurred by the transmission licensee for the construction and maintenance of transmission lines and substations are duly considered by the Commission for the determination of transmission charges. The distribution licensee can also own and operate transmission lines and sub-stations apart from the distribution system consisting of 11kV feeders, transformers, three phase lines and single phase lines. In fact, the distribution licensees such as Trichur Municipal Corporation, Kanan Devan Hill Plantations Company Limited, Cochin Port Trust, Technopark and Rubber Park India Limited own and operate sub-stations and transmission lines associated with them. In the case of KSEB Limited, it has been functioning as a vertically integrated utility even after the enactment of Electricity Act, 2003. KSEB Limited is the State Transmission Utility and Distribution Licensee owning generation assets. For last several years KSEB had been functioning under profit centre system in which there were three independent profit centres namely, generation profit centre, transmission profit centre and distribution profit centre. Therefore in the case of KSEB, only the expenditure incurred by the distribution profit centre can be recovered under section 46 of the Act, provided the necessary and sufficient conditions are satisfied. As already stated, only the distribution licensee has the statutory duty to provide connectivity and supply of electricity and consequently only the distribution licensee has the right to recover the expenditure. The voltage level at which connectivity has to be given to any consumer depends upon the connected load or contract demand of the consumer. This is regulated by sub-regulation (5) of regulation 4 of the Supply Code, 2005 which is quoted hereunder.

“5 The supply voltage for different connected loads for new connections shall be as follows;

<i>Supply Voltage</i>	<i>Maximum Connected load</i>	<i>Maximum Contract Demand</i>
<i>240 V</i>	<i>5 KW</i>	
<i>415 V</i>	<i>100 kVA</i>	
<i>11 kV</i>		<i>3000 kVA</i>
<i>22 kV / 33 kV</i>		<i>6000 kVA</i>
<i>66 kV</i>		<i>8000 kVA</i>
<i>110 kV</i>		<i>20000 kVA</i>
<i>220 kV</i>		<i>>20000 kVA</i>

It is the responsibility of the distribution licensee under section 43 (2) of the Act, to provide electric plant and extend the electricity line to the premises of the consumer to give electricity to the person who has applied for connection. As already explained the voltage level (LT or HT or EHT) at which connectivity has to be given depends on the connected load or contract demand of the

consumer. Therefore the distribution licensee may have to undertake works relating to LT line or HT line or EHT line or sub-station for giving connectivity. The distribution licensee can recover from the consumer, the expenditure reasonably incurred by it, provided such expenditure is incurred for the construction of lines or sub-station for the purpose of giving that supply as per section 46 of the Act. Section 45 (5) of the Act says that charges fixed by the distribution licensee shall be in accordance with the provisions of this Act.

64. Various provisions in regulation 7 and regulation 8 of the Supply Code, 2005 will clearly show that the distribution licensee can recover the cost of service lines, terminal arrangements at the premises of the consumer and of the transformers specifically required for giving connection to the applicant. But it has been stipulated that the licensee shall not be entitled to recover such expenditure if such expenditure is under the scheme approved by the Commission or otherwise charged in the annual revenue requirements of the licensee. This clause has been introduced specifically to safeguard the consumer from the double jeopardy of paying the expenditure for electric lines and electrical plants directly to the licensee and paying such expenditure through tariff. This will also prevent the licensee from making undue enrichment by availing two payments for the same work. The expression specifically for giving that supply gains importance in this context and it means that such electric lines and electrical plants shall not be used for general or common purposes. Hence, the power to recover cost under section 46 of the Act cannot be extended to recover cost on pro-rata basis from the consumer, which is not specific for providing that service. From the above it is clear that the licensee is entitled to recover the cost of works at the distribution level as well as at the transmission level based on the estimated cost of works at the rates approved by the Commission. The estimation has to be done in a transparent and fair manner.
65. In the order of the Commission dated 23.05.2011 on the approval of cost data for transmission works, it is stated that the licensee shall prepare the estimate of the cost of the works based on the principles laid down. The Commission as per Section 50 of the Electricity Act 2003 had specified the Kerala Electricity Supply Code 2005, effective from 2-3-2005. The Supply Code, 2005 provides for time limit for effecting new connections and recovery of expenditure for providing electric connections. As per Section 46 of the Act 2003 and clause 7(2) of the Supply Code, 2005, the Commission has approved the estimate rates for effecting the electric connections. Accordingly, from the date of effect of Supply Code, 2005, the provisions of the Supply Code, 2005 shall only be applicable for effecting the connections. The distribution licensee is entitled to charge only expenses incurred for providing supply specifically to that consumer at the rates approved by the Commission.

