

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

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

Petition No. OP 14/2015

In the matter of rectification of anomalies in fixation of quota for power consumption and seeking fresh fixation of eligible quota as directed by the Hon'ble High Court of Kerala in its judgment dated 08.11.2012 in Writ Petition No. 2579/2012.

M/s Lulu Cyber Park Ltd. : Petitioner
(Formerly known as L&T Tech Park Ltd)
Ground Floor, Lulu Cyber Tower,
Infopark Special Economic Zone
P.O. Infopark, Kakkanad, Kochi 682042.

1. Kerala State Electricity Board,
Vydythi Bhavanam, Pattom,
Thiruvananthapuram

2. M/s KINESCO Power and Utilities Pvt. Ltd
Room No.302-306, IIInd Floor,
CFC Building, KINFRA Park Office,
P.O. Kusumagiri, Kakkanad, Kochi 682030

} Respondent

Order Dated 08.06.2015

1. M/s Lulu Cyber Park Limited, the petitioner, has filed this petition as per the directions contained in the judgment dated 08.11.2012 of the Hon'ble High Court of Kerala in WP (C) No. 2579/2012. The petitioner is running an information technology park. The petitioner is a High Tension (HT) consumer of the 2nd respondent namely, M/s KINESCO Power and Utilities Private Limited (hereinafter referred to as KPUPL) with effect from 23.01.2008 and it has a contract demand of 2900kVA as per the service connection agreement executed between M/s Kinfra Export Promotion and Industrial Park (KEPIP) and M/s L&T Tech Park Limited. M/s KPUPL is the successor in interest of M/s KEPIP as distribution licensee and M/s Lulu Cyber Park Limited is the successor in interest of M/s L&T Tech Park Limited as consumer. KSEB, the first respondent in this case, had introduced power restrictions with effect from 25.05.2008, in accordance with the approval given by this Commission in its order dated

24.07.2008. In view of the directions contained in the said order of the Commission, the KSEB had, as per B.O No. 1817/2008 (Plg.com 4649/2008/08-09)/312 Thiruvananthapuram dated 24.07.2008, issued instructions for implementation of the power restriction. Aggrieved by the quota for monthly consumption as fixed in accordance with the above Board Order the petitioner had approached the Consumer Grievances Redressal Forum (CGRF), Ernakulam. CGRF, Ernakulam vide its order dated 05.01.2009 dismissed the petition. Thereupon the petitioner, on 27.01.2009 preferred an appeal against the order of the CGRF, before the Kerala Electricity Ombudsman. The Electricity Ombudsman vide order No.P48-57/09/223 dated 30.04.2009 directed the licensee M/s KEPIP to compute and fix the eligible monthly quota for consumption of electricity by the petitioner allowing 250 units per kVA of billing demand (75% of the contract demand) as the base average with effect from 01.02.2009. In view of the said order of the Electricity Ombudsman the petitioner had claimed and obtained a refund of Rs.9,97,916/- on 14.11.2009 from the licensee M/s KEPIP. M/s KPUPL, the successor in interest of the licensee M/s KEPIP, had moved the Ombudsman for a review of its order dated 30.04.2009. During the hearing on the admissibility of the review petition, held on 17.08.2010, the petitioner had submitted in writing to the Electricity Ombudsman that *“by and large, we are satisfied with the order No. P48-57/09/223 dated 30.04.2009 issued by this honourable forum and would abide by the same. We do not wish to open the case for review”*. After a lapse of eight months the Electricity Ombudsman, *suo motu* decided to admit the review petition filed on 30.06.2010 by M/s KPUPL. Consequently, the Electricity Ombudsman, as per his order No. P/48/2009 dated P/57/2009 (Review Petition)/938 dated 02.08.2011, ordered to recalculate the quota for consumption of electricity by the petitioner in accordance with the Board Order dated 24.07.2008. Aggrieved by the above order dated 02.08.2011 of the Electricity Ombudsman, the petitioner filed Writ Petition No.2579/2012, before the Hon'ble High Court of Kerala challenging the directions issued by the Electricity Ombudsman in his order dated 02.08.2011. In the judgment dated 08.11.2012 the Hon'ble High Court quashed the order of the Electricity Ombudsman dated 02.08.2011 and directed the petitioner to approach this Commission with appropriate petition seeking fresh fixation of eligible quota in view of the order issued by the Commission on 24.07.2008. This petition has been filed accordingly.