66. It is obvious from the legal provisions and facts that if the modifications or strengthening of the substations owned by the distribution licensee are required for providing power supply to any applicant, the distribution licensee is entitled to recover the cost. The questions of size of the HT load or the issues of redundancy as pointed out by the petitioners are not relevant as per the existing regulations. The Supply Code, 2005 does not distinguish the modifications or improvements in the distribution system or in transmission system owned by the distribution licensee. The Act 2003 itself speaks of electric line and electrical plant which include every component of the power system of the distribution licensee other than the electric lines and apparatus of the consumer. The question to be considered is whether the cost is to be recovered direct from the specific consumer or indirectly through tariff from all consumers in general. If any investment in the transmission or distribution system of the distribution licensee is needed for the sole benefit of an individual applicant, then the cost of such investment has to be borne by the beneficiary. The liability of the beneficiaries to share the cost of modifications/strengthening shall be reduced only if the proposed schemes are already included in the ARR&ERC of the distribution licensee or covered under any specific investment plan approved by the Commission for the distribution licensee. At the same time it is the responsibility of the licensee to provide sufficient infrastructure and make the system ready so as to provide common facility for the individual applicants.
67. The main allegation of the petitioner is that the KSEB officials are demanding/collecting development charges which were against the orders of the Commission dated 16.11.2009 in OP No.13of 2009. This shall be examined below :In the above petition OP 13 dated 14.5.2009 :*KSEB requested before the Commission that they may be allowed to recover a part of the advance requirement made for providing supply on demand from all the prospective LT, HT and EHT consumers as Development charges the details of which are given below,-*

“(a) LT consumers

(i) Rs 1600/kVA as development charges for the load in excess of 10 kW from all new LT Consumers with connected load above 10 kW and also from existing consumers with connected load less than 10 who require additional load for total load in excess of 10 kW. Similarly existing consumers with connected load above 10 kW load, while request for any additional load development charges shall be collected at the above rates for the additional load portion.

(ii) In addition to the development charges proposed as above, all LT consumers have to bear service connection charges and other charges allowed by the Commission as the cost of providing supply at LT side including line extension, new post insertion, terminal arrangements etc

based on the estimate at the scheduled rates approved by the Commission from time to time.

(iii) Over and above the development charges as item (i) and the cost of providing supply as per schedule of rates approved by the Commission as item (ii), KSEB shall not collect extra charges for strengthening of existing sub stations , upgrading existing sub stations, upgrading existing transformer or erecting new transformers. KSEB shall also not collect charges for extending HT line up to 1 KM . But the cost of HT line beyond the initial 1 KM shall be recovered from consumers at the schedule of rates approved by the Hon Commission from time to time

(iv) If any of the consumers installs transformer at their own cost (especially for commercial complexes , flats etc. for HT/LT Conversion) such consumers will have to bear development charges at the reduced rate of Rs 1000/kVA only.

(v) Once the development charges are approved, KSEB shall not insist on installation of separate transformer for those who apply for power above 50 kW.

(b) HT and EHT Consumers (Including bulk consumers)

(i) Rs 1000/ kVA as development charges from all new HT and EHT consumers including bulk consumers for their connected load. Existing consumers also have to pay development charges for additional load above the existing connected load.

(ii) In addition to development charges as proposed above, all HT and EHT consumers have to bear cost for providing supply including cost of extending lines and other incidental overhead cost , departmental charges etc. for providing supply up to the outside limit of the property of the consumer as per the estimate based on schedule of rates approved by the Commission from time to time.

(iii) Consumers are relieved from payment of additional charges above the items b(i) and b(ii) above towards strengthening of existing system of KSEB as part of extending supply to them.”

68. It can be seen that the proposal of KSEB was to collect development charges from all EHT, HT and LT (above 10KW) consumers irrespective of the fact whether any substation / system modification works were to be carried out for providing power supply to them and the rates were uniformly suggested for each category of applicants throughout the state. It was the above prayer of KSEB, which was rejected by the Commission by the order dated 16.11.2009 in OP No.13/2009.
69. From the above statutory provisions and facts it is clear that the distribution licensee can recover the expenditure specifically incurred for giving connectivity to a consumer provided (i) the expenditure has been incurred by the distribution licensee (ii) the expenditure is reasonable (iii) the expenditure has been

estimated fairly and transparently in accordance with the cost data approved by the Commission (iv) the expenditure is incurred for providing electric line or electrical plant used for the purpose of giving that supply and (v) the expenditure is not included in the ARR&ERC or in any other investment plan approved by the Commission. Such expenditure can be recovered irrespective of whether it is for distribution line, transmission line or substation. According to the Commission the Judgment of the Hon'ble High Court dated 30.06.2014 in Writ Appeal No.900/2013 and connected cases has to be understood and implemented in view of the scheme of law as explained in earlier paragraphs. All the distribution licensees including KSEB Limited shall bear the above statutory provisions in mind while implementing the Judgment of the Hon'ble High Court. It should also be clearly understood that the Hon'ble High Court has not approved collection of pro-rata development charges for which KSEB had sought for approval in OP No. 13/2009 and that the Commission had rightly rejected such approval in its order dated 16.11.2009.

70. The petitioner has submitted a list of 7 prospective consumers (exhibit 1 of the petition) who have applied for and waiting for electric connection. They were verbally requested by KSEB to pay development charges/ substation enhancement charges. Among them, demand was raised by KSEB In two cases only and those two consumers have already remitted the developmental charges. Copies of the receipts were attached as Ex.4 & 5. According to the petitioner, collecting the developmental charges or demanding the same in any other name is a clear violation of the Electricity Act 2003 and also of the order of the Commission dated 16-11-2009. Order of the Commission was against allowing KSEB to collect the developmental charges in the petition No. OP13/2009 filed by KSEB.
71. HT/EHT Association also submitted a list of 8 consumers who were requested to remit different charges at pro-rata basis for distribution part and transmission part of the cost of supply by KSEB. Similar cases were reported to the Compliance Examiner from Ernakulam, Trichur and Trivandrum areas. The De Paul Education Trust, Solar Offset Printers, M/s Glass & Glazing Systems Pvt. Ltd. are also other consumers who have faced the similar situation and approached the Commission.
72. The issue of unauthorised collection of development charges was brought before the Compliance Examiner of the Commission by KSSIA on 10-3-2011. Sri. Shaji Sebastian, KSSIA , Ernakulam District had submitted copy of two letters from KSEB before the Compliance Examiner of the Commission. The first one is a letter dated 9-7-2010 from the Dy. Chief Engineer, Transmission Circle Kalamassery to the Executive Engineers (Transmission Divisions) under his circle for realizing the expenditure from the applicants seeking supply of power from KSEB, in order to collect a uniform rate per KVA as development charges for transmission part. The Dy. Chief Engineer had submitted the proposals to Chief Engineer, Transmission South, KSEB on 24-11-2009. The Secretary, KSEB had conveyed the decision of the Board vide letter dated 29-3-

2010(No.TPC 2/359/09/439/29-3-10 of the Secretary, KSEB, Thiruvananthapuram) as follows. "The cost of developing additional infrastructure to provide supply to individual consumers and group of consumers may be realized from them as being done now." Based on the above, Dy. Chief Engineer, Transmission Circle Kalamassery had directed to realize an amount @ Rs. 1900/KVA for contract demand from EHT applicants. He has further directed to realize the transmission part of the cost from HT consumers @Rs. 1350/KVA for connected loads above 100 KVA as development charges. It is ordered to collect the amount with effect from 1-6-2010 in addition to the service connection charges. The Compliance Examiner, in his report to the Commission stated that the explanations of the Dy. Chief Engineer were not satisfactory regarding the complaints on the collection of pro-rata charges.

73. The other issue relates to a Board order dated 29-11-2010 (BO (FM) No.3090/2010 (TC1/SS/94/92) issued from the Transmission Profit Centre of KSEB on the methodology for arriving at the estimate amount for transmission works, the cost of which is to be recovered from beneficiaries. Previous to this, KSEB, vide Board Order (BO (FB) No.2390/2009 (TPC2/314/2009) dated 15-9-2009, had ordered to collect pro-rata amount from bulk consumers who requested for power allocation from any transformer. In the Board order dated 29-11-2010, it is also stated that Chief Engineer (C&T) was directed to forward the proposal to the Commission for approval. In the petition No TP-87/2011 filed by KSEB in the matter of approval of cost data for transmission works, the Commission has approved the methodology for estimating the cost of providing HT/EHT connections and for executing transmission works in favour of other beneficiaries vide order dated 23-5-2011. Commission has ordered that any dispute on the matter, including the rates, quantum of works executed etc. shall be subject to review by CGRF and Ombudsman. Therefore any individual dispute of the consumer related to the development charges can be brought before such forum by the respective consumers.
74. KSEB denied the contention of the petitioner that KSEB is continuing with collection of development charges sought by KSEB in the OP No.13/2009. The prayer of KSEB in that petition was to allow recovering a part of the advance investment made by KSEB for providing supply on demand from all prospective consumers LT, HT and EHT. In that petition, the rate proposed by KSEB was Rs. 1600/KVA from LT consumers above 10 KW and Rs. 1000/KVA for all new HT/ EHT consumers including bulk consumers. KSEB stated that the demand of the charges challenged by the petitioner in the present petition is not related to recovery of such advance investments made by KSEB. The term "development charge" is a misnomer used by the officers of the Board. The charges claimed are against expenses to be incurred by KSEB for release of new service connection / enhancing contract demand. The demand is related to expense towards installation of electrical plants in the transmission system without which the additional demand could not be catered to. The argument of