2. The prayer in this petition is as follows,-

“It is our submission before this Hon'ble Commission to fix a reasonable allocation of eligible quota in the case of this petitioner taking note of the fact that Petitioner's electric connection was provided in January 2008 and also taking note of the facts that:

- 1. The average consumption for the months upto March 2008 and thereafter shows a steep increase.*
- 2. Had the Petitioner been connected up after 1.4.2008 they would be eligible for base average of 250 units per kVA of Billing demand. Only because they got connection 2 or 3 months earlier,*

they are forced to pay heavy penal rates for consumption. This is against the principles of justice.

3. *During the initial months, though the actual demand was as low as around 920 kVA, the Petitioner, as per the service connection agreement, had been paying every month the fixed charges for 75% of the contract demand, i.e, 2175 kVA.”*
3. The relevant facts leading to the case are as follows,-
4. In view of the acute power shortage experienced in the State during the year 2008-09, the first respondent namely, KSEB had introduced restriction on consumption of power by the consumers, after obtaining approval from this Commission as per its order dated 24.07.2008. In the said order this Commission had given the following directions,-
 - “5. *The Commission has considered the arguments of KSEB and views expressed by the stakeholders during the public hearing. Considering the precarious power situation and possible system failure, the Commission is convinced of the essentiality of restricting power consumption of all consumers in Kerala. As an interim measure, all HT & EHT consumers shall restrict the power consumption to 75% on a monthly basis, calculated based on the average monthly consumption from 1st April, 2007 to 31st March 2008. Any consumption over and above the quota fixed shall be charged at the actual cost of additional power purchase required calculated on a monthly basis. The rates for additional usage shall be got approved by the Commission before the 5th of each month.*
 6. *For consumers who do not have adequate consumption during the period mentioned above, the modality for fixing the quota shall be furnished immediately by the Board for approval.*
 7. *All licensees who avail power from KSEB shall restrict the consumption of their HT & deemed HT consumers to 75% as mentioned above. The drawl from KSEB will be reduced by such quantity and the overdrawl will be charged at rates as mentioned above.*
 8. *The Board and other licensees shall take all necessary steps to restrict all kinds of luxury and non-essential consumption including illumination by all consumers. Adequate publicity shall be given through media for such measures.*
 9. *The Commission shall review the power position on 1st of September 2008 or before if needed, to decide extension or relaxation of power restrictions. KSEB shall furnish all necessary data for the review. After the review, if the situation so demands, the Commission may extend the restrictions to all categories of consumers.*
 10. *This order shall be effective from 25.07.2008”*
5. In view of the order of the Commission dated 24.07.2008, KSEB issued B.O No. 1817/2008 (Plg.com 4649/2008/08-09)/312 Thiruvananthapuram dated

24.07.2008, by which detailed procedure for calculation of quota for consumption of electricity by consumers, was issued. As per the said order, the consumption was restricted to 75% of the base average consumption, which had to be calculated as per the detailed instructions contained therein. It was also stipulated that there will be no restriction on the maximum demand. The base average consumption was calculated taking into consideration the consumption during the period of 12 months from 01.04.2007 to 31.03.2008. For the purpose of calculating the base average consumption, the consumers were categorized into the following three categories,-

- (i) Consumers who had availed connection prior to 01.04.2007;
- (ii) Consumers who had availed connection between 01.04.2007 and 31.03.2008, thereby having consumption for period less than 12 months.
- (iii) Consumers who had availed connection on or after 01.04.2008

The petitioner, who had availed connection on 23.01.2008, was in category (ii) above. Therefore the base average consumption of the petitioner was calculated taking into consideration the consumption from February, 2008 to June, 2008. The petitioner being a cyber park had very little consumption during the initial months since the park was not occupied by IT Industrial units. The petitioner was being billed for a billing demand of 2175 kVA, being 75% of the contract demand of 2977 kVA. The details of consumption and billing pertaining to the petitioner during the period from January 2008 to April 2009 are as given below,-

Contract Demand (kVA) - 2900 kVA
Billing Demand (kVA) - 2175 kVA

Month	Actual demand (kVA)	No. of units	Quota fixed by licensee	Excess units over quota	Excess over quota as a% of total consumption
Jan-08	0	0	-	-	-
Feb-08	3	135777	-	-	-
Mar-08	39	192994	-	-	-
Apr-08	819	216767	-	-	-
May-08	882	256950	-	-	-
Jun-08	902	234801	-	-	-
Jul-08	865	258387	155593	23985	9
Aug-08	944	248089	155593	92496	37
Sep-08	919	262966	155593	107373	41
Oct-08	914	302133	161282	140851	47
Nov-08	1021	320023	165966	154057	48
Dec-08	1086	337876	165966	171910	51
Jan-09	1190	324613	165966	158647	49
Feb-09	1058	321318	165966	155352	48
Mar-09	1216	366916	165966	200950	55
Apr-09	1356	355946	165966	189980	53

As can be seen from the above data, the actual demand of the petitioner was zero in January 2008, 3 kVA in February 2008 and 39 kVA in March 2008, as

against the contract demand of 2900 kVA and billing demand of 2175 kVA. From March, 2008 to September, 2008 the actual demand was only between 819 kVA and 944 kVA and from October, 2008 to April, 2009 the actual demand was only between 1021 kVA and 1356 kVA. For those consumers who had availed connection on or after 01.04.2008, the quota was fixed at 250 units per kVA in accordance with the directions in the Board Order dated 24.07.2008. From the consumption pattern as evident from the table above, the occupancy by IT industrial units in the cyber park of the petitioner must have been very poor, as claimed by the petitioner. Had the petitioner availed connection on or after 01.04.2008 as against their actual date of connection of 23.01.2008, the petitioner would have been eligible for a quota at a rate of 250 units per kVA, that is $2175 \times 250 = 543750$ units.

6. Aggrieved by the anomaly in assessing the quota, the petitioner had approached the CGRF, Ernakulam. In its order dated 05.01.2009, the CGRF had rejected the prayer of the petitioner. Thereupon, the petitioner moved the Electricity Ombudsman in an appeal against the order dated 05.01.2009 of the CGRF. The Electricity Ombudsman as per its order No.P48/2009 and P57/2008 dated 30.04.2009 directed as follows,-

“The monthly quota for both the appellants (M/s L&T Park and M/s US Technology International Pvt. Limited, shall be computed and fixed taking 250 units per kVA of billing demand (75% of contract demand) as the base average with effect from 01.02.2009.”

For arriving at the above decision the Electricity Ombudsman had adopted the same criteria which was approved by this Commission with respect to LT consumers. As per the principle adopted in the case of LT consumers, if the average consumption worked out as per the norms is below the normative figure of 105 units per kVA of the connected load, the normative figure of 105 units per kVA should be applied for fixation of quota. In the case of HT consumers, who had availed the connection on or after 01.04.2008, the quota was fixed based on the normative consumption of 250 units / kVA as per the Board Order dated 24.07.2008. But there was no order to the effect that in the case of HT consumers, if the base average consumption worked out on the basis of the norms stipulated by KSEB, is below the normative consumption of 250 units / kVA, such normative consumption of 250 units / kVA should be applied to fix the quota for such consumers. There was also no specific order of this Commission to extend the principle adopted for LT consumers to the cases of similarly placed HT consumers. The Electricity Ombudsman had applied the same principle adopted for fixing the quota of LT consumers to the cases of HT consumers and issued orders to apply the normative consumption of 250 units / kVA for assessing the quota of such HT consumers whose base average consumption worked out on the basis of the norms stipulated by KSEB is below the normative consumption of 250 units / kVA.