KSEB is that the pro-rata charge collected is not against the order of the Commission in the petition OP No.13/2009 since the purpose and the rates collected are now different from that proposed in the earlier petition.

75. The pro-rata charge claimed by KSEB is to be now looked into, in detail in terms of the relevant provisions of the Electricity Act, 2003, the Supply Code, 2005, previous orders of the Commission and also as perceived by the different stakeholders. There is vast difference in the pro-rata charges collected from the consumers listed in the appeal filed by HT/EHT Association during the hearing in the present petition. It is stated that the demand for development charge was using different names such as “cost of capacity enhancement works/system up gradation charges/work deposit charges/charges for enhancement of 66 KV substation/ cost of transmission part” etc. as given in the list submitted by them. It is seen that KSEB is demanding different rates for transmission and distribution part of the work that comes commonly for giving that supply, so that the individual consumer is charged portion proportionate to their requirement.
76. In contrast to the above, the allegations now made by the petitioners were related to recovery of cost of modifications in the substations/system required for providing power supply to the specific applicants. The recovery was proposed by the KSEB officials on a proportionate basis based on the load requirements of the individual applicants. The proportionate cost was reported to be decided based on the actual cost of modifications/strengthening in the substations. Prayers of KSEB in OP No. 13 of 2009 show that by no stretch of imagination can this proportionate recovery of actual cost be termed as the ‘development charges’ proposed in petition No: OP 13 dated 14-5-2009 even if some officials have termed the demand as development charge. As mentioned above, KSEB vide Board order dated 15-9-2009 (BO (FB) No.2390/2009 (TPC2/314/2009), had ordered to collect pro-rata amount from bulk consumers who requested for power allocation from any transformer.
77. The next issue to be addressed is the proportionate sharing or pro-rata sharing of the cost by the multiple applicants in an area. As per the records before the Commission it seems that the officials have computed the total cost involved in the modifications/strengthening of the substations, and estimated the total KVA load it can meet and arrived at the per KVA cost of modifications/strengthening of the substations. Such per KVA rates were demanded from prospective applicants depending upon their power requirements. In the instant case, some KSEB officials are reported to have demanded / collected proportionate per KVA charges towards recovery of cost of modifications/ strengthening of the substations. While recovery of expenditure for providing connection is permitted under the Act, recovery of a uniform per kVA rate as development charge is not permitted by law.
78. All such individual issues can be settled by KSEB Limited in accordance with the Judgment dated 30.06.2014 of the Hon’ble High Court in Writ Appeal No.900/2013 and connected cases. While settling the individual issues KSEB should bear in mind the legal provisions explained in earlier paragraphs. The

Commission is neither inclined nor expected to examine the individual cases in detail. The individual applicants has the freedom to approach the concerned CGRF/Ombudsman with petitions in the prescribed formats with all details. The CGRF/ Ombudsman should scrutinise the individual cases in the light of the principles enumerated in this order, especially in paragraph 69. The fora should also examine whether the works in the transmission sector are estimated in accordance with the order of the Commission on 23.05.2011 in petition No. TP-87/2011 in the matter of approval of cost data for transmission works.