7. In view of the above order of the Electricity Ombudsman, the petitioner claimed and obtained refund of Rs.9,97,916/- on 14.11.2009 from the licensee M/s KEPIP. M/s KEPIP was purchasing electricity from KSEB for distribution among its consumers. M/s KEPIP had passed on to KSEB, the amount collected from the petitioner for the consumption in excess over the quota, in accordance with the orders of this Commission. When M/s KEPIP claimed the amount refunded to the petitioner from KSEB, the Board took a stand that they were not parties to the order dated 30.04.2009 of the Electricity Ombudsman and therefore the Board was not liable to repay the amount to M/s KEPIP. The Commission as per letter dated 21.10.2009 had directed M/s KEPIP to refund the amount to the petitioner. Therefore M/s KEPIP took up the matter with the Commission for a direction to KSEB for refund of the amount. As per order dated 10.05.2010 this Commission had found that a formula for fixing quota for new industries was approved and communicated to KSEB through a letter dated 07.08.2008. But the said formula was not brought to the notice of the other licensees buying power from KSEB. The Commission noticed that the order dated 30.04.2009 happened to be issued by the Electricity Ombudsman without noticing the above aspects. Further it was also observed by the Commission that the Ombudsman was not empowered to arrive at a new formula for fixing eligible quota ignoring the orders of the Commission. Therefore KEPIP was directed to seek review of the order of the Electricity Ombudsman dated 30.04.2009 by making KSEB also a party. Accordingly M/s KPUGL, the successor in interest of the original licensee M/s KEPIP, had filed a review petition before the Electricity Ombudsman on 30.06.2010. During the hearing on 17.08.2010, the petitioner had submitted as follows,-

“by and large, we are satisfied with the order No. P48-57/09/223 dated 30.04.2009 issued by this honourable forum and would abide by the same. We do not wish to open the case for review”.

8. In the order dated 02.08.2011 in the review petition the Electricity Ombudsman directed M/s KEPIP to recalculate the quota of the petitioner as per order dated 24.07.2008 of the Commission and also as per the modality of the quota fixation approved by the Commission for those who do not have adequate consumption during the base year, vide letter dated 07.08.2008 addressed to KSEB. It was also ordered that the earlier order of the Electricity Ombudsman dated 30.04.2009 stood revoked.

9. Aggrieved by the order of the Electricity Ombudsman dated 02.08.2011 the petitioner filed Writ Petition No.2579/2012. In the judgment dated 02.11.2012 the Hon'ble High Court quashed the order of Electricity Ombudsman dated 02.08.2011 and directed the petitioner to approach this Commission for appropriate orders on calculation of quota. In the judgment dated 02.11.2012 the Hon'ble High Court observed and ordered as follows,-

“8. While considering the rival contentions, this court takes note of the fact that, in Ext.P7 order the 4th respondent directed that 75% of the average consumption for previous one year should be fixed as eligible

quota. At the same time KSEB was directed to formulate and submit modality for fixing the quota for approval, with respect to consumers who do not have adequate consumption during the period of one year. Going by Ex. R1 (f) order issued by the KSEB on 24.07.2008 it is evident that the Electricity Board had formulated modality for calculation of the base average. With respect to new industrial connections provided between 01.04.2007 and 31.08.2008 it is stated that, "the average consumption will be calculated taking the actual consumption divided by the number of months for which they have availed supply of energy. Base average will be calculated by applying the principle as in clause 2 (a)". Clause 2 (a) pertains to method of calculation of a base average for the previous period of one year. An illustration as to how the calculation has to be made is also shown in Ext. R1 (f). The 4th respondent Commission while approving the norms for fixation of quota submitted by the KSEB had observed in Ext. R1 (e) letter that, "in case of variation of consumption by any consumer, KSEB shall fix the quota adopting appropriate formula ensuring that the consumer is allocated its eligible quota based on his average consumption." One of the main grounds of attack against Ext. P4 is that since the petitioner was not having consumption for the entire previous one year and since the consumption was steadily increasing during subsequent months after 31.03.2008, the calculation adopted based on average of the few months falling within the previous one year, may not be just and correct reflection of the average consumption. Therefore it is contended that method adopted by the KSEB which is contended that method adopted by the KSEB which is approved by the 4th respondent Commission is unrealistic and cannot be made applicable in the case of the petitioner. In this regard it is pertinent to note that, in the impugned order the 3^d respondent, it is observed that the modality proposal submitted by KSEB to the Commission, which was approved by it, does not contain anything new or special in the norms for quota fixation, as envisaged by the Commission for consumers who do not have adequate consumption during base year. This modality proposed by the KSEB was one and the same as devised for the existing consumers of the base year, who have adequate consumption. Hence in effect there was no distinction between consumers having adequate and inadequate consumption during the base year period. According to the Ombudsman even though the Commission have eager for better criteria for those who have not adequate consumption for the base year, no separate method has been adopted by the KSEB. Further it is pointed out that even while approving the proposal formulating modality, the Commission observed that, in case of variation of consumption by any consumer, KSEB shall fix the quota by adopting appropriate formula ensuring that the consumer is allocated quota

based on his average consumption. However the Ombudsman found that when there exists specific order of the 4th respondent Commission with respect to fixation of eligible quota the same is liable to be followed unless such anomaly is brought to the notice of the Commission for the purpose of reviewing its decision, either by the licensee or by the consumer. But even after making such observations, the Ombudsman had issued directions to the 5th respondent to re-calculate fixation of eligible quota applicable to the petitioner based on modalities formulated by the KSEB which is approved by the Commission.

9. *Under the above context, this court is inclined to appreciate the fact that the petitioner started consumption only in January 2008 and there is merit in the contention raised that the consumption was steadily increasing during the subsequent months. Hence, if the base average of the petitioner is fixed taking note of the consumption for 3 months of January, February, and March 2008, the same will definitely result in causing injustice and prejudice to the petitioner. The 4th respondent Commission while accepting the modalities proposed by the KSEB had specifically observed that in case of variation of consumption by any consumer, appropriate formula for ensuring allocation of eligible quota based on average consumption should be adopted. Therefore, this court is of the view that the case of the petitioner need consideration on a different pedestal taking note of the fact that petitioner's electric connection was provided in January 2008 and also taking note of the fact that the average consumption for the months up to March 2008 and thereafter shows a steep increase. Therefore a reasonable allocation of eligible quota need to be fixed in the case of the petitioner by adopting any different yardsticks. Going by relevant provision in the statute, the competent authority to fix such criteria is the 4th respondent Commission. Hence this court is of the view that interest of justice will be served if the petitioner is given liberty to approach the 4th respondent, seeking fixation of eligible quota.*
10. *Under the above mentioned circumstances, the Writ Petition is disposed of by quashing Ext.P4. The petitioner company is directed to approach the 4th respondent Commission with appropriate petition seeking fresh fixation of eligible quota in view of Ext. P7 order issued by the Commission. If any such application is submitted by the petitioner before the 4th respondent, within a period of one month from the date of receipt of a copy of this judgment, the 4th respondent shall consider the same taking note of the entire facts and circumstances after affording an opportunity of hearing to the petitioner, the KSEB and the respondent No.5. A fresh decision fixing the eligible quota for the petitioner shall be made, taking note of all the relevant documents and orders issued by the Commission. It is made clear that the refund*

already effected to the petitioner on the basis of Ext.P1 order will be subject to final outcome of the matter, which will be decided by the 4th respondent Commission.