79. Kerala State Electricity Board has been continuing as State Transmission Utility and distribution licensee owning generation assets after the enactment of the Electricity Act 2003. For improving the functional efficiency, KSEB was also functionally separated to generation, transmission and distribution profit centres under the corporate office. The matters relating to distribution of electricity by the distribution profit centre of KSEB were regulated in accordance with the provisions of Supply Code, 2005. The Hon'ble High Court has passed the judgment dated 30.06.2014 in Writ Appeal No.900/2013 and connected cases on the basis of the provisions of Electricity Act, 2003 read with the provisions of Supply Code, 2005. Subsequently, with effect from 01.04.2014 the Commission has issued Kerala Electricity Supply Code, 2014 and the Supply Code, 2005 has been repealed. The Commission has also issued KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014. The erstwhile KSEB was incorporated into a company namely Kerala State Electricity Board Limited. Subsequently the Government of Kerala, as per G.O (Ms)No.37/2008/PD dated 25.09.2008, issued the Kerala Electricity First Transfer Scheme 2008 for the purpose of vesting of functions, properties, interests, rights, obligations and liabilities of the Kerala State Electricity Board in the State Government. The Government of Kerala has, as per G.O (P)No. 46/2013 dated 31.10.2013 published as SRO No.871/2013, issued the Second Transfer Scheme by which the functions, properties, interests, rights, obligations and liabilities of the Kerala State Electricity Board which were vested in Government as per the First Transfer Scheme, were re-vested in KSEB Limited. KSEB Limited has also been constituted into three strategic business units under a corporate office. These strategic business units are generation strategic business unit (SBU-G), transmission strategic business unit (SBU-T) and distribution strategic business unit (SBU-D). Their assets and liabilities vested in each strategic business unit have also been clearly spelt out in the Second Transfer Scheme. Therefore there cannot be any doubt relating to the expenditure incurred by the distribution strategic business unit for giving supply to any individual consumer. The recovery of expenditure under section 46 of the Act has to be regulated in accordance with the Supply Code, 2014 after 01.04.2014.
80. The petitioner has submitted that the Judgment dated 30.06.2014 of the Hon'ble High Court in Writ Appeal No.900/2013 and connected cases is applicable only to the petitioners mentioned therein and it has no general

application. The petitioner has therefore requested that the individual cases may be settled in view of the provisions in Supply Code, 2014. The Commission, with due respect to the Hon'ble High Court, cannot take a view that the said Judgment of the Hon'ble High Court in a Writ Appeal has no application in other individual cases. Generally the principle pronounced by the Hon'ble High Court in its Judgment has to be followed by KSEB in similar cases. If the petitioner wants such clarification, it is for him to move the Hon'ble High Court and obtain such clarification.

Orders of the Commission.

81. On examination of the submissions by the petitioners and the respondent and after hearing the parties, the Commission issues the following orders:
- (1) KSEB Limited has the right to recover the reasonable expenditure, specifically incurred by its distribution profit centre for providing electric line and electrical plant required for giving supply of electricity to any consumer irrespective of whether such electric line and electrical plant are in the distribution system or the transmission system owned by the distribution profit centre, subject to the following conditions,-
 - (i) the expenditure has been incurred by the distribution profit centre;
 - (ii) the expenditure is reasonable;
 - (iii) the expenditure has been estimated fairly and transparently in accordance with the cost data approved by the Commission;
 - (iv) the expenditure is incurred for providing electric line or electrical plant used for the purpose of giving that supply; and
 - (v) the expenditure is not included in the ARR&ERC or in any other investment plan approved by the Commission.
 - (2) As ordered by the Commission in its order dated 16.11.2009 in OP No.13/2009 and as admitted by KSEB Limited in its submission before the Commission, it has no right to collect the pro-rata development charge or any other similar charge in any other name.
 - (3) The individual cases for recovery of expenditure from the consumers under section 46 of the Electricity Act, 2003, as mentioned in the petition may be settled in accordance with the principles pronounced by the Hon'ble High Court in its Judgment dated 30.06.2014 in Writ Appeal No.900/2013 and connected cases.
 - (4) The individual cases which arose on or before 31.03.2014, for recovery of expenditure from the consumers under section 46 of the Electricity Act, 2003, which are not mentioned in the petition, may also be settled in accordance with the principles pronounced by the Hon'ble High Court in its Judgment dated 30.06.2014 in Writ Appeal No.900/2013 and connected cases.

- (5) The recovery of expenditure under Section 46 of the Electricity Act, 2003 in the cases which arose on or after 01.04.2014 shall be regulated in accordance with the provisions in the Kerala Electricity Supply Code, 2014, since the Judgment of the Hon'ble High Court dated 30.06.2014 in Writ Appeal No.900/2013 and connected cases was issued in view of the provisions in the Supply Code, 2005.

Petition is disposed of accordingly.

Dated this 22nd day of January 2015.

Sd/-
K. Vikraman Nair
Member

Sd/-
Mathew George
Member

Sd/-
T.M.Manoharan
Chairman

Approved for issue

SECRETARY