11. It is made clear that, ultimately if it is found that any further amount is liable to be refunded to the petitioner company, the KSEB shall reimburse the same to the 5th respondent. Needless to say that if any further amount is found payable by the petitioner company, the 5th respondent shall make payment of the same to the KSEB, on remittance by the petitioner.

12. It is also made clear that I have not expressed anything on the merits of the contentions and the parties will be at liberty to raise all contentions before the 4th respondent.”

10. From the judgment dated 08.11.2012 of the Hon'ble High Court, it can easily be found that,-

- (1) The Hon'ble High Court has quashed the order of the Electricity Ombudsman dated 02.08.2011 in the review petition, by which the Electricity Ombudsman had directed M/s KEPIP / M/s KPUPL to fix the quota of the petitioner in accordance with the Board Order dated 24.07.2008 issued by KSEB in view of the order of this Commission dated 24.07.2008.
- (2) The Commission had already directed in its order dated 24.07.2008 that for consumers who did not have adequate consumption during the period between 01.04.2007 and 31.03.2008, the modality for fixing quota shall be furnished immediately by the Board for approval.
- (3) In the case of existing LT consumers, prior to 01.04.2008, who did not have adequate consumption or nil consumption, the Commission had already taken a decision to the effect that the quota applicable to LT consumers should be 75% of the base average monthly consumption subject to a minimum of 105 units per KW of connected load.
- (4) The Electricity Ombudsman in its order dated 30.04.2008 had extended the above decision of the Commission with regard to LT consumers to HT consumers also, though without explicit order of the Commission.
- (5) The Hon'ble High Court has held that the case of the petitioner needs consideration on a different pedestal taking note of the fact that petitioner's electric connection was provided in January, 2008 and also taking note of the fact that the average consumption for the months up to March, 2008 and thereafter shows a steep increase. Therefore a reasonable allocation of eligible quota has to be fixed in the case of the petitioner adopting an appropriate yardstick.
- (6) If the petitioner submits an application before this Commission, within a period of one month from the date of receipt of a copy of the judgment of the Hon'ble High Court, the Commission shall consider the same, taking note of the entire facts and circumstances, affording an opportunity of hearing the petitioner.

- (7) Realization of charges for consumption in excess over the quota and refund of the amount already collected will be subject to the final order issued by the Commission for fixing quota.
- (8) Ultimately if it is found that any further amount is liable to be refunded to the petitioner KSEB shall reimburse the same to the 5th respondent.
11. In deference to the directions of the Hon'ble High Court the Commission takes the following decisions with regard to the quota for consumption of electricity by the petitioner stated hereunder,-
- (1) The quota for consumption of electricity admissible to the petitioner shall be worked out adopting 250 units / month / kVA of billing demand as the base average consumption during the period of power restriction as ordered by the Commission in its order dated 24.07.2008.
- (2) As ordered by the Hon'ble High Court, the amount if any to be refunded to the petitioner shall be worked out based on the above order, taking into consideration the amount of refund already effected to the petitioner on the basis of the order of the Electricity Ombudsman dated 30.04.2009.
- (3) As ordered by the Hon'ble High Court in its judgment dated 02.11.2012 the amount refunded to the petitioner shall be reimbursed by M/s KSEB Limited to M/s KPUPL and further amount if any is found payable by the petitioner, M/s KPUPL shall make payment of the same to M/s KSEB Limited on remittance by the petitioner.

Sd/-
K. Vikraman Nair
Member

Sd/-
S. Venugopal
Member

Sd/-
T.M.Manoharan
Chairman

Approved for Issue,

SECRETARY